



ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on September 11, 2018, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - 609

INDEXES & OTHER INFORMATION

Regulation Review Procedure	613
ARRS Report.....	895
Other Committee Reports	900
Locator Index - Effective Dates.....	C - 2

KRS Index.....	C - 9
Certifications	C - 16
Technical Amendments	C - 22
Subject Index.....	C - 23

EMERGENCIES

Department of Fish and Wildlife Resources

301 KAR 002:225E. Dove, wood duck, teal, and other migratory game bird hunting.	614
--	-----

Department of Corrections

501 KAR 006:020E. Corrections policies and procedures.....	617
--	-----

Department of Community Based Services: Child Welfare

922 KAR 001:360E. Private child care placement, levels of care, and payment.....	619
--	-----

AS AMENDED

Kentucky Higher Education Assistance Authority

011 KAR 005:145. CAP grant award determination procedure.....	626
011 KAR 015:010. Definitions for 11 KAR Chapter 15.	626
011 KAR 015:110. Scholarships for Registered Apprenticeship programs.	627

Agricultural Experiment Station: Pet Food

012 KAR 003:007. Definitions for 12 KAR Chapter 3.	628
012 KAR 003:012. Labeling format and labeling.	628
012 KAR 003:017. Brand and product names.	630
012 KAR 003:022. Expression of Guarantees.....	631
012 KAR 003:027. Ingredients.	633
012 KAR 003:028. Descriptive terms.	634
012 KAR 003:032. Feeding directions.....	635
012 KAR 003:037. Drugs and pet food additives.....	635
012 KAR 003:039. Nutritional adequacy.	636
012 KAR 003:042. Statements of calorie content.	637

State Board of Elections

031 KAR 003:010. Current address of Kentucky registered voters and distribution of voter registration lists.	638
---	-----

Personnel Cabinet

101 KAR 002:034. Classified compensation administrative regulations.....	639
--	-----

101 KAR 002:095. Classified service general requirements.	643
101 KAR 003:045. Compensation plan and pay incentives for unclassified service.	646

Board of Pharmacy

201 KAR 002:015. Continuing education.	650
---	-----

Department of Fish and Wildlife Resources

301 KAR 001:115. Propagation of aquatic organisms.....	651
301 KAR 002:172. Deer hunting seasons, zones, and requirements.	652

DEPARTMENT OF AGRICULTURE: Pest Control

302 KAR 029:020. General provisions for structural pest control.	655
---	-----

Department of Juvenile Justice

505 KAR 001:120. Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services.	656
--	-----

Department of Insurance

806 KAR 009:360. Pharmacy benefit manager license.	656
---	-----

Department for Aging and Independent Living

910 KAR 001:090. Personal care attendant program and assistance services.....	657
910 KAR 002:030. Accounting provisions for adult guardianship.	662

Department for Community Based Services

921 KAR 003:030. Application process.	664
--	-----

AMENDED AFTER COMMENTS

Department for Environmental Protection: Water

401 KAR 005:002. Definitions for 401 KAR Chapter 5.....	667
401 KAR 005:005. Permits to construct, modify, or operate a facility.....	675
401 KAR 005:015. Releases to be reported to the division.	687
401 KAR 005:037. Groundwater protection plans.....	690
401 KAR 005:320. Wastewater Laboratory Certification Program.	696

Office of Learning Programs Development

<u>704 KAR 003:306.</u>	Kentucky Academic Standards for Historical and Cultural Influences of the Bible Elective Social Studies Course.	700
-------------------------	--	-----

Department of Charitable Gaming

<u>820 KAR 001:032.</u>	Pulltabs.	702
<u>820 KAR 001:050.</u>	Raffles.	715
<u>820 KAR 001:057.</u>	Recordkeeping.	718
<u>820 KAR 001:060.</u>	Prohibited conduct.	724

PROPOSED AMENDMENTS**Department of Revenue**

<u>103 KAR 015:110.</u>	Ethanol tax credit.	727
<u>103 KAR 015:120.</u>	Cellulosic ethanol tax credit.	728
<u>103 KAR 015:140.</u>	Biodiesel tax credit.	730
<u>103 KAR 016:352.</u>	Corporation income taxes policies and circulars.	732
<u>103 KAR 017:100.</u>	Division of income between married individuals filing separate tax returns.	734
<u>103 KAR 017:130.</u>	Individual income tax – military personnel – nonresidents.	735
<u>103 KAR 017:140.</u>	Individual income tax – reciprocity – nonresidents.	736
<u>103 KAR 018:180.</u>	Kentucky economic development acts wage assessment.	738

Board of Pharmacy

<u>201 KAR 002:370.</u>	Pharmacy services in long-term care facility (LTCF).	740
-------------------------	---	-----

Board of Medical Licensure

<u>201 KAR 009:260.</u>	Professional standards for prescribing and dispensing controlled substances.	743
-------------------------	---	-----

Department of Fish and Wildlife Resources

<u>301 KAR 001:015.</u>	Boat and motor restrictions.	748
<u>301 KAR 001:132.</u>	Sale of live bait.	750
<u>301 KAR 002:225.</u>	Dove, wood duck, teal, and other migratory game bird hunting.	752
<u>301 KAR 003:022.</u>	License, tag, and permit fees.	755
<u>301 KAR 004:090.</u>	Buying and selling of inedible wildlife parts.	758

Department for Environmental Protection: Air Quality

<u>401 KAR 052:050.</u>	Permit application forms.	759
<u>401 KAR 052:070.</u>	Registration of air contaminant sources.	761

Department of Corrections

<u>501 KAR 006:020.</u>	Corrections policies and procedures.	764
-------------------------	---	-----

Department of Education

<u>701 KAR 005:140.</u>	District of innovation.	766
<u>702 KAR 007:065.</u>	Designation of agent to manage middle and high school interscholastic athletics.	770

Workers' Compensation Funding Commission

<u>803 KAR 030:010.</u>	Special fund assessments.	774
-------------------------	--------------------------------	-----

Occupational Safety and Health Review Commission

<u>803 KAR 050:010.</u>	Hearings: procedure, disposition.	780
-------------------------	--	-----

Department of Housing, Buildings, and Construction

<u>815 KAR 004:030.</u>	Elevator licensing.	790
<u>815 KAR 007:070.</u>	The Kentucky Certified Building Inspector Program.	794
<u>815 KAR 008:010.</u>	Licensing requirements for master contractors and journeyman HVAC mechanics.	800
<u>815 KAR 008:030.</u>	Apprentice HVAC mechanic registration and certification requirements.	804
<u>815 KAR 015:080.</u>	Boiler and pressure vessel licenses.	805
<u>815 KAR 020:030.</u>	Plumbing licenses.	808
<u>815 KAR 025:020.</u>	Recreational vehicles.	813
<u>815 KAR 025:040.</u>	Fire safety requirements in manufactured and mobile homes.	821

<u>815 KAR 025:050.</u>	Administration and enforcement of manufactured housing construction standards.	822
-------------------------	---	-----

<u>815 KAR 025:060.</u>	Licensing and certifications with manufactured homes and mobile homes.	827
-------------------------	---	-----

<u>815 KAR 025:090.</u>	Site preparation, installation, and inspection requirements.	832
-------------------------	---	-----

<u>815 KAR 025:100.</u>	Alternative dispute resolution and mediation program.	835
-------------------------	--	-----

<u>815 KAR 035:015.</u>	Certification of electrical inspectors.	837
-------------------------	--	-----

<u>815 KAR 035:020.</u>	Electrical inspections.	841
-------------------------	------------------------------	-----

<u>815 KAR 035:060.</u>	Licensing of electrical contractors, master electricians, and electricians.	845
-------------------------	--	-----

<u>815 KAR 035:080.</u>	Electrical code of ethics.	849
-------------------------	---------------------------------	-----

<u>815 KAR 035:090.</u>	Electrical Training Program Standards.	850
-------------------------	---	-----

Department of Community Based Services: Child Welfare

<u>922 KAR 001:360.</u>	Private child care placement, levels of care, and payment.	853
-------------------------	---	-----

NEW ADMINISTRATIVE REGULATION**Department of Revenue**

<u>103 KAR 015:041.</u>	Repeal of 103 KAR 15:040 and 103 KAR 15:090.	859
<u>103 KAR 016:011.</u>	Repeal of 103 KAR 016:010, 103 KAR 016: 210, 103 KAR 016: 310, and 103 KAR 016:360.	860

Department of Revenue

<u>103 KAR 017:042.</u>	Repeal of 103 KAR 017:041.	861
<u>103 KAR 018:191.</u>	Repeal of 103 KAR 018:190. 103 KAR 018:200, 103 KAR 018: 210, and 103 KAR 018:220.	862

Department of Agriculture

<u>302 KAR 020:210.</u>	Repeal of 302 KAR 020:210.	863
<u>302 KAR 020:221.</u>	Repeal of 302 KAR 020:220.	864
<u>302 KAR 020:231.</u>	Repeal of 302 KAR 020:231.	865
<u>302 KAR 020:541.</u>	Repeal of 302 KAR 020:054.	866
<u>302 KAR 020:561.</u>	Repeal of 302 KAR 020:561.	867
<u>302 KAR 020:571.</u>	Repeal of 302 KAR 020:057.	868
<u>302 KAR 020:581.</u>	Repeal of 302 KAR 020:058.	869
<u>302 KAR 100:011.</u>	Repeal of 302 KAR 100:010.	870
<u>302 KAR 100:021.</u>	Repeal of 302 KAR 100:020.	872

Workers' Compensation Funding Commission

<u>803 KAR 030:021.</u>	Repeal of 803 KAR 030:020.	873
-------------------------	---------------------------------	-----

Department of Housing, Buildings, and Construction

<u>815 KAR 002:010.</u>	Continuing education.	874
<u>815 KAR 002:020.</u>	Continuing education course and provider approval.	876
<u>815 KAR 002:030.</u>	Vehicle identification.	879
<u>815 KAR 002:040.</u>	Fees and refunds.	881
<u>815 KAR 004:071.</u>	Repeal of 815 KAR 004:040, 815 KAR 004:050, 815 KAR 004:060, and 815 KAR 004:070.	882

<u>815 KAR 008:091.</u>	Repeal of 815 KAR 008:020, 815 KAR 008:035, 815 KAR 008:050, 815 KAR 008:060, 815 KAR 008:090, and 815 KAR 008:095.	883
-------------------------	--	-----

<u>815 KAR 020:041.</u>	Repeal of 815 KAR 020:012, 815 KAR 020:015, 815 KAR 020:018, 815 KAR 020:032, 815 KAR 020:034, and 815 KAR 020:040.	885
-------------------------	--	-----

<u>815 KAR 022:011.</u>	Repeal of 815 KAR 022:010.	886
<u>815 KAR 025:011.</u>	Definitions for 815 KAR Chapter 025.	887

<u>815 KAR 025:081.</u>	Repeal of 815 KAR 025:070 and 815 KAR 025:080.	889
-------------------------	---	-----

<u>815 KAR 035:101.</u>	Repeal of 815 KAR 035:100.	890
-------------------------	---------------------------------	-----

CHFS: Commissioner's Office: Administration

<u>900 KAR 001:091.</u>	Repeal of 900 KAR 001:090.	891
-------------------------	---------------------------------	-----

Department of Medicaid Services

<u>907 KAR 001:121.</u>	Repeal of 907 KAR 001:120 and 907 KAR 001:130.	892
-------------------------	---	-----

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2018 Edition of the
KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 45, Kentucky Register, page 318 (short form: 45 Ky.R. 318).

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

(ISSN 0096-1493)

© 2018 Legislative Research Commission, All Rights Reserved

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$120 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky. POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

Chairmen

Senator Robert Stivers
Senate President

Senate and House Members

Senator Jimmy Higdon
President Pro Tempore

Representative David W. Osborne
Speaker Pro Tempore

Senator Damon Thayer
Majority Floor Leader

Representative Jonathan Shell
Majority Floor Leader

Senator Ray S. Jones II
Minority Floor Leader

Representative Rocky Adkins
Minority Floor Leader

Senator Dan "Malano" Seum
Majority Caucus Chair

Representative David R. Meade
Majority Caucus Chair

Senator Dorsey Ridley
Minority Caucus Chair

Representative Dennis Keene
Minority Caucus Chair

Senator Mike Wilson
Majority Whip

Representative Kevin Bratcher
Majority Whip

Senator Dennis Parrett
Minority Whip

Representative Wilson Stone
Minority Whip

David Byerman, Director
Joe Cox, Printing and Publications Officer

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Members

Senator Ernie Harris, Co-Chair
Representative David Hale, Co-Chair
Senator Julie Raque Adams
Senator Perry B. Clark
Senator Alice Kerr
Representative Mary Lou Marzian
Representative Jason Petrie
Representative Tommy Turner

Staff

Sarah Amburgey
Stacy Auterson
Emily Caudill
Betsy Cupp
Ange Darnell
Emily Harkenrider
Karen Howard
Carrie Klaber

The following agenda may not take into consideration all of the administrative regulations that may be deferred by promulgating agencies. Deferrals may be made any time prior to or during the meeting.



**Administrative Regulation Review Subcommittee
Tentative Meeting Agenda
Tuesday, September 11, 2018 1:00 PM
Annex Room 149**



1. Call to Order and Roll Call

2. Regulations for Committee Review

FINANCE AND ADMINISTRATION CABINET

Executive Branch Ethics Commission

009 KAR 1:015 & E. Pre-administrative proceedings. ("E" expires 1-7-2019)

009 KAR 1:030 & E. Administrative hearings. ("E" expires 1-7-2019)

AGRICULTURAL EXPERIMENT STATION

Commercial Feeds

012 KAR 002:006. Definitions for 12 KAR Chapter 2.

012 KAR 002:011. Label format.

012 KAR 002:016. Brand and product names.

012 KAR 002:017. Product purpose statement.

012 KAR 002:018. Guaranteed analysis.

012 KAR 002:021. Expression of guarantees.

012 KAR 002:026. Ingredients.

012 KAR 002:031. Directions for use and precautionary statements.

012 KAR 002:036. Non-protein.

012 KAR 002:041. Drug and feed additives.

012 KAR 002:046. Poisonous or deleterious substances.

012 KAR 002:051. Manufacturing conditions.

012 KAR 002:056. List of manufacturers.

012 KAR 002:061. Registration.

012 KAR 002:066. Suitability.

COUNCIL ON POSTSECONDARY EDUCATION

Public Educational Institutions

013 KAR 002:020. Guidelines for admission to the state-supported postsecondary education institutions.

STATE BOARD OF ELECTIONS

Forms and Procedures

031 KAR 004:100 & E. Evaluation of precinct election officers. ("E" expires 12-18-2018)

031 KAR 004:120 & E. Additional and emergency precinct officers. ("E" expires 12-18-2018)

OFFICE OF THE ATTORNEY GENERAL

Office of Consumer Protection

040 KAR 002:345 & E. Visual aid glasses seller annual registration requirements. ("E" expires 12-29-2018)

PUBLIC PROTECTION CABINET

Department of Professional Licensing: Kentucky Athlete Agent Registry: Division of Occupations and Professions, Athlete Agents

200 KAR 030:011. Repeal of 200 KAR 030:010, 030:020, 030:030, 030:040, and 030:070.

BOARDS AND COMMISSIONS

Board of Cosmetology

201 KAR 012:251. Repeal of 201 KAR 12:085, 201 KAR 12:088, 201 KAR 12:120, 201 KAR 12:180, and 201 KAR 12:250. (Deferred from August)

201 KAR 012:280. Esthetic practices restrictions. (Not Amended After Comments)

Board of Nursing

201 KAR 020:057. Scope and standards of practice of advanced practice registered nurses.

201 KAR 020:490. Licensed practical nurse infusion therapy scope of practice

Board of Physical Therapy

201 KAR 022:020. Eligibility and credentialing procedure.

201 KAR 022:040. Procedure for renewal or reinstatement of a credential for a physical therapist or physical therapist assistant.

201 KAR 022:170. Physical Therapy Compact Commission.

VOLUME 45, NUMBER 3 – SEPTEMBER 1, 2018

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife: Fish

301 KAR 001:201. Taking of fish by traditional fishing methods.

301 KAR 001:410. Taking of fish by nontraditional fishing methods.

ENERGY AND ENVIRONMENT

Office of the Secretary: Administration

400 KAR 001:001 & E. Definitions for 400 KAR Chapter 1. ("E" expires 1-9-2019)

400 KAR 001:040 & E. Administrative discovery. ("E" expires 1-9-2019)

400 KAR 001:090 & E. Administrative hearings practice provisions. ("E" expires 1-9-2019)

400 KAR 001:100 & E. General administrative hearing practice provisions relating to matters brought under KRS Chapters 146, 149, 151, 223, 224, and 353. ("E" expires 1-9-2019)

400 KAR 001:110 & E. Administrative hearings relating to matters brought under KRS Chapter 350.310 through 351.375. ("E" expires 1-9-2019)

Department for Environmental Protection: Division of Water: Water Quality

401 KAR 005:002. Definitions for 401 KAR Chapter 5. (Amended After Comments)

401 KAR 005:005. Permits to construct, modify, or operate a facility. (Amended After Comments)

401 KAR 005:006. Wastewater planning requirements for regional planning agencies. (Not Amended After Comments)

401 KAR 005:015. Releases to be reported to the division. (Amended After Comments)

401 KAR 005:037. Groundwater protection plans. (Amended After Comments)

401 KAR 005:039. Repeal of 401 KAR 5:035, 5:057, 5:070, and 5:300. (Deferred from July)

401 KAR 005:045. Treatment requirements; compliance; biochemically degradable wastes. (Deferred from July)

401 KAR 005:050. General provisions of KPDES permitting program. (Not Amended After Comments)

401 KAR 005:052. 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). (Not Amended After Comments)

401 KAR 005:055. Scope of applicability of the KPDES program and pretreatment requirements. (Not Amended After Comments)

401 KAR 005:060. KPDES application requirements. (Not Amended After Comments)

401 KAR 005:065. KPDES permit conditions. (Not Amended After Comments)

401 KAR 005:075. Cabinet review procedures for KPDES permits and permit timetables for 401 KAR Chapter 5. (Not Amended After Comments)

401 KAR 005:080. Criteria and standards for the Kentucky Pollutant Discharge Elimination System. (Not Amended After Comments)

401 KAR 005:320. Wastewater Laboratory Certification Program. (Amended After Comments)

JUSTICE AND PUBLIC SAFETY CABINET

Kentucky Law Enforcement Council

503 KAR 001:110 & E. Department of Criminal Justice Training basic training graduation requirements; records. ("E" expires 12-24-2018)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Board of Education: Department of Education: Office of Learning Programs Development: Office of Instruction

704 KAR 003:015. Kentucky All STARS for Preschool Programs. (Deferred from August)

704 KAR 003:306. Kentucky Academic Standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. (Amended After Comments)

PUBLIC PROTECTION CABINET

Department of Alcoholic Beverage Control: Conduct of Business; Employees

804 KAR 005:080. Vintage distilled spirits. (Deferred from August)

ENERGY AND ENVIRONMENT CABINET

Department of Natural Resources: Division of Oil and Gas

805 KAR 001:210 & E. Comment period for pooling of oil and gas shallow wells. ("E" expires 1-9-2019)

PUBLIC PROTECTION CABINET

Department of Insurance: Health Insurance Contracts

806 KAR 017:020. Disclosure of other coverage in application.

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.

806 KAR 017:300. Provider agreement and risk-sharing agreement filing requirements.

806 KAR 017:360. Prompt payment of claims.

Department of Charitable Gaming: Charitable Gaming

820 KAR 001:001. Definitions. (Not Amended After Comments)

820 KAR 001:005. Charitable gaming licenses and exemptions. (Not Amended After Comments)

820 KAR 001:011. 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. (Not Amended After Comments)

820 KAR 001:025. Reports. (Not Amended After Comments)

820 KAR 001:032. Pulltabs. (Amended After Comments)

820 KAR 001:042. Bingo. (Not Amended After Comments)

820 KAR 001:050. Raffles. (Amended After Comments)

820 KAR 001:055. Charity fundraising event standards. (Deferred from July)

820 KAR 001:057. Recordkeeping. (Amended After Comments)

820 KAR 001:060. Prohibited conduct. (Amended After Comments)

820 KAR 001:125. Gaming inspections. (Not Amended After Comments)

820 KAR 001:130. Administrative actions. (Not Amended After Comments)

820 KAR 001:135. Disposal of gaming supplies. (Deferred from July)

VOLUME 45, NUMBER 3 – SEPTEMBER 1, 2018

Department of Professional Licensing: Kentucky Athlete Agent Registry

830 KAR 002:001. Definitions.

830 KAR 002:010. Registration and fees.

830 KAR 002:020. Complaints.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services: Division of Policy and Operations: Medicaid

895 KAR 001:001 & E. Definitions for 895 KAR Chapter 001. ("E" withdrawn by agency, 7-2-2018)

895 KAR 001:010 & E. Eligibility for Kentucky HEALTH program. ("E" withdrawn by agency, 7-2-2018)

895 KAR 001:015 & E. Premium payments within the Kentucky HEALTH programs. ("E" withdrawn by agency, 7-2-2018)

895 KAR 001:020 & E. PATH requirement for the Kentucky HEALTH program. ("E" withdrawn by agency, 7-2-2018)

895 KAR 001:025 & E. Beneficiary premiums. ("E" withdrawn by agency, 7-2-2018)

895 KAR 001:030 & E. Establishment and use of the MyRewards program. ("E" withdrawn by agency, 7-2-2018)

895 KAR 001:035 & E. Covered services within the Kentucky HEALTH program. ("E" expires 12-26-2018; "E" withdrawn by agency)

895 KAR 001:040 & E. Deductible accounts within the Kentucky HEALTH program. ("E" withdrawn by agency, 7-2-2018)

895 KAR 001:045 & E. Accommodation, modifications, and appeals for beneficiaries participating in the Kentucky HEALTH program. ("E" withdrawn by agency, 7-2-2018)

895 KAR 001:050 & E. Enrollment and reimbursement for providers in the Kentucky HEALTH program. ("E" withdrawn by agency, 7-2-2018)

895 KAR 001:055 & E. Designation or determination of medically frail status or accommodation due to temporary vulnerability in the Kentucky HEALTH program. ("E" withdrawn by agency, 7-2-2018)

Office of Inspector General: Division of Certificate of Need: State Health Plan

900 KAR 005:020 & E. State Health Plan for facilities and services. ("E" expires 1-9-2019)

Department for Public Health: Division of Public Health Protection and Safety: Sanitation

902 KAR 010:051. Repeal of 902 KAR 10:050.

Office of Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 020:008 & E. License procedures and fee schedule. ("E" expires 1-9-2019)

902 KAR 020:251. Repeal of 902 KAR 020:250.

902 KAR 020:260. Hospital-owned pain management clinics.

902 KAR 020:275. Freestanding or mobile technology.

902 KAR 020:401E. Repeal of 902 KAR 020:058, 902 KAR 020:145, 902 KAR 020:190, and 902 KAR 020:400. ("E" expires 1-9-2019)

Department for Public Health: Division of Public Health Protection and Safety: Food and Cosmetics

902 KAR 045:160. Kentucky food processing, packaging, storage, and distribution operations.

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.

Controlled Substances

902 KAR 055:011E. Repeal of 902 KAR 055:010. ("E" expires 1-9-2019)

Radiology

902 KAR 100:018. Repeal of 902 KAR 100:017, 902 KAR 100:060, and 902 KAR 100:090.

902 KAR 100:022. Licensing requirements for land disposal of radioactive waste.

902 KAR 100:052. Specific domestic licenses of broad scope for by product material.

902 KAR 100:070. Packaging and transportation of radioactive material.

902 KAR 100:072. Medical use of byproduct material.

902 KAR 100:100. Licenses for industrial radiography and radiation safety requirements for industrial radiographic operations.

902 KAR 100:142. Licenses and radiation safety requirements for well logging.

Office of Inspector General: Inspector General

906 KAR 001:071E. Repeal of 906 KAR 001:050, 906 KAR 001:060, and 906 KAR 001:070.

906 KAR 001:190. Kentucky National Background Check Program (NBCP). (Comments Received; SOC ext., due 9-14-2018)

Department for Medicaid Services

907 KAR 001:642 & E. Adult group 07-2018 benefit plan and copayments. ("E" withdrawn by agency, 7-27-2018)

3. Regulations Off September's Agenda

BOARDS AND COMMISSIONS: Board of Podiatry

201 KAR 025:090. Prescribing and dispensing controlled substances. (Deferred from February)

TRANSPORTATION CABINET: Department of Vehicle Regulation: Administration

601 KAR 002:030 & E. Ignition interlock. ("E" Expires 1-9-2019) (Comments Received; SOC ext. due 9-14-2018)

LABOR CABINET: Department of Workers' Claims

803 KAR 025:089 & E. Workers' Compensation Medical Fee Schedule for Physicians. ("E" Expires 1-7-2019) (Comments Received; SOC ext. due 9-14-2018)

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

806 KAR 017:570. Minimum standards for Medicare supplement insurance policies and certificates. (Comments Received; SOC ext. due 9-14-2018)

VOLUME 45, NUMBER 3 – SEPTEMBER 1, 2018

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Inspector General

906 KAR 001:190. Kentucky National Background Check Program (NBCP). (Comments Received; SOC ext., due 9-14-2018)

Department for Community Based Services: Division of Family Support: Supplemental Nutrition Assistance Program

921 KAR 003:025. Technical requirements. (Deferred from August)

921 KAR 003:035. Certification process. (Comments Received; SOC ext., due 9-14-2018)

Division of Protection and Permanency: Child Welfare

922 KAR 001:560 & E. Putative father registry and operating procedures. ("E" expires 1-9-2019) (Comments Received; SOC due 9-14-2018)

ARRS meeting materials may be accessed online at <http://www.lrc.ky.gov/CommitteeMeetingDocuments/3>

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
301 KAR 2:225E

This emergency administrative regulation establishes season dates, limits, shooting hours and other requirements for hunting migratory birds. KRS 150.025(1)(a) allows the Kentucky Department of Fish and Wildlife Resources to fix hunting seasons by regulation. KRS 150.600 allows the Department to regulate the taking of waterfowl. 50 C.F.R. §20.100(a) prohibits the "taking, possession, transportation, and other uses of migratory game birds by hunters ... unless it is specifically provided for under regulations developed in accordance with the Migratory Bird Treaty Act. Migratory bird hunting season frameworks are set annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons shall do so within the federal frameworks. The federal frameworks are established in federal regulations that are developed with harvest and population status data, coordination with state wildlife agencies, and public involvement. The "Preliminary Rule" outlining these frameworks was published in the Federal Register on February 2, 2018. Kentucky season selections could not be made until publication of the federal "Final Rule" in June 2018. With hunting seasons contained in this administrative regulation beginning September 1, 2018, it cannot be amended through the ordinary administrative regulation process in time to incorporate the federal frameworks. Thus, an emergency administrative regulation is necessary pursuant to KRS 13A.190(1)(a)(3) to meet a deadline for the promulgation of an administrative regulation that is established by state statute or federal law. An emergency administrative regulation is also necessary pursuant to KRS 13A.190(1)(a)(2) to prevent a loss of federal and state funds. The Department generates state funds through the sale of licenses to hunt migratory birds. The ordinary administrative regulation process will not allow the Department to enact the June 2018 federally-established migratory bird hunting seasons in time for the seasons that start September 1, 2018, which would result in seasons closing and fewer licenses sold. In addition, under the Pittman-Robertson Act (16 U.S.C. 669-669k) and the Dingell-Johnson Act (16 U.S.C. 777-777n), the U.S. Fish and Wildlife Service takes federal tax dollars collected on outdoor equipment and boating fuel and motors, and distributes funds to eligible states' fish and wildlife agencies. The distribution of these funds is based in part on the number of licenses that the Department sells. A reduction in licenses sold could reduce the federal funding for the agency, which is currently \$19 million annually. 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
FRANK JEMLEY III, Acting Commissioner

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Emergency Amendment)

301 KAR 2:225E. Dove, wood duck, teal, and other migratory game bird hunting.

RELATES TO: KRS 150.330, 150.340, 150.603
STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21
EFFECTIVE: July 20, 2018
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation

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

Section 1. Definitions. (1) "Dove" means mourning dove or white-winged dove.

(2) "Migratory game bird" means mourning dove, white-winged dove, wood duck, teal, Canada goose, common gallinule, woodcock, snipe, purple gallinule, Virginia rail, or sora rail.

(3) "Teal" means green-winged teal, blue-winged teal, or cinnamon teal.

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

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

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

Section 2. Season Dates. (1) A person shall not hunt a migratory game bird except during a season established in this administrative regulation.

(2) The seasons established in paragraphs (a) through (g) of this subsection shall apply to migratory bird hunting.[:]

(a) Dove, beginning on:

1. September 1 for fifty-six (56) consecutive days;

2. Thanksgiving Day for eleven (11) consecutive days; and

3. The Saturday before Christmas for twenty-three (23) consecutive days;

(b) Woodcock, beginning on the fourth Saturday in October for forty-seven (47) consecutive days, except that the season shall be closed during the first two (2) days of modern gun deer season, as established in 301 KAR 2:172;

(c) Snipe, beginning on:

1. The third Wednesday in September for forty (40) consecutive days; and

2. Thanksgiving Day for sixty-seven (67) consecutive days;

(d) Wood duck, beginning on the third Saturday in September for five (5) consecutive days;

(e) Teal, beginning on the third Saturday in September for nine (9) consecutive days;

(f) Virginia rail, sora rail, common gallinule, and purple gallinule, beginning on September 1 for seventy (70) consecutive days; and

(g) Canada goose, beginning September 16 for fifteen (15) consecutive days except that the[following] areas[as] established in subparagraphs 1. And 2. of this paragraph[301 KAR 2:224:] shall be closed.[:]

1. Public land in the Ballard Zone, as established in 301 KAR 2:224; and

2. Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, U.S. 60, and Highway 826[Public land in the West-Central Goose Zone; and

3. The Northeast Goose Zone].

Section 3. Bag and Possession Limits. (1) A person shall not exceed the limits established in paragraphs (a) through (h) of this subsection.[:]

(a) Dove. There shall be a:

1. Daily limit of fifteen (15); and

2. Possession limit of forty-five (45).

(b) Eurasian collared dove. There shall not be a[No] limit, except that a hunter, if in the field or during transport, shall keep one (1) of the parts established in subparagraphs 1. and 2. of this paragraph attached to the bird.[:]

1. The head; or

2. A fully-feathered wing.

(c) Woodcock. There shall be a:

1. Daily limit of three (3); and

2. Possession limit of nine (9).

(d) Snipe. There shall be a:

1. Daily limit of eight (8); and

2. Possession limit of twenty-four (24).

(e) Virginia and sora rail, singly or in aggregate. There shall be

a:

1. Daily limit of twenty-five (25); and

2. Possession limit of seventy-five (75).

(f) Common and purple gallinule, singly or in aggregate. There shall be a:

1. Daily limit of three (3); and

2. Possession limit of nine (9).

(g) Wood duck and teal. There shall be a:

1. Daily limit of six (6), which shall not include more than two

(2) wood ducks; and

2. Possession limit of eighteen (18), which shall not include more than six (6) wood ducks.

(h) Canada goose. There shall be a:

1. Daily limit of five (5); and

2. Possession limit of fifteen (15).

(2) A hunter who possesses a migratory game bird other than a dove, in the field or during transport, shall keep one (1) of the parts established in paragraphs (a) and (b) of this subsection attached to the bird.[:]

(a) The head; or

(b) A fully-feathered wing.

Section 4. Shooting Hours. A person shall not take a migratory game bird except during the times established in this section. (1) If hunting dove on WMA land, a person shall hunt:

(a) Between 11 a.m. and sunset during the September and October portion of the season, as established in Section 2 of this administrative regulation; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(2) If hunting dove on private land, a person shall hunt:

(a) Between 11 a.m. and sunset on September 1; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(3) Other species listed in this administrative regulation shall be taken between one-half (1/2) hour before sunrise and sunset.

Section 5. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21 for waterfowl hunting; or

(c) Shot larger than size "T".

Section 6. Hunter Orange. A person shall be exempt from hunter orange requirements pursuant to 301 KAR 2:132 and 2:172 if:

(1) Hunting waterfowl or doves; or

(2) Accompanying a person hunting waterfowl or doves.

Section 7. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) A person shall not:

(a) Hunt wood duck or teal on an area closed to waterfowl hunting as established in 301 KAR 2:222;

(b) Hunt in an area marked by a sign as closed to hunting; or

(c) Enter an area marked by a sign as closed to the public.

(2) A person hunting migratory birds on any of the [following] areas established in paragraphs (a) through (k) of this subsection shall only use or possess nontoxic shot approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21:

(a) Ballard WMA;

(b) Boatwright WMA;

(c) Doug Travis WMA;

(d) Duck Island WMA;

(e) Kaler Bottoms WMA;

(f) Kentucky River WMA;

(g) Ohio River Islands WMA;

(h) Sloughs WMA;

(i) South Shore WMA;

(j) Yatesville Lake WMA; and

(k) A WMA wetland management unit that is posted by sign.

(3) At Ballard WMA and the Swan Lake Unit of Boatwright WMA, a person shall not hunt:

(a) Dove, Virginia rail, sora rail, common gallinule, purple gallinule, or snipe after October 13; or

(b) Woodcock.

~~(4) [In the Swan Lake Unit of Boatwright WMA, a person shall not hunt:~~

~~(a) Dove, Virginia rail, sora rail, common gallinule, purple gallinule, or snipe after October 13; or~~

~~(b) Woodcock.~~

~~(5) [At Miller Welch - Central Kentucky WMA, a person shall not hunt:~~

~~(a) Dove or snipe after October 13; or~~

~~(b) Woodcock.~~

~~(5) At Grayson Lake WMA, a person shall not hunt:~~

~~(a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;~~

~~(b) On Deer Creek Fork; or~~

~~(c) On Camp Webb property or the state park, except for participants[youths] drawn for any department-sponsored quota dove hunt on Camp Webb property in September.~~

~~(6) [(7)] At Land Between the Lakes National Recreation Area, a person shall not hunt a migratory game bird between the last Saturday in September and November 30.~~

~~(7) [(8)] At West Kentucky WMA, a person shall not hunt Canada geese during the September season.~~

~~(8) [(9)] At Yatesville Lake, the following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:~~

~~(a) The Greenbrier Creek embayment; and~~

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

~~(9) [(10)] At Robinson Forest WMA, a person shall not hunt a migratory game bird on the main block of the WMA.~~

Section 8. Youth-Mentor Dove Hunts. (1) There shall be department-sponsored youth-mentor dove hunts on the first Saturday in September in which participants shall be selected by a random computerized drawing.

(2) A youth shall:

(a) Apply on the department's Web site at fw.ky.gov between the first Monday in August and the third Friday in August; and

(b) Carry a department-provided selection notification letter on the day of the hunt.

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

(4) At the youth-mentor hunts:

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

(b) One (1) adult may accompany two (2) youths; and

(c) A maximum of two (2) shotguns are allowed per party.

(5) A person shall:

(a) Hunt within fifteen (15) feet of the assigned location stake; and

(b) Not change locations unless another location has been vacated by the assigned hunter.

(6) A person shall only discharge a firearm within fifteen (15) feet of the assigned location stake.

(7) A person shall leave their firearm at the assigned location stake when retrieving birds.

(8) A hunter participating in youth-mentor hunts shall:

(a) Check-in prior to hunting;

(b) Not begin hunting before 2 p.m.;

(c) Cease hunting by 7 p.m.;

(d) Exit the area by 7:30 p.m.; and

(e) Check out before exiting the field.

FRANK JEMLEY III, Acting Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: July 6, 2018

FILED WITH LRC: July 20, 2018 at 3 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.

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 seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS). In addition, it establishes requirements for the hunting of migratory birds.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2018–2019 migratory bird seasons in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the migratory bird hunting seasons and area specific requirements consistent with state, national, and international management goals.

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

(a) How the amendment will change this existing administrative regulation: This amendment will remove the restrictions for hunting geese during September on public lands in the West-Central and Northeast goose zones. These protections were originally put in place to protect introduced populations of geese and those populations are now considered stable. This will maintain the closure to all goose hunting on Cave Run Lake necessary to protect local populations. All these changes are consistent with the long-term Mississippi Flyway and continental management efforts and are within the USFWS required frameworks. The amendment also removes the requirement for participants in Camp Webb dove hunts to be a youth.

(b) The necessity of the amendment to this administrative regulation: This amendment simplifies hunting regulations for goose hunters. Zones are no longer a necessary management tool in Kentucky's management of Canada geese. Allowing for adult mentor hunts at Camp Webb gives the department greater flexibility in recruitment efforts.

(c) How the amendment conforms to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 40,000 migratory bird hunters in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Migratory bird hunters will now have the opportunity to hunt geese in West-Central and Northeast goose zones with the exception that the closure specified in 301 KAR

2:221 for Cave Run Lake during regular goose seasons is added for September goose seasons.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Goose hunters will have more hunting opportunity and adults will also be able to participate in the dove hunts at Camp Webb.

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

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same requirements and limits apply to all migratory bird hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.360, 150.600, and 50 C.F.R. Parts 20 and 21.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated during subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's migratory bird hunters. Restricting bag limits provides the state the ability to protect populations that may be of concern on the state level but not on a national scale. The greatest concentrations of migratory birds and the greatest hunting pressure often occur on public lands managed by the Department. The Department imposes more restrictive regulations on these lands in effort to meet migratory bird management objectives while still providing quality hunting opportunity.

STATEMENT OF EMERGENCY 501 KAR 6:020E

An emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)(3) to implement new statutory requirements in 2018 Ky Acts ch. 115. An ordinary administrative regulation would not have become effective in sufficient time to implement 2018 Ky Acts ch. 115. It is necessary for the new policy concerning the releases mandated by KRS 439.3110 be incorporated by reference to establish the process and conditions for release. 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 months.

HON. MATTHEW G. BEVIN, Governor of Kentucky
JAMES ERWIN, Commissioner

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Emergency Amendment)

501 KAR 6:020E. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640, 532.260

EFFECTIVE: July 19, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures", July 19[April 12], 2018, are

incorporated by reference. Department of Corrections Policies and Procedures include:

- 1.2 News Media (Amended 6/10/14)
- 1.4 The Monitoring and Operation of Private Prisons (Amended 5/15/08)
- 2.1 Inmate Canteen (Amended 2/26/16)
- 2.12 Abandoned Inmate Funds (Amended 4/12/18)
- 3.1 Code of Ethics (Amended 12/10/13)
- 3.5 Sexual Harassment and Anti-Harassment (Amended 12/10/13)
- 3.9 Student Intern Placement Procedure (Amended 11/7/16)
- 3.10 Appearance and Dress for Nonuniformed Staff (Amended 1/12/18)
- 3.11 Drug Free Workplace Employee Drug Testing (Amended 12/10/13)
- 3.14 Employee Time and Attendance Requirements (Amended 6/14/16)
- 3.17 Uniformed Employee Dress Code (Amended 1/12/18)
- 3.22 Staff Sexual Offenses (Amended 12/10/13)
- 3.23 Internal Affairs Investigation (Added 8/25/09)
- 5.1 Research, Surveys and Data Requests (Amended 3/14/18)
- 5.3 Program Evaluation and Measurement (Amended 6/9/15)
- 6.1 Open Records Law (Amended 5/14/07)
- 6.2 Inmate Record (Added 11/7/16)
- 8.2 Fire Safety (Amended 3/14/14)
- 8.7 Notification of Extraordinary Occurrence (Amended 3/14/14)
- 9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 6/9/15)
- 9.6 Contraband (Amended 2/26/16)
- 9.8 Search Policy (Amended 3/14/18)
- 9.13 Transport to Court - Civil Action (Amended 07/09/07)
- 9.18 Informants (Amended 9/13/10)
- 9.19 Found Lost or Abandoned Property (Amended 10/14/05)
- 10.2 Special Management Inmates (Amended 4/11/17)
- 10.3 Safekeepers and Contract Prisoners (Amended 1/12/18)
- 11.2 Dietary Procedures and Compliance (Amended 1/12/17)
- 11.4 Alternative Dietary Patterns (Amended 1/12/17)
- 13.1 Pharmacy Policy and Formulary (Amended 1/15/15)
- 13.2 Health Maintenance Services (Amended 2/26/16)
- 13.3 Medical Alert System (Amended 3/14/14)
- 13.5 Advance Healthcare Directives (Amended 6/14/16)
- 13.6 Sex Offender Treatment Program (Amended 11/7/16)
- 13.7 Involuntary Psychotropic Medication (Amended 10/14/05)
- 13.8 Substance Abuse Program (Amended 10/12/12)
- 13.9 Dental Services (Amended 10/14/05)
- 13.10 Serious Infectious Disease (Amended 3/14/14)
- 13.11 Do Not Resuscitate Order (Amended 8/9/05)
- 13.12 Suicide Prevention and Intervention Program (Added 8/25/09)
- 13.13 Behavioral Health Services (Amended 11/7/16)
- 13.15 Inmate Observer Program (Added 8/12/16)
- 14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
- 14.2 Personal Hygiene Items (Amended 8/20/13)
- 14.3 Marriage of Inmates (Amended 1/12/17)
- 14.4 Legal Services Program (Amended 3/14/14)
- 14.5 Claims Commission (Amended 4/12/18)
- 14.6 Inmate Grievance Procedure (Amended 3/14/18)
- 14.7 Sexual Abuse Prevention and Intervention Programs (Amended 4/12/18)
- 14.8 Lesbian, Gay, Bisexual, Transgender, and Intersex Offenders (Amended 1/12/18)
- 15.1 Hair, Grooming and ID Card Standards (Amended 1/12/18)
- 15.2 Rule Violations and Penalties (Amended 8/12/16)
- 15.3 Meritorious Good Time (Amended 11/7/16)
- 15.4 Program Credit (Amended 6/12/12)
- 15.5 Restoration of Forfeited Good Time (Amended 2/26/16)
- 15.6 Adjustment Procedures and Programs (Amended 3/14/18)
- 15.7 Inmate Accounts (Amended 1/12/18)
- 15.8 Possession or Use of Unauthorized Substance and

VOLUME 45, NUMBER 3 – SEPTEMBER 1, 2018

- Substance Abuse Testing (Amended 4/12/18)
- 16.1 Inmate Visits (Amended 4/11/17)
- 16.2 Inmate Correspondence (Amended 11/7/16)
- 16.3 Inmate Access to Telephones (Amended 10/12/12)
- 16.4 Inmate Packages (Amended 8/12/16)
- 16.5 Video Visitation (Added 8/12/16)
- 17.1 Inmate Personal Property (Amended 3/14/18)
- 17.2 Assessment Center Operations (Amended 6/9/15)
- 17.3 Controlled Intake of Inmates (Amended 3/14/14)
- 17.4 Administrative Remedies: Sentence Calculations (Amended 8/12/16)
- 18.1 Classification of the Inmate (Amended 3/14/18)
- 18.2 Central Office Classification Committee (Amended 1/12/18)
- 18.3 Confinement of Youthful Offenders (Added 6/9/15)
- 18.5 Custody Level and Security (Amended 7/19/18[4/12/18])
- 18.7 Transfers (Amended 5/13/16)
- 18.9 Out-of-state Transfers (Amended 2/26/16)
- 18.11 Placement for Mental Health Treatment in CPTU or PCU (Amended 6/14/16)
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
- 18.13 Population Categories (Amended 4/12/18)
- 18.15 Protective Custody (Amended 1/12/18)
- 18.16 Information to the Parole Board (Amended 1/12/18)
- 18.17 Interstate Agreement on Detainers (Amended 07/09/07)
- 18.18 International Transfer of Inmates (Amended 5/14/07)
- 19.1 Governmental Services Program (Amended 10/12/12)
- 19.2 Sentence Credit for Work (Amended 2/26/16)
- 19.3 Inmate Wage/Time Credit Program (Amended 4/12/18)
- 19.4 Work Release for State Inmates in Jails (Added 4/12/18)
- 20.1 Educational Programs and Educational Good Time (Amended 8/25/09)
- 21.1 Library Services (Added 3/14/14)
- 22.1 Privilege Trips (Amended 10/14/05)
- 22.2 Recreation and Inmate Activities (Added 3/14/14)
- 23.1 Religious Programs (Amended 3/14/18)
- 25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
- 25.3 Prerelease Program (Effective 11/15/06)
- 25.4 Inmate Furloughs (Added 4/12/18)
- 25.6 Community Service Center Program and Jail Placement (Amended 3/14/18)
- 25.10 Administrative Release of Inmates (Amended 8/12/16)
- 25.11 Victim Services Notification (Amended 8/25/09)
- 25.12 Home Incarceration Program (Added 8/12/16)
- 25.13 Women's Medical Release: Pregnancy (Added 7/19/18)
- 26.1 Citizen Involvement and Volunteer Service Program (Amended 1/12/18)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the policies and procedures area at <https://corrections.ky.gov/Pages/default.aspx>.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: July 19, 2018

FILED WITH LRC: July 19, 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.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Department of Corrections (DOC) including the rights

and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 196.070, 196.075, 196.173, 197.020, 439.470, 439.590, 439.640, 439.3110, 532.100, and 532.260 and to meet American Correctional Association (ACA) standards requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Department of Corrections. The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference establish the policies and procedures that govern the operations of the Department of Corrections and its institutions. It provides direction and information to Corrections employees and inmates concerning the operations of the department.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds procedures for the Kentucky Department of Corrections compliance with KRS 196.173 and 439.3110 and maintains compliance with ACA standards.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035, 196.173, 197.020, 439.3110, and 532.100 and update practices for the department and its institutions.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the state correctional institutions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, 3,904 employees, 24,680 inmates, visitors, volunteers and others who enter state correctional institutions, 12 pregnant inmates, offenders on home incarceration, 200 community offenders on probation and parole, jailers and jail employees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the new policy and the procedures in it. Jailers and jail employees will have to comply with the amendment for state inmates housed in a jail. The institutional employees and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will allow compliance with statutory changes.

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

(a) Initially: No increase in funding is anticipated.

(b) On a continuing basis: No increase in funding is anticipated.

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

Kentucky Department of Corrections budgeted funds for the biennium.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of the Kentucky Department of Corrections and each state correctional institution. The impact of the new CPP 25.13 on county jails is limited to eligible state inmates housed in county or regional jails.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.030, 196.035, 196.070, 196.075, 196.173, 197.020, Chap. 218A, 439.250, 439.310, 439.3110, 439.3401, 439.470, 439.590, 439.640, 441.560, 510, 529.100, 530.020, 530.064, 531.310, 531.320 532.100, 532.260 and to meet American Correctional Association (ACA) standards requirements.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is anticipated to be generated for the Department of Corrections or county or regional jails from this new policy.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is anticipated to be generated for the Department of Corrections or county or regional jails from this new policy.

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the Kentucky Department of Corrections and state correctional institutions operate. There are no significant additional costs for the Department of Corrections under this amendment. There may be a small cost for transportation for twelve state inmates. A bus ticket costs, on average, approximately \$65 per ticket.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how the Kentucky Department of Corrections and state correctional institutions operate. The costs for the amendment are not expected to increase costs for the Kentucky Department of Corrections budgeted funds for the biennium.

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 922 KAR 1:360E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)1 to preserve the health and welfare of vulnerable children in the custody of the Cabinet for Health and Family Services. The administrative regulation implements a payment rate increase for residential child-caring

facilities to better reflect their actual costs serving children in state custody who are assessed as needing levels of care IV and V or who are placed in emergency shelters. Without the payment rate increase, placement capacities would be diminished and would result in children being placed in more costly, restrictive care or care that is not safe and not suitable to the children's needs. Additionally, in accordance with KRS 13A.190(1)(a)2, this emergency administrative regulation protects federal funding that supports the provision of child welfare services by better ensuring adequate service array for children in out-of-home care. An ordinary administrative regulation would not allow the agency sufficient time to increase payment rates for residential child-caring facilities in accordance with 2018 Ky. Acts ch. 169, better meeting their actual costs in providing care and supporting placement capacity and service provision to vulnerable children in state custody. 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 (Emergency Amendment)

922 KAR 1:360E. Private child care placement, levels of care, and payment.

RELATES TO: KRS 13B, 199.011, 199.640-199.680, 199.801, 600.020(25), 605.090(1)(b), (d), 610.110, 42 U.S.C. 622, 672

STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

EFFECTIVE: August 1, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) requires the cabinet to establish the rate setting methodology and the rate of payment for ~~nonprofit~~ child-caring facilities and child-placing agencies, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to promulgate administrative regulations prescribing conditions under which the cabinet may place a child committed to the Department of Juvenile Justice, or the cabinet, in a child-caring facility or a child-placing agency operated by a local governmental unit or private organization willing to receive the child, upon such conditions as the cabinet may prescribe. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) five (5) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care; and (f) procedures for determination of components of the model program cost analysis.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(3)(2).

(2) "Child-caring facility" or "facility" is defined by KRS 199.011(5)(199.641(1)(b)).

(3) "Child-placing agency" or "agency" is defined by KRS 199.011(6).

(4) "Department" is defined by KRS 199.011(7) and 199.641(1)(b)[means the Department for Community Based Services or the department's agent].[(4) "District placement coordinator" means an individual whose responsibilities are described in KRS 199.801.]

(5) "Emergency shelter" is defined by KRS 600.020(25).

(6) "Gatekeeper" means the department or agent responsible

for:

(a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and

(b) Other administrative duties in the areas of:

1. Assessment;
2. Placement;
3. Performance measurement; and
4. Consultation regarding children and their needs.

(7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.

(8) "Initial level of care" means a level of care:

(a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and

(b) That is time-limited and effective for the first six (6) months of a child's placement.

(9) "Level of care" means one (1) of five (5) standards representing the treatment and service needs of a child placed by the cabinet in out-of-home care.

(10) "Level of care packet" means an assessment conducted by designated cabinet staff and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care in accordance with Section 2(2) of this administrative regulation.

(11) "Model program cost analysis" is defined by KRS 199.641(1)(c)(d).

(12) "Placement coordinator" means an individual whose responsibilities are described in KRS 199.801.

(13) "Reassigned level of care" means a level of care that is:

(a) Determined by the gatekeeper after a child's level of care expires; and

(b) Authorized for a specific period of time.

(14)(13) "Time study" is defined by KRS 199.641(1)(d)(e).

(15)(14) "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:

(a) Identifying the child's current level of functioning; and

(b) Assigning the appropriate level of care.

Section 2. Referral Process for Level of Care System Placement. (1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age or a child who is medically complex regardless of age when:

(a) The child enters the level of care system;

(b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age or is found to be medically complex; or

(c) A child's level of care expires and assignment of a new level is necessary.

(2) A level of care packet shall include the DPP-886, Private Child Care Client Inter-agency Referral Form, and the following child-specific information:

(a) Identifying data;

(b) Individual strengths and limitations;

(c) Daily living skills;

(d) Physical health needs, including documentation indicating the child's medically complex status if the child is medically complex;

(e) Mental health needs including:

1. Behavioral health; and

2. Diagnosis and treatment;

(f) Medications;

(g) History of substance abuse, high risk, or other significant behavior including:

1. Sexual acting out; and

2. Legal history, status, or delinquency behavior patterns;

(h) Out-of-home care placement information including:

1. Reason for entering out-of-home care;

2. History of abuse, neglect, or dependency;

3. Current custody status;

4. Current and previous placements; and

5. Permanency goal;

(i) Social supports;

(j) Educational functioning, grade level, and any special educational need;

(k) Religious background and practices; and

(l) If a child has an IQ of seventy (70) or above:

1. Child Behavior Checklist For Ages 1 1/2-5 (Achenbach);

2. Child Behavior Checklist For Ages 6-18 (Achenbach); or

3. Another tool pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15)(A).

(3)(a) If a child needs placement within the level of care system, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the [district] placement coordinator.

(b) The [district] placement coordinator shall forward the level of care packet to potential child-caring facilities or child-placing agencies.

(4) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement, a cabinet staff person shall:

(a) Complete the DPP-114, Level of Care Schedule, with the level of care payment rate:

1. As assigned by the gatekeeper within the previous six (6) months; or

2. If there is an emergency placement, within two (2) business days of the placement or receipt of the assigned level of care;

(b) Arrange transportation for the child to the placement; and

(c) Notify the [district] placement coordinator of the selected placement.

(5) If a child-caring facility or child-placing agency accepts an emergency placement requested by the cabinet outside of the gatekeeper's regular working hours, a cabinet staff person shall:

(a) Submit a level of care packet to the gatekeeper for a child who does not have a current level of care assignment; and

(b) Inform the [district] placement coordinator of the location and date of placement.

(6) The [district] placement coordinator shall notify a child-caring facility or child-placing agency that was not chosen for placement upon provision of notification in accordance with subsection (4)(c) of this section.

Section 3. Gatekeeper Responsibilities. The gatekeeper shall:

(1) Evaluate a child forty-eight (48) months of age or older or any child designated as medically complex:

(a) Who is referred by the department or currently placed in a child-caring facility or child-placing agency; and

(b) For an initial or reassigned level of care;

(2) Within three (3) working days of receipt of the level of care packet:

(a) Determine the appropriate level of care according to a needs assessment consistent with one (1) of the five (5) levels of care; and

(b) Return the completed:

1. DPP-886, Private Child Care Client Inter-agency Referral Form, to the department; or

2. CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Reassignment, to the department and the child-caring facility or the child-placing agency;

(3) Conduct a utilization review for a child:

(a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and

(b) 1. Every three (3) months thereafter if the child is in a private child care residential placement; or

2. Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;

(4) Reassign a child's level of care after the previous level has expired;

(5) Monitor each child-caring facility and child-placing agency;

(6) Maintain a confidential information system for each child served that shall include:

(a) Placement history;

(b) Level of care assignments;

- (c) Length of treatment; and
- (d) Discharge outcomes; and

(7) For a utilization review, return the completed CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, to the private child-caring facility or private child-placing agency and the cabinet after a level is conducted or reassigned.

Section 4. Levels of Care. A level of care shall be assigned in accordance with this section. (1) A Level I child shall be a child who requires a routine home environment that:

- (a) Provides maintenance;
- (b) Provides guidance;
- (c) Provides supervision to meet the needs of the child; and
- (d) Ensures the emotional and physical well-being of the child.

(2) A Level II child shall be a child who:

(a) May engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships; and

(b) Requires supervision in a structured supportive setting with:

1. Counseling available from professional or paraprofessional staff;

2. Educational support; and

3. Services designed to improve development of normalized social skills.

(3) A Level III child shall be a child who:

(a) May engage in an occasional violent act;

(b) May have superficial or fragile interpersonal relationships;

(c) Requires supervision in a structured, supportive environment where the level of supervision and support may vary from low to moderate, proportional to the child's ability to handle reduced structure;

(d) May occasionally require intense levels of intervention to maintain the least restrictive environment; and

(e) Requires a program flexible enough to allow:

1. Extended trials of independence if the child is capable;

2. A period of corrective and protective structure during relapse; and

3. Counseling available from professional or paraprofessional staff.

(4) A Level IV child shall be a child who:

(a) Has behavioral and physical, mental, or social needs that may present a moderate risk of causing harm to himself or others; and

(b) Requires a structured supportive setting with:

1. Therapeutic counseling available by professional staff; and

2. A physical, environmental, and treatment program designed to improve social, emotional, and educational adaptive behavior.

(5) A Level V child shall be a child who:

(a) Has a severe impairment, disability, or need;

(b) Is consistently unable or unwilling to cooperate in his own care;

(c) Presents a severe risk of causing harm to himself or others; and

(d) Requires Level IV services and a:

1. Highly structured program with twenty-four (24) hour supervision; or

2. Specialized setting that provides safe and effective care for a severe, chronic medical condition, behavioral disorder, or emotional disturbance.

Section 5. Payment Methodology and Rates. (1) Payment Methodology.

(a) The cabinet shall base a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, upon the model program cost analysis defined at KRS 199.641(1)(c)(4).

(b) Each private, nonprofit child caring facility shall report to the cabinet annually, on the DPP-888, cost report and time study and instructions.

(2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined.

(a) The factor shall be determined as follows:

1. Based on the amount of treatment provided at each level of care; and

2. By determining the median of:

a. Number of daily treatment hours, derived from time study data, provided to children served by private, nonprofit child-caring facilities; and

b. Level of care of children served by private, nonprofit child-caring facilities that contract with the cabinet.

(b)1. For children whose level is determined, the median level of care shall be represented by an index factor of one (1).

2. For children whose level is not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to the children in the median level pursuant to subparagraph 1 of this paragraph.

(3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of ninety (90) percent for residential treatment and seventy-five (75) percent for a group home.

(4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(5) Statewide median cost shall be calculated:

(a) Using a utilization factor of eighty (80) percent:

1. For an emergency shelter with a treatment license:

a. Board;

b. Care; and

c. Treatment components; or

2. For an emergency shelter without a treatment license:

a. Board; and

b. Care components; and

(b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(6)(a) To the extent funds are available, an incentive payment for a private child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(2)(a). Measurable performance outcomes shall include:

1. Child safety while in the care of a private child-caring facility or child-placing agency;

2. Child safety after reunification with the child's family;

3. Adequate educational support;

4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;

5. Increased placement stability during the service period;

6. Increased achievement of permanency goals; and

7. Increased stability in permanency placement following planned discharge.

(b) The cabinet's contract with a private child-caring facility shall specify the:

1. Indicators used to measure the performance outcomes described in paragraph (a) of this subsection; and

2. Target percentages used as performance goals.

(c) Each child in the custody of the cabinet who is placed in a private child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.

(d) When the contract period expires, each private child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private child-caring facilities or child-placing agencies to provide alternative services to children and their families. To the extent funds are available, the alternative services:

(a) Shall be geared toward improved performance outcomes; and

(b) May include case management responsibilities shared between the cabinet and the child-caring facility or child-placing agency.

(8) Payment to child-caring facilities or child-placing agencies that provide alternative services according to subsection (7) of this section shall be based upon expectations agreed upon between the cabinet and the child-caring facility or child-placing agency such as:

- (a) Reduced length of stay in out-of-home placement;
- (b) Increased safety from child abuse or neglect;
- (c) Increased number of children moving into and remaining in permanent placement;
- (d) Increased number of children and their families cared for in close proximity to their home communities;
- (e) Increased number of children reunified with their families;
- (f) Increased accountability for success in after care; or
- (g) Decreased reentry into state custody.

Section 6. Residential Care. (1) A child-caring facility in the levels of care system shall be licensed under 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.

(2) The facility shall comply with 922 KAR 1:390, Section 4, Residential Treatment Program, if providing treatment oriented services.

(3) The daily rate for residential care to a child-caring facility shall be:

- (a) Level I – \$51.19;
- (b) Level II - \$61.52;
- (c) Level III - \$109.71;
- (d) Level IV:
 - 1. ~~\$183.00~~[\$175.87]; or
 - 2. ~~\$193.50~~[\$183.00] on or after August[October] 1, 2018[2016];
- and
- (e) Level V:
 - 1. ~~\$236.60~~[\$248.99]; or
 - 2. ~~\$256.70~~[\$236.60] on or after August[October] 1, 2018[2016].

Section 7. Emergency Shelter Care. (1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be:

- (a) For a child-caring facility with a treatment license:
 - 1. ~~\$115.31 per day~~[for a child-caring facility with a treatment license]; or
 - 2. ~~\$126.80 per day on or after August 1, 2018;~~ or
- (b) For a child-caring facility without a treatment license:
 - 1. ~~\$101.41 per day;~~ or
 - 2. ~~\$111.60 per day on or after August 1, 2018~~[for a child-caring facility without a treatment license].

(2) If a child's treatment placement is disrupted and the child enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall:

- (a) Receive a rate consistent with the child's assigned level of care for residential care during the previous placement, pending results of the next-scheduled utilization review;
- (b) If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and
- (c) Adhere to the child's individual treatment plan.

(3)(a) If the department determines that a child without an assigned level of care shall remain in an emergency shelter child-caring facility longer than thirty (30) days, the department shall make a referral to the gatekeeper, by the 20th day of placement, for assignment to an appropriate level of care.

(b) If a child remains in an emergency shelter longer than thirty (30) days, the emergency shelter child-caring facility with a treatment license shall:

- 1. Receive the residential rate consistent with the assigned level of care for each day the child is in the facility beyond the 30th day;
- 2. If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and

3. Adhere to the child's individual treatment plan.

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency. (1) The basic daily rate for foster care shall be \$44.82.

(2) The daily rates for therapeutic foster care shall be as follows:

- (a) Levels I and II, if the child is stepped down from Level III or higher - \$76.10;
- (b) Level III - \$83.16;
- (c) Level IV - \$101.23; and
- (d) Level V - \$139.96.

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

- (1) A rate consistent with the assigned level of care for the adolescent parent; and
- (2) Inclusive of child care cost, the amount specified in Section 8(1) of this administrative regulation for the committed child of an adolescent parent who is committed to the cabinet.

Section 10. Provider Requirements. (1) A child-caring facility or child-placing agency shall:

- (a) Inform the department of the levels of care the facility or agency has the ability to serve;
- (b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

- 1. Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;
- 2. Clinical services including:
 - a. The evaluation and treatment of an emotional disorder, mental illness, or substance abuse problem; and
 - b. Identification and alleviation of related disability or distress, experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and

- 3. Support services that:
 - a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;
 - b. Allow a child to cope with the disability or distress;
 - c. Provide access to improving the educational or vocational status of the child; and

- d. Provide essential elements of daily living;
- (c) Submit the following reports to the gatekeeper in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:

1. For a child who has an IQ seventy (70) or above, a behavior inventory appropriate to the child's developmental level consisting of completed forms specified in Section 2(2)(l) of this administrative regulation; and

2. For a child who has an IQ below seventy (70), a behavioral inventory appropriate to the child's development level:

- a. Consisting of:
 - (i) A completed Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology); or
 - (ii) Another completed tool identified and piloted pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15)(A); and
- b. By the first utilization review due date and every twelve (12) months thereafter; and

3. To the gatekeeper and designated cabinet staff, a copy of the CRP-7, Children's Review Program Application for Level of Care Payment (ALP):

- a. On a quarterly basis, for a private child care residential placement; or
- b. On a semiannual basis for a foster care placement;
- (d) Provide outcomes data and information as requested by the gatekeeper; and

(e) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:

1. The Council on Accreditation; or
2. The Joint Commission on Accreditation for Healthcare Organizations.

(2) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (1)(e) of this section.

Section 11. Utilization Review and Authorization of Payment.

(1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports specified in Section 10(1)(c) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

(2) If the child-caring facility or child-placing agency fails to submit the reports as specified in Section 10(1)(c) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date, the cabinet shall:

(a) Suspend payments until the necessary information has been submitted to the gatekeeper;

(b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or

(c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.

(3) If the child-caring facility makes timely submission of the reports, and if the:

(a) Level of care remains unchanged, payments shall continue unchanged;

(b) Level of care is reduced, and the:

1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or

2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or

(c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.

(4) If a child-caring facility, child-placing agency, or the department determines it to be in the best interest of a child to be transitioned from a residential program to another program and the required reports specified in Section 10(1)(c) of this administrative regulation have been submitted on time, and if:

(a) The program is not therapeutic foster care, the rate for the level resulting from the utilization review shall remain in effect until the next scheduled utilization review; or

(b) The new program is therapeutic foster care, the residential rate for the level resulting from the utilization review shall remain in effect for thirty (30) days after the change in placement. On the 31st day, the therapeutic foster care rate for the assigned level shall apply.

(5) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination as specified in Section 12 of this administrative regulation.

Section 12. Redetermination. (1) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:

(a) New information which supports the request for a new level; and

(b) Completion of the "request for redetermination" section of one (1) of the following forms:

1. DPP-886, Private Child Care Client Inter-agency Referral Form, for an initial or reassigned level;

2. CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, for a utilization review;

3. CRP-4, Children's Review Program Notice of Level of Care

Redetermination;

4. CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment, for a utilization review; or

5. CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Reassignment, for a reassignment.

(2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review or admission, and if the gatekeeper assigns a higher level with a CRP-4, Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive to the most recent of the following:

(a) The date of the most recent utilization review due date; or

(b) The date of admission.

(3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review or admission, and if a:

(a) Higher level is assigned by the gatekeeper with a CRP-4, the increased payment shall be effective the day after the request is received by the gatekeeper; or

(b) Lower level is assigned by the gatekeeper with a CRP-4, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.

(4) If the child-caring facility, child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-4, an appeal may be requested in accordance with Section 14 or 15 of this administrative regulation.

Section 13. Reassignment. (1) If the level of care expires and the child is moved to a different child-caring facility or child-placing agency placement, a reassigned level of care shall be obtained by the:

(a) Department completing a level of care packet for a level assignment; or

(b) New child-caring facility or child-placing agency submitting the following within thirty (30) days of the placement:

1. A cover letter requesting a reassignment;

2. An assessment of the child;

3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary; and

4. Material as specified in Section 2(2)(l) of this administrative regulation.

(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as specified in Section 12 of this administrative regulation.

Section 14. Informal Dispute Resolution. (1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.

(2) Upon receipt of a request for informal resolution, the cabinet shall:

(a) Review the request; and

(b) Render a written decision on the issue raised within thirty (30) calendar days unless an extension is granted by the secretary or designee:

1. Due to extenuating circumstances that prolong the review; and

2. With notice provided to the contract agent.

(3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section 15 of this administrative regulation.

Section 15. Administrative Hearing Process. A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:320.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Child Behavior Checklist for Ages 1 1/2 - 5 (Achenbach)", 7/00;
- (b) "Child Behavior Checklist for Ages 6-18 (Achenbach)", 6/01;
- (c) "CRP-2, Children's Review Program Notice of Level of Care Payment Authorization", 11/14;
- (d) "CRP-4, Children's Review Program Notice of Level of Care Redetermination", 11/14;
- (e) "CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", 11/14;
- (f) "CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Reassignment", 11/14;
- (g) "CRP-7, Children's Review Program Application of Level of Care Payment (ALP)", 11/14;
- (h) "DPP-114, Level of Care Schedule", 8/18[5/17];
- (i) "DPP-886, Private Child Care Client Inter-agency Referral Form", 10/04;
- (j) "DPP-888, Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and Instructions for Completing the Cost Report Time Study Codes and Definitions, and Instructions for the Time Study, for Child-Caring and Child-Placing Programs and Facilities", 10/04; and
- (k) "Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology)", 1990.

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

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 26, 2018

FILED WITH LRC: August 1, 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: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes five levels of care based upon the needs of a child for whom the Cabinet for Health and Family Services has legal responsibility, a payment rate for each level, gatekeeper responsibilities, provider requirements, procedures for classification at the appropriate level of care, and procedures for determination of components of the model program costs analysis.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policy and procedures for placement of a child in the custody of the cabinet with a private child care provider, levels of care and related payments, responsibilities and requirements of the gatekeeper and private provider, and rate setting methodology.

(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 levels of care and associated payments for a private child care placement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes through its incorporation of the methodology regarding the placement of a child in the custody of the cabinet with a private child care provider, procedures concerning the model program cost analysis, provider and gatekeeper requirements, levels of care, and payment rate for each level of care.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation

increases the payment rates for children who are assessed as having levels of care IV and V, and who are placed with a private residential child-caring facility; and children who are placed in emergency shelters. In addition, the administrative regulation makes technical corrections in accordance with KRS Chapter 13A, including alignment with 2018 Ky. Acts ch. 159 (a.k.a., House Bill 1).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to adjust reimbursement for children placed in residential child-caring facilities to better reflect actual costs of providers. The rate increase is anticipated to assist with provider capacity, thereby better assuring placement options and quality care for children in state custody. Without these placement options, children risk placement in more costly, restrictive settings or, conversely, in settings that do not otherwise meet the needs of the children. The health and welfare of said children are jeopardized without the payment rate increase, in addition to threats to federal child welfare funding due to an inadequate service array for children needing out-of-home care.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by adjusting residential child-caring facility payment rates in accordance with 2018 Ky. Acts ch. 169.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by enhancing provider payment rates so that they are more consistent with actual provider costs, thereby better facilitating placement options and preserving the health and welfare of children in the custody of the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The cabinet maintains a monthly average of 1,287 children who are placed in emergency shelters and are assessed as needing levels of care IV or V in residential child-caring facility placements.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation requires no new action on the part of regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation imposes no new or additional costs on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Residential child-caring facilities will benefit from the payment rate increase implemented through the amendment to this administrative regulation. The effect of the regulatory amendment will preserve the health and welfare of children in the custody of the cabinet.

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

(a) Initially: In accordance with 2018 Ky. Acts ch. 169, residential child-caring facilities, including emergency shelters, will realize payment rate increases. The cabinet has identified approximately \$7.3 million, a combination of federal, general, agency, and restricted funds, within its existing appropriations to support the rate increase.

(b) On a continuing basis: The cabinet projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include federal Title IV-E (of the Social Security Act) foster care maintenance, general funds, and agency and restricted funds derived from the Temporary Assistance for Needy Family (TANF) block grant and Medicaid.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Additional funding was appropriated in 2018 Ky. Acts ch. 169.

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

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

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 622, 672

2. State compliance standards. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.090(1)(d), 605.150(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 622, 672

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, specifically the Department for Community Based Services (DCBS), is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1), 42 U.S.C. 622, 672

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new 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 generate no new revenues.

(c) How much will it cost to administer this program for the first year? The administrative body has conducted extensive analysis of its budgetary context and service demands to ensure the per diem increases are sustainable within appropriations. The cabinet has identified approximately \$7.3 million, a combination of federal, general, agency, and restricted funds to support the rate increase in accordance with 2018 Ky. Acts ch. 169.

(d) How much will it cost to administer this program for subsequent years? The administrative body projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

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

Revenues (+/-):

Expenditures (+/-):

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, August 14, 2018)

11 KAR 5:145. CAP grant award determination procedure.

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535, 164.7889(3)

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4), 164.7889(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7889(3) requires the authority to promulgate an administrative regulation that increases both the maximum amount available under the grant programs, and increases the average income level for qualification for the grant programs if sufficient funds are available. This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

Section 1. Each application submitted pursuant to 11 KAR 4:080 and 11 KAR 5:130 shall be reviewed for determination that all eligibility requirements established in 11 KAR 5:034 are met. To qualify for a CAP award based on financial need, the applicant's expected family contribution shall be ~~\$5,486~~[\$5,234] or less.

Section 2. CAP Grant Award. (1) Except as provided in subsection (2) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment on a full-time basis as determined by the educational institution in an eligible program shall be the lesser of:

(a) \$950; or

(b) The amount of eligibility the student has remaining within the aggregate KHEAA grant limit.

(2) The maximum CAP grant in any semester for an applicant accepted for enrollment on less than a full-time basis as determined by the educational institution in an eligible program shall be:

(a) The amount specified in subsection (1)(a) of this section:

1. Divided by twelve (12); and

2. Multiplied by the number of credit hours in which the applicant is accepted for enrollment; and

(b) Not in excess of the maximum specified in subsection (1)(b) of this section.

(3) For any academic year, a student shall not receive more than \$1,900 for an aggregate CAP grant award.

Section 3. (1) A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books.

(2) A KHEAA grant award shall not be made for a summer academic term.

Section 4. (1) A KHEAA grant award shall not exceed the applicant's cost of education less expected family contribution and other anticipated student financial assistance.

(2) The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the determination of financial need for that student.

(3) The KHEAA Grant Program Officer (KGPO) and the grant recipient shall make every reasonable effort to provide the

authority the information needed to prevent an overaward.

(4) If the applicant's expected family contribution, disbursed KHEAA grant amount, plus other student financial assistance exceeds his or her need, the excess shall be considered to be an overaward. If an overaward occurs, this amount shall be returned to the authority immediately.

Section 5. (1) If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked.

(2) If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant.

Section 6. If the educational institution receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant, and:

(1) If the grant has not yet been disbursed for the fall academic term, the reduction shall be made to both the fall and spring disbursements~~[s]~~ and the educational institution shall notify the student of the reduction;

(2) If the grant for the fall academic term has already been disbursed and the student enrolls for the spring academic term, the reduction shall be made to the spring disbursement~~[s]~~ and the educational institution shall notify the student of the reduction;

(3) If the grant for the fall academic term has already been disbursed and the student does not enroll for the spring academic term, the educational institution shall notify the student of the fall overaward and the student shall repay the overaward to the authority; or

(4) If both the fall and spring disbursements have been made, the educational institution shall notify the student of the overaward and the student shall repay the overaward to the authority.

Section 7. (1) Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant.

(2) Any student who is awarded a KHEAA grant who fails to provide verification requested by the participating institution shall be deemed ineligible, and the grant shall be revoked.

CHARLES VINSON, Chair

APPROVED BY AGENCY: May 30, 2018

FILED WITH LRC: June 14, 2018 at 10 a.m.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293, email dbarber@kheaa.com.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, August 14, 2018)

11 KAR 15:010. Definitions for 11 KAR Chapter 15.

RELATES TO: KRS 164.7871-164.7885, 20 U.S.C. 1087I

STATUTORY AUTHORITY: KRS 164.748(4), 164.7885(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.7885(7) ~~authorizes~~**[requires]** the authority to promulgate administrative regulations for the administration of the Kentucky Educational Excellence Scholarship Program. This

administrative regulation establishes the definitions for 11 KAR Chapter 15.

Section 1. Definitions. (1) "Academic term" is defined in KRS 164.7874(1) and 13 KAR 2:045, Section 1(1).

(2) "Academic year" is defined in KRS 164.7884(1).

(3)[(2)] "ACT score" is defined in KRS 164.7874(3).

(4) "Apprentice" is defined in KRS 164.7884(1).

(5)[(3)] "Authority" is defined in KRS 164.7874(4).

(6)[(4)] "Award period" is defined in KRS 164.7874(5).

(7)[(5)] "Correspondence course" means a home study course that:

(a) Is provided by an educational institution under which the institution provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the institution;

(b) Meets the following requirements:

1. When a student completes a portion of the instructional materials, the student takes the examinations that relate to that portion of the materials[is] and returns[return] the examinations to the institution for grading;

2. The institution provides instruction through the use of video cassettes or video discs in an academic year unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at an institution during the same academic year; and

3. If a course is part correspondence and part residential training, the course shall be considered to be a correspondence course; and

(c) Does not include courses from the Kentucky Commonwealth Virtual University (KCVU).

(8)[(6)] "Council" is defined in KRS 164.7874(6).

(9)[(7)] "Cumulative grade point average" means the total grade point average for a postsecondary education student as reported by the postsecondary education institution where the student is currently enrolled.

(10)[(8)] "Eligible high school student" is defined in KRS 164.7874(7).

(11)[(9)] "Eligible postsecondary student" is defined in KRS 164.7874(8).

(12)[(10)] "Eligible program of study" means, for purposes of enrollment in a participating institution, a postsecondary[is] undergraduate program that:

(a)1. Leads to a certificate, diploma, or associate or baccalaureate degree;

2. Is designated as an equivalent undergraduate program of study by the council in an administrative regulation; or

3. Is a degree program in a field of study that is not available at any participating institution in the Commonwealth but is offered at an out-of-state institution designated by the council as an approved participating institution; and

(b) May include study abroad or away from the main campus if the student pays tuition to, and is given academic credit by, the participating institution for the study, except that a correspondence course shall not be included.

(13) "Eligible student" is defined in KRS 164.7884(1).

(14)[(11)] "Full-time student" is defined in KRS 164.7874(9).

(15)[(12)] "Grade point average" is defined in KRS 164.7874(10).

(16)[(13)] "High school" is defined in KRS 164.7874(11).

(17)[(14)] "KEES" or "Kentucky Educational Excellence Scholarship" is defined in KRS 164.7874(12).

(18)[(15)] "KEES Program officer" means the official designated on the administrative agreement, pursuant to KRS 164.748(6) and 164.7874(20), to serve as the participating institution's on-campus agent to certify all institutional transactions and activities with respect to the Kentucky Educational Excellence Scholarship Program.

(19)[(16)] "Maximum award amount" means the KEES award maximum defined by KRS 164.7874(14).

(20)[(17)] "Participating institution" is defined in KRS 164.7874(20).

(21)[(18)] "Part-time student" is defined in KRS 164.7874(21).

(22) "Registered apprenticeship program" is defined in KRS 164.7884(1).

(23) "Related instruction" is defined in KRS 164.7884(1).

(24) "Sponsor" is defined in KRS ~~164.7884(1)~~~~164.7881~~.

(25)[(19)] "Supplemental award" means the KEES supplemental amount defined by KRS 164.7874(17).

CHARLES VINSON, Chair

APPROVED BY AGENCY: May 30, 2018

FILED WITH LRC: June 14, 2018 at 10 a.m.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293, email dbarber@kheaa.com.

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, August 14, 2018)**

11 KAR 15:110. Scholarships for Registered Apprenticeship programs.

RELATES TO: KRS 164.7871-164.7885

STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4), 164.753(3), 164.7884, 164.7894

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7884(5) requires[authorizes] the authority to promulgate administrative regulations establishing the procedures for making awards to KEES-eligible students participating in a registered apprenticeship program.

Section 1. Eligibility. (1) A student who has earned a KEES award and who is enrolled in a registered apprenticeship program is eligible to request reimbursement for post-secondary expenses beginning with the 2018-2019 academic year.

(2) Reimbursement shall be made only for approved expenses as provided in KRS 164.7884(3)(a).

Section 2. Election Process. (1) By August 1 prior to the start of the academic year, a student enrolled in a registered apprenticeship program shall submit to KHEAA their funding pathway choice, either traditional or reimbursement, for postsecondary KEES use.

(2) If a student chooses the traditional KEES funding pathway, funds shall be paid to the student's postsecondary institution upon KHEAA's receipt of enrollment verification from the institution. Funds shall not be paid directly to the student by KHEAA.

(3) If a student chooses the registered apprenticeship reimbursement pathway, funds shall be paid directly to the student upon KHEAA's receipt of both a reimbursement request and proof of purchase by the student.

(4) Any student who fails to make an election by August 1 shall automatically be placed in[on] the traditional KEES funding pathway.

Section 3. Reimbursement Process. (1) Upon receipt of a student's election to participate in the registered apprenticeship reimbursement pathway, KHEAA shall provide written confirmation to the student detailing the reimbursement process.

(2) In order to be eligible for reimbursement, the student must:

(a) Purchase items required for participation in the registered apprenticeship program;

(b) Complete and submit to KHEAA a reimbursement request; and

(c) Submit to KHEAA supporting documentation, including an itemized dated receipt.

(3) Upon receipt of the required documentation and approval of the reimbursement request, KHEAA shall provide reimbursement of the approved expenses directly to the student in the form of a paper check.

(4) In addition to reimbursable purchases, a student may request a travel allowance of up to \$250 per semester to cover

commuting costs incurred during participation in the registered apprenticeship program.

(5) The total reimbursement amount per year shall not exceed the student's KEES award maximum.

(6) Eligibility for reimbursement ends the earlier of:

(a) Five (5) years following the student's date of high school graduation or GED receipt; ~~for~~

(b) The student's successful completion of a registered apprenticeship program; or

(c) Receipt of reimbursement for four (4) academic years.

Section 4. Conversion of Funding Pathway. A student may elect to change their funding pathway one (1) time after making their initial election. (1) The change request must be submitted to KHEAA in writing.

(2) The change shall become effective at the beginning of the next academic year following KHEAA's receipt and approval of the request.

(3) The KEES award maximum for a student transitioning from the traditional KEES pathway to the registered apprenticeship pathway shall be based on the student's postsecondary renewal amount for the last academic year completed in the traditional pathway.

CHARLES VINSON, Chair

APPROVED BY AGENCY: May 30, 2018

FILED WITH LRC: June 14, 2018 at 10 a.m.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293, email dbarber@kheaa.com.

**AGRICULTURAL EXPERIMENT STATION
(As Amended at ARRS, August 14, 2018)**

12 KAR 3:007. Definitions for 12 KAR Chapter 3[and terms].

RELATES TO: KRS 250.491-250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571 authorizes the Director of the Agricultural Experiment Station to define terms ~~that~~[which] serve as reference points in the application of labeling requirements to pet foods and specialty pet foods. This administrative regulation establishes definitions for 12 KAR Chapter 3.

Section 1. Definitions. (1) "All life stages" means gestation or lactation[~~gestation/lactation~~], growth, and adult maintenance life stages.

(2) "Family" means a group of products that are nutritionally adequate for any or all life stages based on the products[~~their~~] nutritional similarity to a lead product that has been successfully test-fed according to an AAFCO feeding protocol.

(3) ["Principal display panel"] means the part of a label that is most likely to be displayed, presented, shown or examined under normal and customary conditions of display for retail sale.

Section 2. "Ingredient statements" means a collective and contiguous listing on the label of the ingredients of which the pet food is composed.

Section 3. "Immediate container":

(a) Means the unit, can, box, tin, bag, or other receptacle or covering in which a pet food or specialty pet food is displayed for sale to retail purchasers; ~~and~~

(b)[~~but~~] Does not mean[~~include~~] containers used as shipping containers.

(4) "Ingredient statements" means a collective and contiguous listing on the label of the ingredients of which the pet food or specialty pet food is composed.

(5) ["Principal display panel"] means the part of a label that is

most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

**AGRICULTURAL EXPERIMENT STATION
(As Amended at ARRS, August 14, 2018)**

12 KAR 3:012. Label format and[Uniform] labeling[format].

RELATES TO: KRS 250.501, 250.521, 15 U.S.C. 1451-1461

STATUTORY AUTHORITY: KRS 250.521(2)(e), (f), 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631. KRS 250.521 requires that pet foods be labeled and establishes the information that shall be stated on the label. This administrative regulation establishes a uniform format for labeling information for pet foods and specialty pet foods and delineates criteria for product claims.

Section 1. Pet food and specialty pet food shall be labeled with the following information prescribed in this administrative regulation.

(1) Product name and brand name, if any, on the principal display panel as established[~~stipulated~~] in 12 KAR 3:017;

(2) A statement specifying the species name of pet or specialty pet for which the food is intended, conspicuously designated on the principal display panel;

(3) "Quantity statement", as defined by[~~in~~] KRS 250.501(22) and as established in 12 KAR 2:011, Section 1(9), by weight (pounds and ounces, and metric), liquid measure (quarts, pints, and fluid ounces, and metric) or by count, on the principal display panel;

(4) Guaranteed analysis as established[~~stipulated~~] in 12 KAR 3:022;

(5) Ingredient statement as established[~~stipulated~~] in 12 KAR 3:027;

(6) A statement of nutritional adequacy or purpose if required pursuant to[~~under~~] 12 KAR 3:039;

(7) A statement of calorie content if required pursuant to[~~under~~] 12 KAR 3:042;

(8) Feeding directions if required pursuant to[~~under~~] 12 KAR 3:032; and

(9) Name and address of the manufacturer or distributor as established[~~stipulated~~] in Sections 10 and 11 of this administrative regulation.

Section 2. If a pet food or specialty pet food enclosed in an outer container or wrapper is intended for retail sale, all required label information shall appear on the outer container or wrapper.

Section 3. A vignette, graphic, or pictorial representation on a pet food or specialty pet food label shall not misrepresent the contents of the package.

Section 4. The word "proven," in connection with a label claim for a pet food or specialty pet food, shall not be used unless the claim is substantiated by scientific or other empirical evidence.

Section 5. A statement shall not appear upon the label or labeling of a pet food or specialty pet food that makes false or misleading comparisons between that product and any other product.

Section 6. A personal or commercial endorsement may be

VOLUME 45, NUMBER 3 – SEPTEMBER 1, 2018

used on a pet food or specialty pet food label if the endorsement is not false or misleading.

Section 7. A statement on a pet food or specialty pet food label stating "improved," "new," or similar designation shall be substantiated and limited to six (6) months of production.

Section 8. A statement on a pet food or specialty pet food label stating preference or comparative attribute claims shall be substantiated and limited to one (1) year production, after which the claim shall be removed or re-substantiated.

Section 9. (1) Raw milk distributed as pet food or specialty pet food shall bear the following statement "WARNING: NOT FOR HUMAN CONSUMPTION – THIS PRODUCT HAS NOT BEEN PASTEURIZED AND MAY CONTAIN HARMFUL BACTERIA."

(2) This statement shall be displayed in a conspicuous manner and shall not be smaller than the height of the minimum font required by the federal Fair Packaging and Labeling Act 15 U.S.C. 1451-1461, for the quantity statement as shown in the following table:

<u>Panel Size</u>	<u>Minimum Warning Statement Type Size</u>
<u>≤5 in.²</u>	<u>1/16 in.</u>
<u>>5-≤25 in.²</u>	<u>1/8 in.</u>
<u>>25-≤100 in.²</u>	<u>3/16 in.</u>
<u>>100-≤400 in.²</u>	<u>1/4 in.</u>
<u>>400 in.²</u>	<u>1/2 in.</u>

Section 10. The label of a pet food or specialty pet food shall specify the name and address of the manufacturer or distributor. (1) Except as established in subsection (2) of this section, the statement of the place of business shall include the street address, city, state, and zip code.

(2); however,] The street address may be omitted if the street address is shown in a current city directory or telephone directory for the city listed on the label.

Section 11. If a person manufactures or distributes a pet food or specialty pet food in a place other than the principal place of business, the label may state the principal place of business in lieu of the actual place where each package of the pet food or specialty pet food was manufactured or packaged or from where each package is to be distributed. [The quantity statement and product name shall appear on the principal display panel of a pet food label. All other required information shall be:

- (1) Placed on the label; and
- (2) Easily read by a purchaser.

Section 2. The quantity statement shall conform with the United States Fair Packaging and Labeling Act of 15 U.S.C. 1451 through 1461.

Section 3. (1) The information required in the guaranteed analysis shall be listed in the following order:

- (a) Crude protein (minimum percentage);
 - (b) Crude fat (minimum percentage);
 - (c) Crude fiber (maximum percentage); and
 - (d) Moisture (maximum percentage).
- (2) Additional guarantees shall follow moisture.

Section 4. The label of a pet food shall specify the name and address of the manufacturer, packer, or distributor. The statement shall include the street address unless the street address is shown in a current city directory or telephone directory of the city named on the label as the manufacturer's or distributor's address.

Section 5. If a person manufactures, packages, or distributes a pet food in a place other than his principal place of business, the label may state either address if it is not misleading.

Section 6. A vignette, graphic, or pictorial representation of a

product on a pet food label shall not misrepresent the contents of the package.

Section 7. The word "proven" shall not be used in connection with a label claim for a pet food unless scientific or other empirical evidence substantiating the claim is available.

Section 8. A statement shall not appear upon the label of a pet food that makes a false or misleading comparison between that pet food and another pet food.

Section 9. A personal or commercial endorsement may be included on a pet food label if the endorsement is:

- (1) Factual; and
- (2) Not misleading.

Section 10. If a pet food intended for retail sale is enclosed in an outer container or wrapper, all required label information shall appear on the outside wrapper or container.

Section 11. The words "dog food," "cat food" or a similar designation shall appear conspicuously upon the principal display panel of the pet food label.

Section 12. The label of a pet food shall not contain an unqualified claim that the pet food, or recommended feeding of the pet food, is a complete, perfect, scientific or balanced ration for dogs or cats unless the product or feeding:

- (1)(a) Meets the nutrient requirements for all life stages established by the Association of American Feed Control Officials (AAFCO) Dog or Cat Food Nutrient Profiles, as contained in the Official Publication; or
- (b) Has had adequate testing to demonstrate the stated capabilities if:
 1. A product ingredient provides a nutrient in an amount that substantially deviates from the established nutrient requirements; or
 2. The stated capability has not been established by AAFCO; and
- (2) Contains a combination of ingredients which when fed to a normal animal as the only source of nourishment in accordance with the testing procedures established by AAFCO, meets the criteria of the testing procedures for the appropriate life stage.

Section 13. A label for a product formulated for or suitable for a limited purpose, such as feeding of puppies, shall state that the product, or its recommended feeding, meets the requirements of a complete, perfect, scientific or balanced ration for dogs or cats if:

- (1) Accompanied by a statement of the limited purpose for which the product is intended or suitable positioned on the same panel and in the same size, style and color print; and
- (2) An affidavit is provided upon request of the director substantiating that the pet food:
 - (a) Meets the nutrient requirements established by the AAFCO Dog or Cat Food Nutrient Profiles; or
 - (b) Has had its capabilities for the limited or qualified purpose demonstrated by adequate testing.

Section 14. Except as specified by 12 KAR 3:017, Section 1, the name of an ingredient on the label, other than in the product name shall:

- (1) Not be given undue emphasis so as to create the impression that it is present in a larger amount than is the fact;
- (2) Constitute at least three (3) percent of the total ingredients, excluding water sufficient for processing, if preceded by the designation "with" or a similar term;
- (3) Be in the same size, style and color print; and
- (4) Appear in the order of the ingredient's predominance by weight in the product if the names of more than one (1) ingredient are shown.

Section 15. The label of a dog or cat food, other than one (1) prominently identified as a snack or treat, shall bear on the

principal display panel or the information panel as defined in 21 C.F.R. 501.1 and 501.2 in type of a size reasonably related to the largest type on the panel, a statement of the nutritional adequacy or purpose of the product. The statement shall:

(1) Consist of one (1) of the following:

(a) A claim that the pet food meets the nutritional requirements of one (1) or more of the recognized life-stage categories, which shall include gestation, lactation, growth, maintenance, or complete for all life stages. The claim shall be stated as one (1) of the following:

1. (Insert name of product) is formulated to meet the nutritional levels established by the AAFCO (dog or cat) Food Nutrient Profiles for (insert life-stage category); or

2. Animal feeding tests using AAFCO procedures substantiate that (insert name of product) provides complete and balanced nutrition for (insert life-stage category);

(b) A nutrition or dietary claim for purposes other than those listed in Sections 12 and 13 of this administrative regulation, if the claim is scientifically substantiated; or

(c) The statement, "this product is intended for intermittent or supplemental feeding only", if the product does not meet either the requirements of Section 12 or 13 of this administrative regulation or other special nutritional or dietary need; and

(2) If the product is intended for use by or under the supervision of direction of a veterinarian, the statement "use only as directed by your veterinarian".

Section 16. A claim on a pet food label that states:

(1) "Improved" or "new" shall be:

(a) Substantiated by the manufacturer; and

(b) Limited to six (6) months of production; or

(2) A preference or comparative attribute shall be:

(a) Substantiated by the manufacturer; and

(b) Limited to one (1) year of production, after which the claim shall be removed or resubstantiated.

Section 17. Dog and cat food labeled as complete and balanced for a life stage, except a pet food labeled in accordance with Section 15(2) of this administrative regulation, shall list feeding directions on the label. These directions shall be expressed in common terms and appear prominently on the label. Feeding directions shall, at a minimum, state, "feed (weight or unit of product) per (weight unit) of dog (or cat)".

Section 12[18]. Incorporation by Reference. (1) "2018 Official Publication", (2018[1998] Edition), Association of American Feed Control Officials, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

**AGRICULTURAL EXPERIMENT STATION
(As Amended at ARRS, August 14, 2018)**

12 KAR 3:017. Brand and product names.

RELATES TO: KRS 250.501, 250.521, 250.531

STATUTORY AUTHORITY: KRS 250.571(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for efficient enforcement of KRS 250.491 to 250.631. This

administrative regulation establishes the conditions for use of a brand or product name.

Section 1. The words "100%", "all", or words of similar designation shall not be used in the brand or product name of a pet food or specialty pet food if the product contains more than one (1) ingredient, not including water sufficient for processing, decharacterizing agents, or trace amounts of preservatives and condiments.

Section 2. An ingredient or combination of ingredients may form part of a product name of a pet food or specialty pet food:

(1) If/When the ingredients constitute at least ninety-five (95) percent of the total weight of the product. Water sufficient for processing may be excluded when calculating the percentage; however, the ingredients shall constitute at least seventy (70) percent of the total product weight; and

(2) If/When any ingredient constitutes at least twenty-five (25) percent of the weight of the product, if provided that:

(a) Water sufficient for processing may be excluded when calculating the percentage, however, the ingredients shall constitute at least ten (10) percent of the total product weight; and

(b) A descriptor is used with the ingredient names. This descriptor shall imply other ingredients are included in the product formula.

1. Examples of descriptors include "dinner", "platter", "entrée", "formula", and "recipe".

2. and

(e) The descriptor shall be in the same size, style, and color print as the ingredient names; or, and

(3) If/When a combination of ingredients, which are included in the product name in accordance with this section, complies with paragraphs (a) through (c) of this subsection. [Section 2 of this administrative regulation, meets all of the following:]

(a) Each ingredient shall constitute/constitutes at least three (3) percent of the product weight, excluding water sufficient for processing; and

(b) The names of the ingredients shall appear in the order of their respective predominance by weight in the product; and

(c) All the ingredient names appear on the label in the same size, style, and color print.

Section 3. (1) If the name of any ingredient appears in the product name of a pet food, specialty pet food, or elsewhere on the product label and includes a descriptor such as "with" or similar designation, the named ingredients shall each constitute at least three (3) percent of the product weight exclusive of water for processing.

(2) If the names of more than one (1) ingredient are shown, each named ingredient [they] shall appear in [their respective] order of predominance by weight in the product.

(3) The three (3) percent minimum level shall not apply to claims for nutrients, such as [, but not limited to:] vitamins, minerals, and fatty acids, as well as condiments.

(4) The word "with" or similar designation, and named ingredients shall be in the same size, style, color, and case print and be of no greater size than:

Panel Size	Max "With Claim" Type Size
≤5 in. ²	1/8 in.
>5 - ≤25 in. ²	1/4 in.
>25 - ≤100 in. ²	3/8 in.
>100 - ≤400 in. ²	1/2 in.
>400 in. ²	1 in.

Section 4. A flavor designation may be included as part of the product name or elsewhere on the label of a pet food or specialty pet food if [the flavor designation meets all of the following:]

(1) The flavor designation:

(a) Conforms to the name of the ingredient as listed in the ingredient statement; or

(b) Is identified by the source of the flavor in the ingredient

statement:

(2) The word "flavor" is printed in the same size type and with an equal degree of conspicuousness as the name of the flavor designation; and

(3) Substantiation of the flavor designation, the flavor claim, or the ingredient source is provided to the Division of Regulatory Services upon request.

Section 5. The product name of the pet food or specialty pet food shall not be derived from one (1) or more ingredients unless all ingredients are included in the name, except as established in [specified by] Section 2 or 3 of this administrative regulation.; provided that The name of an ingredient or combination of ingredients may be used as a part of the product name if:

(1) The ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in amounts that[which] have a material bearing upon the price of the product or upon acceptance of the product by the purchaser [thereof]; or

(2) The name[is] does not constitute a representation that the ingredient or combination of ingredients is present to the exclusion of other ingredients.

Section 6. Contractions or coined names referring to ingredients shall not be used in the brand name of a pet food or specialty pet food unless it is in compliance with Section[Sections] 2, 3, or 4 of this administrative regulation.

Section 7. (1) If pet food or specialty pet food consists of raw milk, the words, "Raw (blank) Milk" shall appear conspicuously on the principal display panel.

(2) The (blank) shall be completed by using the species of animal from which the raw milk is collected. [(1) A flavor designation shall:

(a) Not be used on a pet food label unless the flavor is:

1. Detectable by a recognized test method; or

2. Distinguishable by the pet; and

(b) Conform to the name of its source as shown in the ingredient statement. The word "flavor" shall be printed in the same size type and equally conspicuous as the ingredient term from which the flavor is derived.

(2) A distributor shall supply verification of the designated or claimed flavor upon request of the director.

Section 2. The designation "100 percent" or "all" or words of similar connotation shall not be used in the brand or product name of a pet food if it contains more than one (1) ingredient. Water sufficient for processing, a required decharacterizing agent or trace amount of a preservative or a condiment shall not be considered an ingredient.

Section 3. The terms "meat" or "meat by-products" shall be qualified to designate the animal or animals from which the meat or meat by-products are derived, unless the meat is from cattle, swine, sheep, or goats.

Section 4. The name of the pet food shall not be derived from one (1) or more ingredients of a mixture to the exclusion of the other ingredients, except as specified by Sections 1, 5, and 6 of this administrative regulation. If an ingredient or combination of ingredients is intended to impart a distinctive characteristic that is important to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the name of the pet food if:

(1) The ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in an amount which has a significant bearing upon the price of the product or upon acceptance of the product by the purchaser;

(2) The name does not imply that the ingredient or combination of ingredients is present to the exclusion of other ingredients; and

(3) The name is not false or misleading.

Section 5. If an ingredient or a combination of ingredients derived from animals, poultry, or fish constitutes ninety-five (95) percent or more of the total weight of a pet food, the name or names of the ingredient or ingredients may be a part of the product name. If more than one (1) ingredient is part of the product name, all of the ingredient names shall be in the same size, style and color print. Water sufficient for processing shall be excluded when calculating the percentage of the ingredients. The named ingredients shall constitute at least seventy (70) percent of the total product.

Section 6. (1) If an ingredient or a combination of ingredients constitutes at least twenty-five (25) percent but less than ninety-five (95) percent of the total weight of a pet food, the name or names of the ingredient or ingredients may form a part of the name of the pet food if:

(a) Each of the ingredients constitutes at least three (3) percent of the product weight excluding sufficient water for processing; and

(b) The product name:

1. Includes a primary descriptive term such as "dinner", "platter", or similar designation; and

2. Describes the contents of the product without being misleading.

(2) If the names of more than one (1) ingredient are shown, they shall appear in the order of their predominance by weight.

(3) An ingredient name and the primary descriptive term shall be in the same size, style and color print.

(4) Water sufficient for processing shall be excluded when calculating the percentage of the ingredients. The named ingredients shall constitute at least ten (10) percent of the total product.

Section 7. A contraction or coined name referring to an ingredient shall not be used in the brand name of a pet food unless it is in compliance with Sections 1, 4, 5, or 6 of this administrative regulation.]

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, August 14, 2018)

12 KAR 3:022. Expression of guarantees.

RELATES TO: KRS 250.501, 250.521

STATUTORY AUTHORITY: KRS 250.521(1)(b), 250.571(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for efficient enforcement of KRS 259.491 to 250.631. KRS 250.521(1)(b) requires that a commercial feed label contain a guaranteed analysis that advises the purchaser of the composition of the feed or to support claims made in the labeling. This administrative regulation establishes a uniform format for expressing guarantees for pet foods and specialty pet foods.

Section 1. The "Guaranteed Analysis" shall be listed in the following order and format unless otherwise established[specified] in 12 KAR Chapter 3:

(1) A pet food or specialty pet food label shall list the following required guarantees:

(a) Minimum percentage of crude protein;

(b) Minimum percentage of crude fat;

(c) Maximum percentage of crude fat, if required by 12 KAR 3:028;

(d) Maximum percentage of crude fiber;

(e) Maximum percentage of moisture; and

(f) Additional guarantees, if applicable, shall follow moisture;[;]

(2) If ash is listed in the guaranteed analysis on a pet food or specialty pet food label, ash[;] shall be guaranteed as a maximum percentage and shall immediately follow moisture;[;]

(3) If listed on the label of a dog or cat food product, guarantees for dietary starch and sugars shall be stated as maximum percentages. Neither guarantee shall be listed without the other. The guarantee for dietary starch shall follow ash, if also listed;[;] or moisture, if ash is not listed. The guarantee for sugars shall follow dietary starch;[;]

(4) A dog or cat food label shall list other required or voluntary guarantees in the same order and units of the nutrients in the AAFCO Dog (or Cat) Food Nutrient Profiles. Guarantees for substances not listed in the AAFCO Dog (or Cat) Food Nutrient Profiles, or not otherwise provided for in 12 KAR Chapter 3, shall immediately follow the listing of the recognized nutrients and shall be accompanied by an asterisk referring to the disclaimer "not recognized as an essential nutrient by the AAFCO Dog (or Cat) Food Nutrient Profiles." The disclaimer shall appear immediately after the last[such] guarantee in the same size type as the guarantees; and[;]

(5)(a) Except as established in paragraph (b) of this subsection, a specialty pet food label shall list other required or voluntary guarantees in the same order and units for the nutrients in an AAFCO-recognized nutrient profile for the specific species.

(b)[; however,] If no species-specific AAFCO-recognized nutrient profile is available, the order and units shall follow the same order and units of nutrients in the AAFCO Cat Food Nutrient Profile. (c) Guarantees for substances not listed in an AAFCO recognized nutrient profile for the specific species of animal shall immediately follow the listing of recognized nutrients and shall be accompanied by an asterisk referring to the disclaimer "not recognized as an essential nutrient by the _____." The blank shall be completed by listing the specific AAFCO recognized nutrient profile. This disclaimer shall appear immediately after the last[such] guarantee in the same size type as the guarantees. The[Such] disclaimer shall not be required unless an AAFCO-recognized nutrient profile is available for the specific species of specialty pet.

Section 2. The sliding scale method of expressing a guaranteed analysis on a pet food or specialty pet food label (for example, "Minimum crude protein 15-18%") shall not be used.

Section 3. The label of a pet food or a specialty pet food that[which] is formulated as and represented to be a mineral supplement shall include:

(1)(a) Minimum guarantees for all minerals from sources declared in the ingredient statement and established by an AAFCO-recognized nutrient profile, expressed as the element in units specified in the nutrient profile; or

(b)[(2)] Minimum guarantees for all minerals from sources declared in the ingredient statement expressed as the element in units specified in the AAFCO Cat Food Nutrient Profiles if no species-specific nutrient profile has been recognized by AAFCO;

(2)[and provided that]

(3) Mineral guarantees required by subsection (1)[subsections (1) and (2)] of this section may be expressed in milligrams (mg) per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and

(3)[(4)] A weight equivalent (e.g., 1 fl. oz. = 28 grams) for liquid products.

Section 4. The label of a pet food or a specialty pet food that is formulated as and represented to be a vitamin supplement shall include:

(1)(a) Minimum guarantees for all vitamins from sources declared in the ingredient statement and established by an AAFCO-recognized nutrient profile, expressed in units specified in the nutrient profile; or

(b)[(2)] Minimum guarantees for all vitamins from sources

declared in the ingredient statement expressed in units specified in the AAFCO Cat Food Nutrient Profiles if no species-specific nutrient profile has been recognized by AAFCO;

(2)[and provided that]

(3) Vitamin guarantees required by subsection (1)[subsections (1) and (2)] of this section may be expressed in approved units (e.g., IU, mg, g) per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and

(3)[(4)] A weight equivalent (e.g., 1 fl. oz. = 28 grams) for liquid products.

Section 5. If the label of a pet food or specialty pet food includes a comparison of the nutrient content of the food with levels established by an AAFCO-recognized nutrient profile, such as a table of comparison, a percentage, or any other designation referring to an individual nutrient or all of the nutrient levels, the following shall apply:

(1) The product shall meet the AAFCO-recognized nutrient profile;

(2)(a) Except as established in paragraph (b) of this subsection, the statement of comparison shall be preceded by a statement that the product meets the AAFCO-recognized profile.

(b)[; however,] The statement that the product meets the AAFCO-recognized nutrient profile shall not be required if the nutritional adequacy statement as per 12 KAR 3:039, Section 1(1) or Section 2(2)(a) appears elsewhere on the product label;

(3) The statement of comparison of the nutrient content shall constitute a guarantee, but need not be repeated in the guaranteed analysis; and

(4) The statement of comparison may appear on the label separate and apart from the guaranteed analysis.

Section 6. (1) Except as established in subsection (2) of this section, the maximum moisture declared on a pet food or specialty pet food label shall not exceed seventy-eight (78) percent or the natural moisture content of the ingredients, whichever is higher.

(2)[However,] Pet food and specialty pet food such as [; but not limited to,] those consisting principally of stew, gravy, sauce, broth, aspic, juice, or a milk replacer, and that are so labeled, may contain moisture in excess of seventy-eight (78) percent.

Section 7. Guarantees for crude protein, crude fat, and crude fiber shall not be required if the pet food or specialty pet food is intended for purposes other than to furnish these substances or if they are of minor significance relative to the primary purpose of the product, such as a mineral or vitamin supplement.

Section 8. Guarantees for microorganisms and enzymes shall be stated in the format as established[stipulated] in 12 KAR 2:021, Sections 7 and 8.[A guaranteed analysis shall not be expressed as a range, such as "protein 15-18 percent".

Section 2. (1) The label of a pet food that is a mineral supplement shall include in the guaranteed analysis the minimum:

(a) And maximum percentages of calcium;

(b) Percentage of phosphorous;

(c) And maximum percentages of added salt; and

(d) Content of all other essential nutrient elements recognized by the Association of American Feed Control Officials (AAFCO) Dog or Cat Food Nutrient Profile.

(2) Each element shall be stated using the unit of measurement identified in the Nutrient Profile, except that:

(a) A product labeled with a quantity statement in units of tablets, capsules, granules, or liquid measures may express the mineral guarantees in milligrams (mg) per unit. The unit shall be consistent with the unit used in the quantity statement or directions for use; and

(b) A liquid expressed as a volume shall list a weight equivalent, with one (1) fluid ounce equal to twenty-eight (28) grams.

VOLUME 45, NUMBER 3 – SEPTEMBER 1, 2018

Section 3. The guaranteed analysis on a pet food label shall state the vitamin content as follows:

- (1) For Vitamin A, D, or E, in international units per kilogram (IU/kg);
- (2) For Vitamin B₁₂, in milligrams per kilogram (mg/kg) or in micrograms per kilogram (ug/kg); or
- (3) For all other vitamins, in milligrams per kilogram (mg/kg).

Section 4. A vitamin supplement shall guarantee the minimum content of each vitamin declared in the ingredient statement. A vitamin guarantee shall be stated using the unit of measurement required by Section 3 of this administrative regulation; or per quantity unit (tablet, capsule, granule, or liquid measure) consistent with the quantity statement or directions for use. A liquid expressed as a volume shall list a weight equivalent, with one (1) fluid ounce equal to twenty-eight (28) grams.

Section 5. (1) A comparison may be stated using the units of measurement used by AAFCO if the label:

- (a) Does not claim that the pet food is a vitamin or mineral supplement; and
 - (b) Includes a table comparing a typical analysis of the vitamin, mineral, or nutrient content with the levels recommended in the AAFCO Dog or Cat Food Nutrient Profile.
- (2) The statement in a table of comparison of the vitamin, mineral, or nutrient content shall:
- (a) Constitute a guarantee; and
 - (b) Appear on the label separate from the guaranteed analysis.

Section 6. (1) Except as provided in subsection (2) of this section, a percentage or other reference to a nutrient level established by the AAFCO Dog or Cat Food Nutrient Profile shall not be used on a pet food label.

(2) A direct comparison between the individual nutrient contents and the recommended nutrient profile may be made if the comparison is:

- (a) Expressed in the same quantitative units; and
- (b) Preceded by a statement that the product meets the nutrient profile recommended by AAFCO.

Section 7. A guarantee for crude protein, crude fat, or crude fiber shall not be required if:

- (1) The pet food is intended for a purpose other than to furnish that substance; and
- (2) The substance is of minor significance to the primary purpose of the product, such as a mineral or vitamin supplement.]

Section 9[8]. Incorporation by Reference. (1) "Official Publication," (2018[1998] Edition), Association of American Feed Control Officials, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, August 14, 2018)

12 KAR 3:027. Ingredients.

RELATES TO: KRS 250.501, 250.521

STATUTORY AUTHORITY: KRS 250.521(1)(c), 250.571(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for efficient enforcement of KRS 250.491 to 250.631. KRS 250.521(1)(c) requires that a commercial feed label list the common or usual name of each ingredient used in the manufacture of a commercial feed, unless the director promulgates an administrative regulation permitting the use of a collective term for a group of ingredients. This administrative regulation establishes the [maximum moisture content allowed and the] required format for listing ingredients on the label of pet foods and specialty pet foods.

Section 1. Each ingredient of a pet food or specialty pet food shall be listed in the ingredient statement as established in subsections (1) through (4) of this section.[follows:]

(1) The names of all ingredients in the ingredient statement shall be shown in letters or type of the same size, style, and color.;]

(2) The ingredients shall be listed in descending order by their predominance by weight in non-quantitative terms.;]

(3) Ingredients shall be listed and identified by the name and definition established by AAFCO.; and]

(4) Any ingredient for which no name and definition have been so established shall be identified by the common or usual name of the ingredient.

Section 2. The ingredients "meat" or "meat by-products" shall be qualified to designate the animal from which the meat or meat by-products are derived unless the meat or meat by-products are derived from cattle, swine, sheep, goats, or any combination thereof. For example, ingredients derived from horses shall be listed as "horsemeat" or "horsemeat by-products".

Section 3. Brand or trade names shall not be used in the ingredient statement.

Section 4. The quality, nature, form, or other attribute of an ingredient may be referenced if [the reference meets all of the following]:

- (1) The designation is not false or misleading;
- (2) The ingredient imparts a distinctive characteristic to the pet food or specialty pet food because it possesses that attribute; and
- (3) A reference to quality or grade of the ingredient does not appear in the ingredient statement. [(1) Except as provided in subsection (2) of this section, the maximum moisture in pet food shall be guaranteed and shall not exceed seventy-eight (78) percent by weight or the natural moisture content of the constituent ingredients of the product, whichever is greater.

(2) Pet food that consists principally of stew, gravy, sauce, broth, juice or a milk replacer, which is so labeled, may contain moisture in excess of seventy-eight (78) percent.

Section 2. Each ingredient of the pet food shall be:

- (1) Listed in the ingredient statement;
- (2) Shown in letters or type of the same size;
- (3) Listed in descending order by the ingredient's predominance by weight; and
- (4) Identified by the:
 - (a) Name of the ingredient as established by the Association of American Feed Control Officials, if a name and definition has been established; or
 - (b) Common or usual name of the ingredient, if a name and definition has not been established. A brand or trade name shall not be used in the ingredient statement.

Section 3. The term "dehydrated" may precede the name of an ingredient if it has been artificially dried.

Section 4. A reference to the quality or grade of an ingredient shall not appear in the ingredient statement unless the:

- (1) Designation of quality, nature, form, or other attribute of an ingredient is accurate; and
- (2) Ingredient imparts a distinctive characteristic to the pet food.]

Section 5. Incorporation by Reference. (1) "2018 Official Publication", (2018[1998] Edition), Association of American Feed Control Officials, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, (859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

**AGRICULTURAL EXPERIMENT STATION
(As Amended at ARRS, August 14, 2018)**

12 KAR 3:028. Descriptive terms.

RELATES TO: KRS 250.501, 250.521, 15 U.S.C. 1451-1461

STATUTORY AUTHORITY: KRS 250.521(2)(e), (f), 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631. KRS 250.521 requires that pet foods be labeled and establishes the information that shall be stated on the label. This administrative regulation establishes a uniform format for labeling information for pet foods and delineates criteria for the use of descriptive terms.

Section 1. Calorie Terms. (1) "Light."

(a) A dog food product that bears on its label the terms "light," "lite," "low calorie," or words of similar designation shall:

1. Contain no more than 3100 kcal ME/kg for products containing less than twenty (20) percent moisture, no more than 2500 kcal ME/kg for products containing twenty (20) percent or more but less than sixty-five (65) percent moisture, and no more than 900 kcal ME/kg for products containing sixty-five (65) percent or more moisture;

2. Include on the label a calorie content statement:

a. In accordance with the format established[provided] in 12 KAR 3:042; and

b. That states no more than 3100 kcal ME/kg for products containing less than twenty (20) percent moisture, no more than 2500 kcal ME/kg for products containing twenty (20) percent or more but less than sixty-five (65) percent moisture, and no more than 900 kcal ME/kg for products containing sixty-five (65) percent or more moisture; and

3. Include on the label feeding directions that reflect a reduction in calorie intake consistent with the intended use.

(b) A cat food product that bears on its label the terms "light," "lite," "low calorie," or words of similar designation shall:

1. Contain no more than 3250 kcal ME/kg for products containing less than twenty (20) percent moisture, no more than 2650 kcal ME/kg for products containing twenty (20) percent or more but less than sixty-five (65) percent moisture, and no more than 950 kcal ME/kg for products containing sixty-five (65) percent or more moisture;

2. Include on the label a calorie content statement:

a. In accordance with the format established[provided] in 12 KAR 3:042; and

b. That states no more than 3250 kcal ME/kg for products containing less than twenty (20) percent moisture, no more than 2650 kcal ME/kg for products containing twenty (20) percent or more but less than sixty-five (65) percent moisture, and no more than 950 kcal ME/kg for products containing sixty-five (65) percent or more moisture; and

3. Include on the label feeding directions that reflect a reduction in calorie intake consistent with the intended use.

(2) "Less" or "reduced calories."

(a) A dog or cat food product that bears on its label a claim of "less calories," "reduced calories," or words of similar designation, shall include on the label:

1. The name of the product of comparison and the percentage of calorie reduction (expressed on equal weight basis) explicitly stated and juxtaposed with the largest or more prominent use of the claim on each panel of the label on which the term appears;

2. The comparative statement printed in type of the same color and style and at least one-half the type size used in the claim;

3. A calorie content statement in accordance with the format established[provided] in 12 KAR 3:042; and

4. Feeding directions that reflect a reduction in calories compared to feeding directions for the product of comparison.

(b) A comparison between products in different categories of moisture content (for example, i.e.) less than twenty (20) percent, twenty (20) percent or more but less than sixty-five (65) percent, sixty-five (65) percent or more) is misleading.

Section 2. Fat Terms. (1) "Lean."

(a) A dog food product that bears on its label the terms "lean," "low fat," or words of similar designation shall:

1. Contain no more than nine (9) percent crude fat for products containing less than twenty (20) percent moisture, no more than seven (7) percent crude fat for products containing twenty (20) percent or more but less than sixty-five (65) percent moisture, and no more than four (4) percent crude fat for products containing sixty-five (65) percent or more moisture; and

2. Include on the product label in the Guaranteed Analysis:

a. A maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in (12 KAR 3:022, Section 1(1)); and

b. A maximum crude fat guarantee that is no more than nine (9) percent crude fat for products containing less than twenty (20) percent moisture, no more than seven (7) percent crude fat for products containing twenty (20) percent or more but less than sixty-five (65) percent moisture, and no more than four (4) percent crude fat for products containing sixty-five (65) percent or more moisture.

(b) A cat food product that bears on its label the terms "lean," "low fat," or words of similar designation shall:

1. Contain a maximum percentage of crude fat that is no more than ten (10) percent crude fat for products containing less than twenty (20) percent moisture, no more than eight (8) percent crude fat for products containing twenty (20) percent or more but less than sixty-five (65) percent moisture, and no more than five (5) percent crude fat for products containing sixty-five (65) percent or more moisture; and

2. Include on the product label in the Guaranteed Analysis:

a. A maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as established[specified] in 12 KAR 3:022, Section 1(1); and

b. A maximum crude fat guarantee that is no more than ten (10) percent crude fat for products containing less than twenty (20) percent moisture, no more than eight (8) percent crude fat for products containing twenty (20) percent or more but less than sixty-five (65) percent moisture, and no more than five (5) percent crude fat for products containing sixty-five (65) percent or more moisture.

(2) "Less" or "Reduced Fat."

(a) A dog or cat food product that bears on its label a claim of "less fat," "reduced fat," or words of similar designation, shall include on the label:

1. The name of the product of comparison and the percentage of fat reduction (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on which the term appears;

2. The comparative statement printed in type of the same color and style and at least one-half the type size used in the claim; and

3. A maximum crude fat guarantee in the Guaranteed Analysis immediately following the minimum crude fat guarantee in addition

VOLUME 45, NUMBER 3 – SEPTEMBER 1, 2018

to the mandatory guaranteed analysis information as specified in 12 KAR 3:022, Section 1(1).

(b) A comparison on the label between products in different categories of moisture content (for example, i.e., less than twenty (20) percent, twenty (20) percent or more but less than sixty-five (65) percent, sixty-five (65) percent or more) is misleading.

Section 3. Carbohydrate Terms. (1) "Low" carbohydrate, dietary starch, and sugars claims. A claim of "low carbohydrates," "low dietary starch," "low sugars," or a combination thereof shall be prohibited[is not allowed].

(2) "Less" or "reduced" carbohydrates, dietary starch, and sugars claims.

(a) A dog or cat food product that[which] bears on its label a claim of "less _____" or "reduced _____" (the blank shall be completed by using "carbohydrates," "dietary starch," or "sugars") or words of similar designation, shall include on the label:

1. The name of the product of comparison and the percentage of reduction in total dietary starch plus sugars (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on which the term appears;

2. The comparative statement printed in type of the same color and style and not less than one-half the size used in the claim; and

3. Maximum guarantees for dietary starch and sugars as established[stated] in 12 KAR 3:022, Section 1(3).

(b) A comparison between products in different categories of moisture content (for example, i.e., less than twenty (20) percent, twenty (20) percent or more but less than sixty-five (65) percent, sixty-five (65) percent or more) is misleading.

Section 4. Incorporation by Reference. (1) "2018 Official Publication", (2018 Edition), Association of American Feed Control Officials, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, August 14, 2018)

12 KAR 3:032. Feeding directions[for use].

RELATES TO: KRS 250.491-250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631. This administrative regulation establishes requirements for feeding directions to ensure that[special-purpose] pet food and specialty pet food products have adequate labeling to provide for safe and effective use.

Section 1. (1) Dog or cat food, including snacks or treats, labeled as complete and balanced for any or all life stages, as established[provided] in 12 KAR 3:039, Section 3(1), except those pet foods labeled in accordance with 12 KAR 3:039, Section 4, shall list feeding directions on the product label.

(2) These directions shall be consistent with the intended uses indicated in the nutritional adequacy statement, unless a limited use or more limited life stage designation is declared elsewhere

(for example, e.g., "adult formula").

(3) These directions shall be expressed in common terms and shall appear prominently on the label.

(4) Feeding directions shall, at a minimum, state:

(a) "Feed (weight/unit of product) per (weight) of dog (or cat)."; and

(b) The frequency of feeding.

Section 2. If a dog or cat food is intended for use by or under the supervision or direction of a veterinarian, the statement: "Use only as directed by your veterinarian" may be used in lieu of feeding directions.

Section 3. (1) Specialty pet food, including snacks or treats, labeled as complete and balanced for any or all life stages, as established[provided] in 12 KAR 3:039, Section 1, shall list feeding directions on the product label.

(2) These feeding directions shall be adequate to meet the nutritional requirements of the intended species of specialty pet as recommended by the AAFCO-recognized nutritional authority.

(3) These directions shall be expressed in common terms and shall appear prominently on the label.

(4) The frequency of feeding shall also be specified.

Section 4. Incorporation by Reference. (1) "2018 Official Publication", (2018 Edition), Association of American Feed Control Officials, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m. [The label of a pet food product which is suitable only for intermittent or supplemental feeding or for some other limited purpose should:

(1) Bear a clear and conspicuous disclosure to that effect; or

(2) Contain specific feeding directions which clearly state that the product should be used only in conjunction with other foods.]

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, August 14, 2018)

12 KAR 3:037. Drugs and pet food additives.

RELATES TO: KRS 250.501, 250.511, 250.541(1)(a), (b), (c), (d), (e), (f), (j), (2)(c), (d), (e), 21 C.F.R. Parts 70, 71, 73, 74, 80, 81, 82, 501.22, 570.3(1), 570.30, 582, 21 U.S.C. 360(b)

STATUTORY AUTHORITY: KRS 250.571(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for efficient enforcement of KRS 250.491 to 250.631. KRS 250.541 defines adulterated commercial feeds and states how they may be adulterated by additives. KRS 250.551(1) and (2) prohibits the manufacturing and distribution of adulterated products as animal feeds. This administrative regulation establishes requirements to ensure that a drug or additive used in pet food or specialty pet food is safe and effective for its intended purpose.

Section 1. An artificial color may be used in a pet food or specialty pet food only if it has been shown to be harmless to pets or specialty pets. The permanent or provisional listing of an artificial color in 21 C.F.R. Part 70, 71, 73, 74, 80, 81, or 82, or 501.22 as safe for use, together with the conditions, limitations, and tolerances, if any, shall constitute[be satisfactory] evidence

that the color is harmless to pets or specialty pets.

Section 2. Before approval of a label and a registration application, the distributor of a pet food, containing an additive including a drug, another special purpose additive, or a nonnutritive additive shall, upon request of the director, submit evidence to prove the safety and efficacy of the pet food if used according to label directions. ~~[Satisfactory]~~ Evidence of the safety and efficacy of a pet food or specialty pet food shall be:

- (1) If the pet food or specialty pet food contains an additive that conforms to 21 C.F.R. 570.3(1), 570.30, or Part 582; or
- (2) If the pet food or specialty pet food is a drug as defined by/in KRS 250.501(7) and is generally recognized by the Food and Drug Administration as safe and effective for its labeled use or is marketed subject to an application approved by the Food and Drug Administration under 21 U.S.C. 360(b).

Section 3. If a drug is included in a pet food or specialty pet food, the medicated labeling format recommended by the Association of American Feed Control Officials in its 2018 Official Publication shall be used to insure that adequate labeling is provided.

Section 4. Incorporation by Reference. (1) "2018 Official Publication", (2018~~[1998]~~ Edition), Association of American Feed Control Officials, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

**AGRICULTURAL EXPERIMENT STATION
(As Amended at ARRS, August 14, 2018)**

12 KAR 3:039. Nutritional adequacy.

RELATES TO: KRS 250.501, 250.521, 15 U.S.C. 1451-1461
STATUTORY AUTHORITY: KRS 250.521(2)(e), (f), 250.571
NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631. KRS 250.521 requires that pet foods and specialty pet foods be labeled and establishes the information that shall be stated on the label. This administrative regulation establishes a uniform format for establishing nutritional adequacy in labeling information for pet foods and specialty pet foods and delineates criteria for product claims.

Section 1. The label of a pet food or specialty pet food that is intended for all life stages and sizes of the pet or specialty pet may include an unqualified claim, directly or indirectly, such as "complete and balanced," "perfect," "scientific," or "100% nutritious" if at least one (1) of the following apply:

- (1) The product complies with/meets the nutrient requirements for all life stages and sizes established by an AAFCO-recognized nutrient profile;
- (2) The product complies with/meets the criteria for all life stages as substantiated by completion of the appropriate AAFCO-recognized animal feeding protocols; or
- (3) The product is a member of a product family that is nutritionally similar to a lead product that contains a combination of ingredients that has been fed to a normal animal as the sole

source of nourishment in accordance with the testing procedures established by AAFCO for all life stages, if:

- (a) The nutritional similarity of the family product can be substantiated according to the Procedures for Establishing Pet Food Product Families developed by AAFCO;
- (b) The family product complies with/meets the criteria for all life stages; and
- (c) Under circumstances of reasonable doubt, the director requires/may require the manufacturer to perform additional testing of the family product and substantiates/in order to substantiate the claim of nutritional adequacy.

Section 2. The label of a pet food or specialty pet food that is intended for a limited purpose (such as size of dog) or a specific life stage, but not for all life stages and sizes, may include a qualified claim such as "complete and balanced," "perfect," "scientific," or "100% nutritious" if the product and claim meet all of the following:

- (1) The claim is qualified with a statement of the limited purpose of specific life stage for which the product is intended or suitable, for example, "complete and balanced for puppies (or kittens)." The claim and the required qualification shall be juxtaposed on the same label panel and in the same size, style, and color print; and
- (2) The product complies with/meets at least one (1) of the following:
 - (a) The nutrient requirements for the limited purpose or specific life stage established by an AAFCO-recognized nutrient profile;
 - (b) The criteria for a limited purpose or a specific life stage as substantiated by completion of the appropriate AAFCO-recognized animal feeding protocol; or
 - (c) The requirements of a product family that is nutritionally similar to a lead product that contains a combination of ingredients that, if fed for the limited purpose, will satisfy the nutrient requirements for the limited purpose and has had its capabilities in this regard demonstrated by adequate testing, and if:
 1. The nutritional similarity of the family product can be substantiated according to the Procedures for Establishing Pet Food Product Families developed by AAFCO;
 2. The family product meets the criteria for the limited purpose; and
 3. Under circumstances of reasonable doubt, the director requires/may require the manufacturer to perform additional testing for the family product and substantiates/to substantiate the claim of nutritional adequacy.

Section 3. Dog and cat food labels shall include a statement of nutritional adequacy or purpose of the product except if the dog or cat food is clearly and conspicuously identified on the principal display panel as "snack," "treat," or "supplement." The statement shall consist of one (1) of the following:

- (1) A claim that the dog or cat food complies with/meets the requirements of one (1) or more of the recognized categories of nutritional adequacy: gestation or lactation~~[gestation/lactation]~~, growth, maintenance, and all life stages. The claim shall be stated verbatim as one (1) of the following:
 - (a) "(Name of product) is formulated to meet the nutritional levels established by the AAFCO Dog (or Cat) Food Nutrient Profiles for _____." (The blank shall be completed by using the stage or stages of the pet's life, such as gestation or lactation~~[gestation/lactation]~~, growth, maintenance, or the words "All Life Stages."). For a dog food, if the blank includes the words "growth" or "all life stages," one (1) of the following phrases shall also be added verbatim to the end of the claim:
 1. "including growth of large size dogs (70 lb. or more as an adult)" if the product has been formulated to meet the levels of nutrients specifically referenced in the Dog Food Nutrient Profiles as being applicable to large size growing dogs; or
 2. "except for growth of large size dogs (70 lb. or more as an adult)" if the product has not been formulated to meet the levels of nutrients specifically referenced in the Dog Food Nutrient Profiles as being applicable to large size growing dogs;
 - (b) "Animal feeding tests using AAFCO procedures

substantiate that (Name of Product) provides complete and balanced nutrition for _____. (The blank shall be completed by using the stage or stages of the pet's life tested, such as gestation/lactation, growth, maintenance, or the words "all life stages."); or

(c) "(Name of Product) provides complete and balanced nutrition for _____. (The blank shall be completed by using the stage or stages of the pet's life, such as gestation and lactation, growth, maintenance, or the words "all life stages") and is comparable in nutritional adequacy to a product that/which has been substantiated using AAFCO feeding test.";

(2) A nutritional or dietary claim for purposes other than those established/listed in Sections 1 and 2 of this administrative regulation if the claim is scientifically substantiated; or

(3) The statement: "This product is intended for intermittent or supplemental feeding only," if a product does not comply with/meet the requirements of Sections 1 and 2 of this administrative regulation or any other special nutritional or dietary need and so is suitable only for limited or intermittent or supplementary feeding.

Section 4. A product intended for use by, or under the supervision or direction of a veterinarian shall make a statement in accordance with Section 3(1) or (3) of this administrative regulation.

Section 5. A signed affidavit attesting that the product complies with/meets the requirements of Sections 1 or 2(2) of this administrative regulation shall be submitted to the director upon request.

Section 6. If the nutrient content of a product does not comply with/meet those nutrient requirements established by an AAFCO-recognized nutrient profile, or if no requirement has been established by an AAFCO recognized nutritional authority for the life stages of the intended species, the claimed nutritional adequacy or purpose of the product shall be scientifically substantiated.

Section 7. The following AAFCO-recognized nutritional authority, nutrient profile, or animal feeding protocol shall be acceptable as the basis for a claim of nutritional adequacy:

(1) As an AAFCO-recognized nutrient profile or nutritional authority:

(a) For dogs, the AAFCO Dog Nutrient Profiles;

(b) For cats, the AAFCO Cat Nutrient Profiles; and

(c) For specialty pets, the nutrient recommendation approved by the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences, if this nutrient recommendation is recognized only for the specific specialty pet of which the profile is intended; and

(2) As an AAFCO-recognized animal feeding protocol, the AAFCO Dog and Cat Food Feeding Protocols.

Section 8. Incorporation by Reference. (1) "2018 Official Publication", (2018 Edition), Association of American Feed Control Officials, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

AGRICULTURAL EXPERIMENT STATION
(As Amended at ARRS, August 14, 2018)

12 KAR 3:042. Statements[Statement] of calorie[calorie] content.

RELATES TO: KRS 250.501, 250.521

STATUTORY AUTHORITY: KRS 250.571(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for efficient enforcement of KRS 250.491 to 250.631. This administrative regulation establishes a uniform procedure for determining the caloric content of dog and cat foods and expressing it on product labels.

Section 1. [If] The label of a dog or cat food, including snacks, treats, and supplements, shall bear[bears] a statement of calorie content and comply with the requirements established in subsections (1) through (5) of this section.[meet].;[all of the following][requirements shall be met].;

(1) The[calorie] statement shall be separate and distinct from the "Guaranteed Analysis" and shall appear under the heading "Calorie Content".

(2) The statement shall be measured in terms of metabolizable energy (ME) on an "as fed" basis and must be expressed both as "kilocalories per kilogram" ("kcal/kg") of product, and as kilocalories per familiar household measure (for example[e.g.], cans or cups) or unit of product (for example[e.g.], treats or pieces).

(3) The calorie content shall be determined by one (1) of the following methods:

(a) By calculation using the following "Modified Atwater" formula:

$$ME(kcal/kg) = 10[(3.5 \times CP) + (8.5 \times CF) + (3.5 \times NFE)]$$

where ME = metabolizable energy.

CP = % crude protein "as fed."

CF = % crude fat "as fed."

NFE = % nitrogen-free extract (carbohydrate) "as fed," and the percentages of CP and CF are the average values of these components in the product as determined by sound scientific methods, such as but not limited to scientifically accurate calculations made from the formula of the product or upon chemical analysis of the product. The NFE is calculated as the difference between 100 and the sum of CP, CF, and the percentages of crude fiber, moisture and ash (determined in the same manner as CP and CF); or

(b) In accordance with a testing procedure established by AAFCO.

(4)[; (a) In terms of metabolizable energy (ME);

(b) On an as-fed basis; and

(c) Expressed as:

1. "Kilocalories per kilogram" (kcal/kg) of product; or

2. Kilocalories (kcal) per familiar household measure, which shall be a can, cup, pound, or similar designation.

(3) An affidavit shall be provided upon request of the director, substantiating that the calorie content was determined by:

(a) Subsection [12 KAR 3:042, Section 1](3)(a) of this section, in which case the summary data used in the calculation shall be included in the affidavit; or

(b) Subsection [12 KAR 3:042, Section 1](3)(b) of this section, in which case the summary data used in the determination of calorie content shall accompany the affidavit.

(5) The caloric content statement shall appear as one (1) of the following:

(a) The heading "Calorie Content" on the label or other labeling shall be followed parenthetically by the word "calculated" if the caloric content is determined in accordance with subsection (3)(a) of this section[1(3)(a) of this administrative regulation]; or

(b) The heading "Calorie Content" on the label or other labeling shall be followed parenthetically by the word "fed" if the caloric content is determined in accordance with subsection (3)(b) of this section[1(3)(b) of this administrative regulation].

Section 2. [the method established in paragraph (a) or (b) of this subsection:

(a) Calculation using the Modified Atwater formula:
 $ME (kcal/kg) = 10 ((3.5 \times CP) + (8.5 \times CF) + (3.5 \times NFE))$
 where CP = percent crude protein as fed, CF = percent crude fat as fed, NFE = percent nitrogen-free extract (carbohydrate) as fed, and the percentages of CP and CF are the arithmetic averages from proximate analyses of at least four (4) production batches of the product and the NFE is calculated as the difference between 100 and the sum of CP, CF, and the percentages of crude fiber, moisture, and ash (determined in the same manner as CP and CF). The results of all the analyses used in the calculation shall accompany the affidavit, and the claim on the label shall be followed parenthetically by the word "calculated"; or

(b) Testing using the procedure established by the Association of American Feed Control Officials in the Official Publication. The summary data used in the determination of calorie content shall accompany the affidavit. The value stated on the label shall not exceed or understate the value determined by the Modified Atwater formula by more than fifteen (15) percent.

(4) A comparative claim shall:

(1) [a] Not be false, misleading, or given undue emphasis; and
 (2) [b] Be based on the same methodology for all products compared.

Section 3[2]. Incorporation by Reference. (1) "**2018** Official Publication", (2018[4998] Edition), Association of American Feed Control Officials, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RICK BENNETT, Director

APPROVED BY AGENCY: May 31, 2018

FILED WITH LRC: June 7, 2018 at 9 a.m.

CONTACT PERSON: Darrell Johnson, Executive Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2435, fax (859) 323-9931, darrell.johnson@uky.edu.

KENTUCKY STATE BOARD OF ELECTIONS (As Amended at ARRS, August 14, 2018)

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

RELATES TO: KRS 116.085, 116.155, 117.025, 117.225

STATUTORY AUTHORITY: KRS 117.015

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPROVED BY AGENCY: April 16, 2018

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

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

PERSONNEL CABINET

(As Amended at ARRS, August 14, 2018)

101 KAR 2:034. Classified compensation administrative regulations.

RELATES TO: KRS 18A.030(2), 18A.110, 18A.165

STATUTORY AUTHORITY: KRS 18A.110(1)(c), (d), (g), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate administrative regulations which govern the pay plan for all employees in the classified service. This administrative regulation establishes requirements to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. New Appointments. (1) An appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade.

(2) The appointing authority shall adjust to that salary an employee who is earning less than the new appointee's salary, if the appointing authority determines that the incumbent employee:

(a) Is in the same job classification;

(b) Is in the same work county; and

(c) Has a similar combination of education and experience relating to the relevant job class specification.

Section 2. Reentrance to Classified Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A while receiving retirement payments through the Kentucky Retirement Systems or Kentucky Teachers Retirement System shall be appointed in accordance with the provisions for new appointments in this administrative regulation.

(2) Other reentering employees.

(a) Former classified employees. An appointing authority shall set the salary of a former classified employee, other than a returning retiree, who is being reemployed, reinstated, or probationarily appointed in one (1) of the following ways:

1. In accordance with the standards used for making new appointments in this administrative regulation; or

2. Up to the same salary as that paid at the time of separation from the classified service, if that salary does not exceed the midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary.

(b) Former unclassified employees with prior classified service. An appointing authority shall set the salary of a former classified employee who moved to the unclassified service and who is reinstated, reemployed or probationarily appointed to a position in the classified service in one (1) of the following ways:

1. In accordance with the standards for making new appointments;

2. Up to the same salary as that paid at the time of separation from the classified service, if that salary does not exceed the pay grade midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary;

3. At a salary that is the same as the salary the employee last received in the classified service with adjustments for increases that would have been received if the employee had remained in the classified service prior to resignation if the salary does not exceed the pay grade midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary; or

4. At a salary up to five (5) percent above the pay grade entry level wage for each year of service in the KRS Chapter 18A system, if the salary does not exceed the pay grade midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary. Salary shall be calculated using whole percentages.

(c) Former unclassified employees with no previous classified service. An appointing authority shall set the salary of a former unclassified employee with no previous classified service, who is probationarily appointed or reemployed, in one (1) of the following ways:

1. In accordance with the standards for making new appointments; or

2. At a salary up to five (5) percent above the minimum salary for each year of service in the unclassified service, if the salary does not exceed the pay grade midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary. Salary shall be calculated using whole percentages.

(d) Laid off employees. A former employee, separated from the classified service by layoff and reinstated or reemployed in the same or similar job classification within five (5) years from the date of layoff, may receive the salary the employee was[they were] receiving at the time of layoff, even if the salary is above the maximum of the pay grade.

(3) Probationary increments upon reentrance to state service.~~[(a)]~~ A former employee who is probationarily appointed at a salary at or below the midpoint of the pay grade shall receive a probationary increment upon successful completion of the probationary period.~~[(b) A former employee who is probationarily appointed at a salary that equals or exceeds the midpoint of the pay grade may, at the discretion of the appointing authority, receive a probationary increment at the time of successful completion of the probationary period. If the employee is not granted a probationary increment at the time of completion of the probationary period, an increment shall be awarded at the beginning of the month following completion of twelve (12) months of service from the date of appointment.]~~

Section 3. Salary Adjustments. (1) Promotion.

(a) An employee who is promoted shall receive the greater of five (5) percent for each grade, or an increase to the minimum of the new grade except as provided under subsection (2)(b) of this section;or

(b) If sufficient funds are available and except as provided under subsection (2)(b) of this section, an appointing authority may adjust the employee's salary up to the midpoint of the pay grade as long as the increase is greater than the increase specified in subsection (1)(a) of this section.

(2) Demotion.

(a) If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

1. The employee's salary shall be reduced by five (5) percent for each grade the employee is reduced; or

2. The employee shall retain the salary received prior to demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.

(b) An employee whose salary is not reduced by five (5) percent per grade upon demotion shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty, reallocation, ~~or~~ pay grade change, or successful completion of promotional probation until the employee[he] is moved to a job classification with a higher pay grade than that from which he was demoted. If a promotion, reclassification, detail to special duty, ~~or~~ reallocation, or pay grade change occurs, it shall be deemed as having been made from the grade from which the employee had been demoted.

(3) Reclassification.

(a) An appointing authority shall adjust the salary of an employee who is advanced to a higher pay grade through reclassification in one (1) of the following ways:

1.~~[shall receive]~~ The greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(b) of this section; ~~or~~

2. If sufficient funds are available and except as provided under subsection (2)(b) of this section, up to the midpoint of the pay grade as long as the increase is greater than the increase specified in subparagraph 1. of this paragraph.

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification, but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty,~~or~~ reallocation, pay grade change, or successful completion of promotional probation until the employee[he] is moved to a job classification with a higher pay grade than that from which he was reclassified. If a promotion, reclassification, detail to special duty,~~or~~ reallocation, or pay grade change occurs, it shall be deemed as having been made from the grade from which the employee had been reclassified.

(c) An employee shall not be reclassified from a job classification that does not require the supervision of employees to a job classification that requires the supervision of employees as mandated within the job class specification.

(4) Reallocation.

(a) An employee who is advanced to a higher pay grade through reallocation shall receive the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(b) of this section.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation, but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty,~~or~~ reallocation, pay grade change, or successful completion of promotional probation until he is moved to a job classification with a higher pay grade than that from which he was reallocated. If a promotion, reclassification, detail to special duty,~~or~~ reallocation, or pay grade change occurs, it shall be deemed as having been made from the grade from which the employee had been reallocated.

(5) Detail to special duty.

(a) An employee who is approved for detail to special duty shall receive, during the period of detail, the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(b) of this section.

(b) An employee who is approved for detail to the same or lower pay grade shall receive the same salary received prior to detail.

(6) Reversion.

(a) The salary of an employee who is reverted while serving a promotional probationary period, or following detail to special duty in a higher pay grade, shall be adjusted to:

1. The salary received prior to the promotion or detail; and

2. All salary advancements and adjustments which would have been awarded if the promotion or detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and

2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(c) The increment date of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be restored to the increment date set prior to leaving the classified service.

(7) Pay grade changes.

(a) If a job classification is assigned to a higher pay grade, the appointing authority shall raise the salary of an employee below the new grade minimum to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that job classification to:

1. The greater of the new grade minimum or five (5) percent; ~~or~~
2. The greater of the new grade minimum or ten (10) percent[; or

~~3. The greater of the new grade minimum or a dollar amount approved by the secretary].~~

(b) If a job classification is assigned to a lower pay grade, an employee in that job classification shall retain his current salary.

(8) Special entrance rates. If a special entrance rate is established for a job classification, an appointing authority shall adjust the salary of an employee in that job classification who is below the special entrance rate to the new rate. If sufficient funds are available, on the same date as the establishment of the special entrance rate, an appointing authority may uniformly grant to all employees in that job classification, except those employees who are on initial probation, a salary adjustment equal to the difference between the former entrance rate and the new entrance rate.

(9) Other salary adjustments. On the 16th of a month, an appointing authority may grant a salary adjustment to all employees in a job classification within an agency who were eligible for, but did not receive, a five (5) percent salary adjustment as a result of a grade change applicable to the job classification, on or after January 1, 1999. The total adjustment granted at the time of the grade change and under this paragraph shall equal five (5) percent of the employee's salary immediately prior to the grade change.

(10) Conversion rule. The salary of an employee whose position changes from a thirty-seven and five-tenths (37.5) hour workweek to a forty (40) hour workweek, or vice versa, shall be converted to accurately reflect the employee's hourly rate of base pay. This conversion shall be applied before applying any other salary adjustment to which the employee is entitled pursuant to this section.

Section 4. Salary Advancements. (1) Initial probation increase. A full-time or part-time employee who completes an initial probationary period shall be granted a five (5) percent salary advancement on the first of the month following completion of the probationary period~~, except as specified under Section 2(3) of this administrative regulation].~~

(2) Promotional probation increase. An employee shall receive a five (5) percent salary advancement on the first of the month following completion of the promotional probationary period except as provided under Sections 3(2)(b), 3(3)(b), and 3(4)(b) of this administrative regulation.

(3) Annual increment dates shall be established as follows:

(a) Upon completion of an initial probationary period;

(b) When a former employee has been probationarily

appointed and has received compensation in any~~completed a total of~~ twelve (12) months~~of service~~ without receiving an increment; or

(c) When an employee returns from leave without pay under the provisions of subsection (5) of this section.

(4) Annual increment dates shall not change if an employee:

(a) Is in a position which is assigned a new or different pay grade;

(b) Receives a salary adjustment as a result of a reallocation;

(c) Is promoted;

(d) Is transferred;

(e) Is demoted;

(f) Is detailed to special duty;

(g) Receives an educational achievement award;

(h) Returns from military leave;

(i) Is reclassified; ~~or~~

(j) Receives a promotional increase after completion of a promotional probationary period; or

(k) Is reemployed after layoff.

(5) Return from leave without pay. An employee returning to duty from leave without pay shall receive an annual increment on the first of the month after receiving compensation in any~~completing~~ twelve (12) months~~of service~~ since the last increment was received.

(6) Service computation. Full-time and part-time service shall be counted in computing service for the purpose of determining increment eligibility.

(7) Order of calculating increments and other salary increases which occur at the same time. If an employee's increment date occurs on the same date that a salary adjustment or advancement is granted, the increment shall be applied before the adjustment or advancement is added to the employee's salary, except if the adjustment is based on a reversion, pay grade change, ~~or~~ a salary schedule change, or establishment of a special entrance rate.

Section 5. Educational Achievement Award. (1) On the 16th of a month, an appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement as specified in this section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

(4) An employee shall not receive an educational achievement award and an adjustment for continuing excellence (ACE) based on the same training.

(5) By submitting a personnel action to grant an educational achievement award, the appointing authority shall certify that all of the qualifying conditions established by this section for the appropriate type of educational achievement award have been met.

(a) For a high school diploma, high school equivalency certificate, or a passing score on the GED test, the qualifying conditions shall be met if:

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

a. Outside of work hours;

b. While in state service; and

c. After establishing an increment date~~On or after January 1, 1984~~;

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate, or a passing score on the GED test.

(b) For postsecondary education or training, the qualifying conditions shall be met if:

1. The employee has completed 260 hours of job-related instruction, or the equivalent;

2. The employee began the course work after becoming a state employee and completed the course work after establishing

an increment date;

3. The employee has completed the course work within five (5) years of the date on which it was begun;

4. The course work has not previously been applied toward an educational achievement award;

5. The agency has not paid for the course work or costs associated with it, in whole or in part; and

6. The employee was not on educational or extended sick leave when the courses were taken. ~~[(c) For the Kentucky Certified Public Manager Program, the qualifying conditions shall be met if:~~

~~1. The employee has successfully completed the Kentucky Certified Public Manager Program offered by the Governmental Services Center at Kentucky State University; and~~

~~2. The employee has not previously received an educational achievement award for completing the Kentucky Certified Manager Program.]~~

Section 6. Salary Schedule Adjustment. If the secretary authorizes an adjustment of ~~all grades in~~ the salary schedule, an appointing authority shall adjust the salaries of all employees below the new minimum rate to the new minimum rate. If sufficient funds are available, the secretary may authorize an appointing authority to grant a salary increase for all employees equal to the difference in the old schedule minimum for the grade and the new schedule minimum for the grade.

Section 7. Paid Overtime. (1) Overtime for which pay is authorized shall be in accordance with 101 KAR 2:102, Section 5, and the Fair Labor Standards Act, 29 U.S.C. Section 201, et seq., as amended.

(2) Eligibility for overtime pay shall be approved by the appointing authority, and shall be subject to review by the Secretary of Personnel ~~and the Secretary of the Finance and Administration Cabinet~~.

(3) An employee who is eligible for overtime shall request permission from or be directed in advance by the supervisor to work overtime.

(4) An overtime payment shall not be added to base salary or wages.

Section 8. Maintenance and Maintenance Allowance. If an employee, or the employee and family, is provided with full or partial maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, the maintenance shall be treated as partial payment of wages. The value of those services shall be deducted from the employee's salary in accordance with a maintenance schedule developed by the appropriate appointing authority after consultation with the Secretary of the Finance and Administration Cabinet.

Section 9. Supplemental Premiums. (1) Locality premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a locality premium for an employee who is regularly or temporarily assigned to work in a job classification, work county, and organizational unit where the agency can demonstrate sustained recruitment and retention issues impacting the mission of the agency.

(b) Once authorized, this premium shall apply to all employees in that organizational unit who are regularly or temporarily assigned to work in the job classification and work county for which the locality premium is approved.

(c) An employee shall not receive a locality premium after transfer, reclassification, reallocation, detail to special duty, promotion or demotion to a position in a job classification, organizational unit, or work county that is ineligible for a locality premium.

(d) The secretary may rescind authorization to pay a locality premium for a job classification at any time.

(e) Locality premium pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(2) Shift premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental premium for an employee

who is regularly assigned to work an evening or night shift in that agency.

(b) Once authorized, this premium shall apply to all employees in that agency who are regularly assigned to work an evening or night shift in a job classification for which the shift premium is approved.

(c) An employee shall not receive a shift premium after shift reassignment, transfer, promotion or demotion to a position that is ineligible for a shift differential premium.

(d) The secretary may rescind authorization to pay shift premium for a job classification at any time.

(e) Shift differential pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(3) Weekend premium.

(a) Upon request by an appointing authority, the secretary shall authorize the payment of a weekend premium for an employee in a specific job classification who is regularly assigned to work on Saturdays, Sundays, or state holidays as part of the usual work week.

(b) Once authorized, the premium shall apply to all employees in the specified job classifications in that agency who are regularly assigned to work Saturdays, Sundays, or state holidays as part of their usual work week.

(c) An employee shall not receive a weekend premium after reassignment, transfer, promotion, or demotion to a position that is ineligible for weekend premium.

(d) The secretary may rescind authorization to pay weekend premium at any time.

(e) Weekend premium pay shall not be considered part of the employee's base salary or wages and shall not be applied to any leave time usage.

(f) An agency may request, and be authorized for, both shift premium and weekend premium for the same job classifications.

(4) Multilingual hourly premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental multilingual hourly premium for an employee who is assigned to complete work duties in a specified foreign language. An employee completing work duties in a specified foreign language shall receive a multilingual hourly premium based on the percentage of time multilingual skills are performed. An employee in a job classification that includes interpreting services as a characteristic of the job on the job class specification shall not be eligible for this premium.

(b) Language proficiency testing shall be completed prior to an employee receiving the multilingual hourly premium. Testing shall indicate a standard level of multilingual proficiency as required by the appointing authority.

(c) An appointing authority shall submit the multilingual premium request to the Personnel Cabinet in writing. The request shall contain, at a minimum:

1. An explanation of the reason or reasons for granting the multilingual premium;
2. The percentage of time the employee will use multilingual skills; and
3. Certification by the appointing authority that the employee has completed multilingual testing and received a standard level of multilingual proficiency rating. This certification shall include the name of the testing facility or organization, the format of the test taken (oral, written, or a combination of oral and written), and the level of proficiency granted in the request for the multilingual premium.

(d) Once authorized, the multilingual hourly premium shall apply to all employees in that agency who are regularly assigned to complete work in a specified foreign language once the employees are individually approved in accordance with this subsection.

(e) An employee shall not receive a multilingual hourly premium after reassignment, reclassification, transfer, promotion, reallocation, or demotion to a position which no longer requires work in a specified foreign language.

(f) An employee who ceases to perform work duties in a specified foreign language shall not be eligible to receive a multilingual hourly premium.

(g) The secretary may rescind the multilingual hourly premium

authorization provided to an agency or individual employee at any time.

(h) The multilingual hourly premium shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

Section 10. Employee Recognition Award (ERA). (1) On the 16th day of a month, an appointing authority may grant an employee an ~~employee recognition award, or~~ ERA in the form of a lump sum payment of any whole percentage from one (1) [up] to ten (10) percent of the grade midpoint under the following conditions:

(a) The employee has established an annual increment date and has worked at least twenty-four (24) consecutive months in KRS Chapter 18A state service, twelve (12) consecutive months of which is in the department or office granting the award;

(b) The employee has not received an ERA ~~or a distinguished service award~~ in the preceding twenty four (24) months, nor an Adjustment for Continuing Excellence ~~continuing excellence~~ (ACE) award in the preceding twelve (12) months; and

(c) 1. The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens; ~~or~~

2. The employee has exhibited distinguished performance during participation in special projects that have had a significant beneficial impact on the department, office, or governmental operations; or

3. The employee has demonstrated a sustained level of exceptional job performance.

(2) An employee shall not be eligible for an ERA under this section for an act or idea that has been approved or submitted for consideration as an Employee Suggestion System Award. An employee who has received an ERA shall not be eligible to be considered for an Employee Suggestion System Award for those acts or ideas upon which the ERA is based.

(3) The granting of an ERA shall be within the sole discretion of the appointing authority.

(4) If an appointing authority grants an ERA, the justification for the award shall be stated in writing, and placed in the employee's personnel files.

(5) An appointing authority shall not grant an ERA to more than twenty-five (25) percent of the total number of full-time employees in a ~~the~~ department or office in a calendar year.

(6) An appointing authority shall submit a written justification ~~letter or memorandum~~ to the Personnel Cabinet ~~cabinet~~ to award an ERA. The justification ~~letter or memorandum~~ shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. Sufficient funds are available within the department or office; and
2. The criteria and limitations established in this section have been met.

Section 11. Adjustment for Continuing Excellence (ACE) Award. (1) On the 16th day of a month, an appointing authority may grant a salary adjustment of any whole percentage from one (1) [up] to ten (10) percent of the grade midpoint to a full-time employee's base pay as an ACE award ~~adjustment for continuing excellence award (ACE)~~ under the following conditions:

(a) The employee has an established annual increment date;

(b) The employee has worked at least twenty-four (24) consecutive months in KRS Chapter 18A state service, twelve (12) consecutive months of which shall have been served in the department or office granting the award;

(c) The employee has not received an ACE award ~~or a distinguished service award~~ in the preceding twenty-four (24) months or an ERA ~~employee recognition award (ERA)~~ in the preceding twelve (12) months; and

(d) 1. The employee has demonstrated a sustained level of exceptional job performance;

2. The employee has assumed a significant level of additional job responsibilities or duties consistent with the assigned job classification, and has performed them in an exceptional manner; or

3. The employee has acquired professional or technical skills or knowledge through department or office directed or authorized attainment of a job related licensure, certification, or formal training that will substantially improve job performance.

(2) An employee shall not be eligible for an ACE award under this section if an educational achievement award has been granted for the same training.

(3) The granting of an ACE award shall be within the sole discretion of the appointing authority.

(4) An appointing authority shall not grant an ACE award to more than twenty-five (25) percent of the total number of full-time employees in a department or office in a calendar year, shall not receive an ACE award.

(5) An appointing authority shall submit a written justification ~~[letter or memorandum]~~ to the Personnel Cabinet ~~[cabinet]~~ to grant an ACE award. The justification ~~[letter or memorandum]~~ shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. The criteria and limitations established in this section have been met; and

2. Sufficient funds are available within the department's or office's current recurring base budget to support the award.

Section 12. Voluntary actions. An employee request for transfer, demotion, or promotion shall be documented on the Voluntary Transfer/Demotion/Promotion Employee Agreement Form in Accordance with 101 KAR 1:335 and 101 KAR 1:400.

Section 13. Incorporation by Reference. (1) "Voluntary Transfer/Demotion/Promotion Employee Agreement Form", September 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS B. STEPHENS, Secretary, Personnel Cabinet

APPROVED BY AGENCY: May 25, 2018

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

CONTACT PERSON: Lesley Bilby, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone: (502) 564-7430, fax (502) 564-0224, email Lesley.Bilby@ky.gov.

**PERSONNEL CABINET
(As Amended at ARRS, August 14, 2018)**

101 KAR 2:095. Classified service general requirements.

RELATES TO: KRS 18A.030(2), 18A.110, 26 U.S.C. 501(c)(3)

STATUTORY AUTHORITY: KRS 18A.030, 18A.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate comprehensive administrative regulations for the classified service. This administrative regulation establishes requirements for the classified service and governs the maintenance of employee and other records and reports in the cabinet and other conditions of employment.

Section 1. Definitions. (1) "Charitable federation" means a legally constituted grouping, made up of or supporting at least ten (10) health and human welfare organizations, all of which:

(a) Qualify as exempt voluntary charitable organizations pursuant to 26 U.S.C. 501(c)(3); and

(b) Have a substantial Kentucky presence.

(2) "Designated nonprofit agency" means an organization with

proof of tax-exempt status pursuant to 26 U.S.C. 501(c)(3) written in on a pledge card by a state employee as a choice to receive contributions.

(3) "State employee" means a person, including an elected public official, who is employed by a department, board, agency, or branch of state government, except one (1) relating to a state college or university.

(4) "Substantial Kentucky presence" means a facility, staffed by professionals or volunteers, available to provide its services and open at least fifteen (15) hours a week and with a regional or statewide presence that meets the requirements of Section ~~2(8)~~(2) of this administrative regulation.

Section 2. Requirements for the Kentucky Employees Charitable Campaign. (1) General Purpose. The purpose of the Kentucky Employees Charitable Campaign shall be to:

(a) Provide an opportunity for employees to contribute to eligible Kentucky organizations through the state's payroll deduction process;

(b) Ensure accountability for participants in regard to the funds raised;

(c) Encourage the involvement of state employees as responsible citizens;

(d) Give recognition to state employee volunteers; and

(e) Minimize workplace disruption and administrative costs to Kentucky taxpayers by allowing only one (1) statewide payroll deduction charitable solicitation per year.

(2) An organization shall be considered to have a substantial Kentucky presence if the requirements established in this subsection are met.

(a) Services shall be available to state employees in the local community.

(b) Services shall directly benefit human beings whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically disabled.

(c) Services shall consist of:

1. Care, research, education, or prevention in the fields of human health or social adjustment and rehabilitation;

2. Relief for victims of natural disasters and other emergencies;

or

3. Assistance to those who are impoverished and in need of food, shelter, clothing, and basic human welfare services.

(3) The secretary shall approve a charitable organization for participation in the campaign if the charitable organization demonstrates:

(a) Proof of tax exempt status pursuant to 26 U.S.C. 501(c)(3);

(b) Proof of current registration and compliance with the reporting requirements of the Secretary of State and the Office of the Attorney General;

(c) Proof of financial responsibility, including:

1. Adoption of a detailed annual budget;

2. Use of generally accepted accounting principles and procedures;

3. The board of directors' approval for deviations from the approved budget; and

4. An annual financial audit;

(d) Proof of direction by an active volunteer board of directors, which shall meet regularly and whose members shall serve without compensation;

(e) A written nondiscrimination policy;

(f) Public disclosure of fundraising administrative costs with a statement demonstrating that, if fund and administrative expenses are in excess of twenty-five (25) percent of total support and revenue, actual expenses for those purposes are reasonable under all the circumstances in its case; and

(g) Publication of an annual report available to the general public, which includes a full description of the organization's Kentucky activities including fundraising activities.

(4) A **charitable** federation may apply on behalf of all their member organizations if both the federation and all federation members meet the criteria established in subsection (3) of this section.

(5) Authority of the Secretary of Personnel.

(a) The Secretary of Personnel shall have the full authority over the procedures and policies relating to the operation of the Kentucky Employees Charitable Campaign.

(b) The secretary shall designate a group of state employees to compose the Kentucky Employees Charitable Campaign Committee to make recommendations on related matters.

(c) The committee shall be composed of a cross-section of state employees, involving the large cabinets and small agencies.

(d) The chair of the committee shall be appointed by the secretary.

(6) Functions of the committee. The committee shall make recommendations on the following:

(a) Designation of a campaign administrator.

1. The campaign administrator shall serve for a minimum period of two (2) years.

2. The campaign administrator shall be charged to manage and administer the charitable fund campaign for the Commonwealth, subject to the direction and control of the Secretary of Personnel. The campaign administrator shall have statewide workplace campaign experience and have the necessary staff and volunteer support to administer the Kentucky ~~Employees~~Employee Charitable Campaign;

(b) Establishment of minimum amount, based on cost effectiveness, that an employee may authorize to be deducted for each approved **charitable** federation;

(c) The format of the brochure, pledge card, or other promotional materials for the annual campaign;

(d) The dates and duration of the campaign;

(e) The annual campaign budget submitted by the campaign administrator; and

(f) The costs of the campaign, which shall be:

1. Detailed in the budget; ~~and~~

2. ~~which shall be~~ Borne by each recipient organization proportionally.

(7) Charitable federations to apply for statewide campaign.

(a) A federation desiring inclusion shall ~~apply~~make application by February 15 of each year.

(b) A federation that has previously participated in the campaign shall update its application with a letter and a copy of the most recent year's audit.

(c) A charitable organization that has previously participated in the campaign shall be eligible if it fulfills all conditions of eligibility.

(8) The campaign administrator. The campaign administrator shall:

(a) Provide staffing to manage and administer the annual campaign, ~~which includes~~ This shall include preparing drafts of campaign materials for consideration by the Secretary of Personnel;

(b) Serve as the central accounting point for both campaign cash and for payroll deductions received from the Personnel Cabinet including:

1. The preparation and submission of an annual campaign budget. Costs of the campaign shall be divided among recipient organizations; and

2. A separate account maintained for managing the income and expenses of the campaign;

(c) Distribute campaign funds received from the Personnel Cabinet to participating organizations in accordance with agreed upon time periods. This shall include distribution of funds to designated nonprofit agencies;

(d) Provide an end-of-campaign report to the Secretary of Personnel and to participating organizations; and

(e) Annually furnish a financial statement prepared by a certified public accountant.

Section 3. Attendance; Hours of Work. (1) The number of hours a full-time employee shall be required to work shall be thirty-seven and one-half (37 1/2) hours per week or forty (40) hours per week, unless specified otherwise by the appointing authority or the statutes.

(2) The normal work day shall be from:

(a) 8 a.m. to 4:30 p.m., local time, Monday through Friday, for a thirty-seven and one-half (37 1/2) hour work schedule; or

(b) 8 a.m. to 5 p.m., local time, Monday through Friday, for a forty (40) hour work schedule.

(3) An appointing authority may require an employee to work hours and days other than regular days and hours, including an overtime or inclement weather schedule if it is in the best interest of the agency.

(4) An employee who works for an agency that requires more than one (1) shift or seven (7) days a week operation may be reassigned from one (1) shift to another or from one (1) post to another or alternate days off by the agency to meet staffing requirements or to maintain security or provide essential services of the agency.

(5) An employee shall give reasonable notice in advance of absence from a work station.

Section 4[3]. Work Station and Temporary Assignment. (1) Each employee shall be assigned a work station by the appointing authority.

(2) A work station may be changed to better meet the needs of the agency.

(3) An employee may be temporarily assigned to a different work station in a different county. The assignment shall be to the same job classification.

(a) If an employee is temporarily assigned to a different work station in a different county, the assignment shall not last more than sixty (60) calendar days.

(b) Temporary assignment may be renewed with ~~prior~~the approval of the Secretary of Personnel.

(c) A temporarily reassigned employee shall be reimbursed for travel expenses in accordance with 200 KAR 2:006, and the appointing authority shall notify the employee in writing prior to the effective date of the action.

(4) An appointing authority may assign an employee to work in a different site within the county of employment within the same job classification.

Section 5[4]. Dual Employment.~~[(1)]~~ An employee holding a full-time position covered under KRS Chapter 18A~~[with the Commonwealth]~~ shall not hold another KRS Chapter 18A~~[state]~~ position except upon recommendation of the appointing authority and the written approval of the secretary.

~~[(2) A complete list of all employees holding more than one (1) state position shall be furnished to the Legislative Research Commission quarterly by the secretary.]~~

Section 6[5]. Notice of Resignation and Retirement. (1) An employee who ~~decides~~desires to terminate his or her service~~[with the state]~~ shall submit a written resignation or notice of retirement to the appointing authority.

(2) A resignation or notice of retirement shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's ~~notice~~resignation shall be attached to the separation personnel action~~[effecting the separation]~~ and placed in the personnel files maintained by~~[be filed in the employee's service record in]~~ the agency and the Personnel Cabinet.

(3) Failure of an employee to give fourteen (14) calendar days' notice~~[with his resignation or notice of retirement]~~ may result in forfeiture of accrued annual leave, based on:

(a) If the fourteen (14) day deadline was:

1. Practicable under the circumstances;

2. Appropriate for the situation; and

3. Complied with; or

(b) If the appointing authority and the employee have agreed that the employee shall retain the leave.

(4) The effective date of a separation shall be the next calendar day following the last work day unless the employee has been approved for the use of annual, compensatory, or sick leave prior to termination.

Section 7[6]. Records and Reports. (1) An appointing authority shall provide a request to the Personnel Cabinet for a personnel action or status change.

(a) The Secretary of the Personnel Cabinet shall determine

which personnel actions warrant a Personnel Action Notification to the employee, in accordance with KRS 18A.020 and 18A.095.

(b) The secretary shall provide a Personnel Action Notification to the appointing authority.

(c) The appointing authority shall provide a copy of a Personnel Action Notification to the employee affected by the action.

(2) The secretary shall maintain a leave record showing for each employee:

- (a) Annual leave earned, used and unused;
- (b) Sick leave earned, used and unused;
- (c) Compensatory leave earned, used and unused; and
- (d) Special leave or other leave with or without pay.

Section 8[7]. Telecommuting. (1) Telecommuting shall be a work arrangement in which a selected state employee is allowed to perform the normal duties and responsibilities of his or her position through the use of computer or telecommunications at home or another place apart from the employee's usual work station.

(2) An appointing authority may establish a telecommuting program for all or any part of the agency.

(3) Eligibility and selection for participation in a telecommuting program shall be the decision of the agency, with no implied or specific right to participation being granted to an employee.

(4) The telecommuter's conditions of employment shall remain the same as for a nontelecommuting employee.

(a) Employee salary, benefits, and employer-sponsored insurance coverage shall not change as a result of telecommuting.

(b) The telecommuter shall be responsible for the security and confidentiality of data, as well as the protection of state-provided equipment, used and accessed during telecommuting.

(c) The telecommuter shall agree to maintain a clean, safe workplace.

(d) An on-site visit by the employer for monitoring of safety issues shall not require advance notice by the employer[be arranged in advance]. [Section 8. Requirements for the Kentucky Employees Charitable Campaign. (1) General Purpose. The purpose of the Kentucky Employees Charitable Campaign shall be to:

(a) Provide an opportunity for employees to contribute to eligible Kentucky organizations through the state's payroll deduction process;

(b) Ensure accountability for participants in regard to the funds raised;

(c) Encourage the involvement of state employees as responsible citizens;

(d) Give recognition to state employee volunteers; and

(e) Minimize workplace disruption and administrative costs to Kentucky taxpayers by allowing only one (1) statewide payroll deduction charitable solicitation per year.

(2) An organization shall be considered to have a substantial Kentucky presence if the requirements established in this subsection are met.

(a) Services shall be available to state employees in the local community.

(b) Services shall directly benefit human beings whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically disabled.

(c) Services shall consist of:

1. Care, research, education, or prevention in the fields of human health or social adjustment and rehabilitation;

2. Relief for victims of natural disasters and other emergencies; or

3. Assistance to those who are impoverished and in need of food, shelter, clothing, and basic human welfare services.

(3) The secretary shall approve a charitable organization for participation in the campaign if the charitable organization demonstrates:

(a) Proof of tax exempt status pursuant to 26 U.S.C. 501(c)(3);

(b) Proof of current registration and compliance with the reporting requirements of the Secretary of State and the Office of the Attorney General;

(c) Proof of financial responsibility, including:

1. Adoption of a detailed annual budget;

2. Use of generally accepted accounting principles and procedures;

3. The board of directors' approval for deviations from the approved budget; and

4. An annual financial audit;

(d) Proof of direction by an active volunteer board of directors, which shall meet regularly and whose members shall serve without compensation;

(e) A written nondiscrimination policy;

(f) Public disclosure of fundraising administrative costs with a statement demonstrating that, if fund and administrative expenses are in excess of twenty-five (25) percent of total support and revenue, actual expenses for those purposes are reasonable under all the circumstances in its case; and

(g) Publication of an annual report available to the general public, which includes a full description of the organization's Kentucky activities including fundraising activities.

(4) A federation may apply on behalf of all their member organizations if both the federation and all federation members meet the criteria established in subsection (3) of this section.

(5) Authority of the Secretary of Personnel.

(a) The Secretary of Personnel shall have the full authority over the procedures and policies relating to the operation of the Kentucky Employees Charitable Campaign.

(b) The secretary shall designate a group of state employees to compose the Kentucky Employees Charitable Campaign Committee to make recommendations on related matters.

(c) The committee shall be composed of a cross-section of state employees, involving the large cabinets and small agencies.

(d) The chair of the committee shall be appointed by the secretary.

(6) Functions of the committee. The committee shall make recommendations on the following:

(a) Designation of a campaign administrator.

1. The campaign administrator shall serve for a minimum period of two (2) years.

2. The campaign administrator shall be charged to manage and administer the charitable fund campaign for the Commonwealth, subject to the direction and control of the Secretary of Personnel. The campaign administrator shall have statewide workplace campaign experience and have the necessary staff and volunteer support to administer the Kentucky Employee Charitable Campaign;

(b) Establishment of minimum amount, based on cost effectiveness, that an employee may authorize to be deducted for each approved federation;

(c) The format of the brochure, pledge card, or other promotional materials for the annual campaign;

(d) The dates and duration of the campaign;

(e) The annual campaign budget submitted by the campaign administrator; and

(f) The costs of the campaign, which shall be detailed in the budget, and which shall be borne by each recipient organization proportionally.

(7) Charitable federations to apply for statewide campaign.

(a) A federation desiring inclusion shall make application by February 15 of each year.

(b) A federation that has previously participated in the campaign shall update its application with a letter and a copy of the most recent year's audit.

(c) A charitable organization that has previously participated in the campaign shall be eligible if it fulfills all conditions of eligibility.

(8) The campaign administrator. The campaign administrator shall:

(a) Provide staffing to manage and administer the annual campaign. This shall include preparing drafts of campaign materials for consideration by the Secretary of Personnel;

(b) Serve as the central accounting point for both campaign cash and for payroll deductions received from the Personnel Cabinet including:

1. The preparation and submission of an annual campaign budget. Costs of the campaign shall be divided among recipient

organizations; and

2. A separate account maintained for managing the income and expenses of the campaign;

(c) Distribute campaign funds received from the Personnel Cabinet to participating organizations in accordance with agreed upon time periods. This shall include distribution of funds to designated nonprofit agencies;

(d) Provide an end-of-campaign report to the Secretary of Personnel and to participating organizations; and

(e) Annually furnish a financial statement prepared by a certified public accountant.]

Section 9. Workplace Violence Policy. (1) Workplace violence shall be prohibited and shall include:

(a) The attempted, threatened, or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or

(b) A threatening statement, harassment, or behavior that gives a state employee or member of the general public reasonable cause to believe that his or her health or safety is at risk.

(2) Examples of prohibited workplace violence shall include:

(a) Threats of harm;

(b) Brandishing or displaying a weapon or an object that looks like a weapon in a manner that would present a safety risk to a state employee or a member of the general public or threatens or intimidates them;

(c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;

(d) Stalking;

(e) Striking, slapping, or otherwise physically attacking another person; or

(f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions that create a risk to the health or safety of a state employee or the public or threatens or intimidates them.

(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

Section 10. Issuance of Pay to State Employees. (1) Pay shall be issued to state employees on the 15th and 30th day of each month.

(2) If the regularly scheduled pay date falls on a weekend, state employees shall be issued pay on the preceding Friday.

(3) If the regularly scheduled pay date falls on a state holiday as defined in KRS 18A.190, pay shall be issued on the workday preceding the holiday.

Section 11. Incorporation by Reference. (1) "Personnel Action Notification", PAN, August 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: May 25, 2018

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

CONTACT PERSON: Lesley Bilby, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone: (502) 564-7430, fax (502) 564-0224, email Lesley.Bilby@ky.gov.

PERSONNEL CABINET
(As Amended at ARRS, August 14, 2018)

101 KAR 3:045. Compensation plan and pay incentives for unclassified service.

RELATES TO: KRS 18A.110, 18A.155, 18A.202, 199.555

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.155(1)(b), (e), 18A.110(2), 18A.202(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.155 requires the Secretary of Personnel to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t) and (u). KRS 18A.110 requires the secretary to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.202 authorizes the secretary to implement work-related incentive programs for state employees. This administrative regulation establishes the compensation plan and pay incentives for employees in unclassified service.

Section 1. New Appointments. An appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade.

Section 2. Reentrance to State Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A, while receiving retirement payments through the Kentucky Retirement Systems or Kentucky Teachers Retirement System, shall be appointed in accordance with the provisions for new appointments in this administrative regulation.

(2) Other reentering employees. An appointing authority shall set the salary of a former classified or unclassified employee, other than a returning retiree:

(a) In accordance with the standards used for making new appointments in this administrative regulation; or

(b) Up to a salary formerly paid in the classified or unclassified service, if that salary is within the current pay grade.

Section 3. Salary Adjustments. (1) Promotion.

(a)1. An employee who is promoted shall receive a five (5) percent increase or an increase to the minimum of the new grade, whichever is greater; or]

2. (b)] An appointing authority may grant a salary increase of five (5) percent per grade upon promotion.

(b)] or

(c)] If sufficient funds are available, an appointing authority may adjust the employee's salary up to the midpoint of the pay grade as long as the increase is greater than the increase specified in subparagraph 1. of subsection (1)(a) of this section.

(2) Demotion. If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

(a) The employee's salary shall be reduced to a rate that is not below the minimum for the job classification to which the demotion is made; or

(b) The employee shall retain the salary received prior to the demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.

(3) Reclassification.

(a) An appointing authority shall adjust the salary of an employee who is advanced to a higher pay grade through reclassification in one (1) of the following ways:

1. The greater of five (5) percent or the new grade minimum [shall receive a five (5) percent increase or an increase to the minimum of the new grade, whichever is greater.]; or

2. The greater of five (5) percent for each grade or the new grade minimum [An appointing authority may grant a salary increase of five (5) percent per grade upon reclassification to a higher grade]; or

3. If sufficient funds are available, up to the midpoint of the pay grade as long as the increase is greater than the increase specified in subparagraph 1. of this paragraph .

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification.

(c) An employee shall not be reclassified from a job classification that does not require the supervision of employees to a job classification that requires the supervision of employees as mandated within the job class specification.

(4) Reallocation.

(a) An employee who is advanced to a higher pay grade

through reallocation shall receive a five (5) percent increase or an increase to the new grade minimum, whichever is greater. An appointing authority may grant a five (5) percent increase per grade upon reallocation to a higher grade.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation.

(5) Detail to special duty.

(a) An employee who is detailed to special duty in a higher grade shall receive a five (5) percent increase or an increase to the minimum of the grade, whichever is greater, for the duration of the period of the detail. An appointing authority may grant a salary increase of five (5) percent per grade for the duration of the detail.

(b) An employee who is detailed to special duty to the same or lower grade shall continue to receive the same salary.

(6) Reversion.

(a) The salary of an employee who is reverted following detail to special duty in a higher pay grade shall be adjusted to:

1. The salary received prior to the detail; and

2. All salary advancements and adjustments which would have been awarded if the detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and

2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(7) Pay grade changes.

(a) If a job classification is assigned to a higher pay grade, the appointing authority shall raise the salary of an employee below the new grade minimum to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that job classification to:

1. The greater of the new grade minimum or five (5) percent; or
2. The greater of the new grade minimum or ten (10) percent; or

3. The greater of the new grade minimum or a dollar amount approved by the secretary.]

(b) If a job classification is assigned to a lower pay grade, an employee in that job classification shall retain his current salary.

(8) Special entrance rates. If a special entrance rate is established for a job classification, an appointing authority shall adjust the salary of an employee in that job classification, who is below the special entrance rate, to the new rate. If sufficient funds are available, on the same date as the establishment of the special entrance rate, an appointing authority may also grant a salary adjustment equal to the difference between the former entrance rate and the new special entrance rate to other employees in that job classification, except those employees who are on initial probation.

(9) Other salary adjustments.

(a) On the 16th of a month, an appointing authority may grant a five (5) percent salary adjustment to an employee who was eligible for, but did not receive an increase upon the completion of six (6) months service following promotion.

(b) On the 16th of a month, an appointing authority may grant a salary adjustment to an employee within an agency who was eligible for, but did not receive at least a five (5) percent advancement as a result of a grade change on or after January 1, 1999. The total adjustment under this provision when combined with an increase at the time of the grade change shall equal five (5) percent of the employee's salary immediately prior to the grade change.

(10) Conversion rule. The salary of an employee whose position changes from a thirty-seven and five-tenths (37.5) hour workweek to a forty (40) hour workweek, or vice versa, shall be converted to accurately reflect the employee's hourly rate of base pay. This conversion shall be applied before applying any other salary adjustment to which the employee is entitled pursuant to this section.

Section 4. Salary Advancements. (1) Initial appointment increase. An appointing authority ~~may~~shall grant a five (5) percent increase to an employee, except an interim employee, on the first day of the month following completion of six (6) months of service; ~~or~~

~~(b) No later than the first day following twelve (12) months of service.~~

~~(c) If the appointing authority elects not to grant the initial appointment increase upon completion of six (6) months service, the increase may be granted on the first day of any month following the date the employee was eligible, but shall be granted no later than the first day following twelve (12) months of service.]~~

(2) Six (6) month promotional increase. An employee may receive a five (5) percent increase following the completion of six (6) months service after promotion.

(3) Annual increment dates shall be established as follows:

(a) On the first day of the month following completion of the initial probation period~~(the date of receiving an initial appointment increase); or~~

(b) On the first day of the month following completion of twelve (12) months service since receiving the last annual increment for~~by a former employee who is appointed or reappointed, except in the case of an interim employee; or~~

~~(c) On the first day of the month following completion of twelve (12) months service by]~~ an employee, other than an interim employee, who returns from leave without pay.

(4) Annual increment dates shall not change if an employee:

(a) Is in a position which is assigned a new or different pay grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is promoted;

(d) Is transferred;

(e) Is demoted;

(f) Is detailed to special duty;

(g) Receives an educational achievement award;

(h) Returns from military leave;

(i) Is reclassified; or

(j) Receives an increase six (6) months following promotion.

(5) Return from leave without pay. An employee, other than an interim employee, returning to duty from leave without pay shall receive an annual increment on the first of the month after receiving compensation in any~~(completing)~~ twelve (12) months~~of service]~~ since the last increment was received.

(6) Service computation. Full-time and part-time service shall be counted when computing service for purposes of determining increment eligibility. Service as an interim employee, or in the former seasonal, temporary, or emergency categories shall not be considered.

(7) Order of calculating increments and other salary increases which occur at the same time. If an employee's increment date occurs on the same date that a salary adjustment or advancement is granted, the increment shall be applied before the adjustment or advancement is added to the employee's salary, except if the adjustment is based on a reversion, pay grade change,~~or~~ a salary schedule change, or establishment of a special entrance rate.

Section 5. Educational Achievement Award. (1) On the 16th of a month, an appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement as specified in this section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

(4) An employee shall not receive an educational achievement award and an adjustment for continuing excellence (ACE) based on the same training.

(5) By submitting a personnel action to grant an educational achievement award, the appointing authority shall certify that all of the qualifying conditions established by this section for the appropriate type of educational achievement award have been

met.

(a) For a high school diploma, high school equivalency certificate, or a passing score on the GED test, the qualifying conditions shall be met if:

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

- a. Outside of work hours;
- b. While in state service; and
- c. After establishing an increment date, ~~[- and~~
- d. ~~On or after January 1, 1984;]~~

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate, or a passing score on the GED test.

(b) For postsecondary education or training, the qualifying conditions shall be met if:

1. The employee has completed 260 hours of job-related instruction, or the equivalent;

2. The employee began the course work after becoming a state employee and completed the course work after establishing an increment date;

3. The employee has completed the course work within five (5) years of the date on which it was begun;

4. The course work has not previously been applied toward an educational achievement award;

5. The agency has not paid for the course work or costs associated with it, in whole or in part; and

6. The employee was not on educational or extended sick leave when the courses were taken. ~~[(c) For the Kentucky Certified Public Manager Program, the qualifying conditions shall be met if:~~

~~1. The employee has successfully completed the Kentucky Certified Public Manager Program offered by the Governmental Services Center at Kentucky State University; and~~

~~2. The employee has not previously received an educational achievement award for completing the Kentucky Certified Manager Program.]~~

Section 6. Salary Schedule Adjustment. If the secretary authorizes an adjustment of ~~[all grades in]~~ the salary schedule, an appointing authority shall adjust the salaries of all employees below the new minimum rate to the new minimum rate. If sufficient funds are available, the secretary may authorize an appointing authority to grant a salary increase for all employees equal to the difference in the old schedule minimum for the grade and the new schedule minimum for the grade.

Section 7. Maintenance and Maintenance Allowance. If an employee, or the employee and family, is provided with full or partial maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, the maintenance shall be treated as partial payment of wages. The value of those services shall be deducted from the employee's salary in accordance with a maintenance schedule developed by the appropriate appointing authority after consultation with the Secretary of the Finance and Administration Cabinet.

Section 8. Supplemental Premiums. (1) Locality premium. (a) Upon request by an appointing authority, the secretary may authorize the payment of a locality premium for an employee who is regularly or temporarily assigned to work in a job classification, work county, and organizational unit where the agency can demonstrate sustained recruitment and retention issues impacting the mission of the agency.

(b) Once authorized, this premium shall apply to all employees in that organizational unit who are regularly or temporarily assigned to work in the job classification and work county for which the locality premium is approved.

(c) An employee shall not receive a locality premium after transfer, reclassification, reallocation, detail to special duty, promotion or demotion to a position in a job classification,

organizational unit, or work county that is ineligible for a locality premium.

(d) The secretary may rescind authorization to pay a locality premium for a job classification at any time.

(e) Locality premium pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(2) Shift premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental premium for an employee who is regularly assigned to work an evening or night shift in that agency.

(b) Once authorized, this premium shall apply to all employees in that agency who are regularly assigned to work an evening or night shift in a job classification for which the shift premium is approved.

(c) An employee shall not receive a shift premium after shift reassignment, transfer, promotion or demotion to a position that is ineligible for a shift differential premium.

(d) The secretary may rescind authorization to pay shift premium for a job classification at any time.

(e) Shift differential pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(3) [(2)] Weekend premium.

(a) Upon request by an appointing authority, the secretary shall authorize the payment of a weekend premium for an employee in a specific job classification who is regularly assigned to work on Saturdays, Sundays, or state holidays as part of the usual work week.

(b) Once authorized, the premium shall apply to all employees in the specified job classifications in that agency who are regularly assigned to work Saturdays, Sundays, or state holidays as part of their usual work week.

(c) An employee shall not receive a weekend premium after reassignment, transfer, promotion, or demotion to a position that is ineligible for weekend premium.

(d) The secretary may rescind authorization to pay weekend premium at any time.

(e) Weekend premium pay shall not be considered part of the employee's base salary or wages and shall not be applied to any leave time usage.

(f) An agency may request, and be authorized for, both shift premium and weekend premium for the same job classifications.

(4) [(3)] Multilingual hourly premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental multilingual hourly premium for an employee who is assigned to complete work duties in a specified foreign language. An employee completing work duties in a specified foreign language shall receive a multilingual hourly premium based on the percentage of time multilingual skills are performed. An employee in a job classification that includes interpreting services as a characteristic of the job on the job class specification shall not be eligible for this premium.

(b) Language proficiency testing shall be completed prior to an employee receiving the multilingual hourly premium. Testing shall indicate a standard level of multilingual proficiency as required by the appointing authority.

(c) An appointing authority shall submit the multilingual premium request to the Personnel Cabinet in writing. The request shall contain, at a minimum:

1. An explanation of the reason or reasons for granting the multilingual premium;

2. The percentage of time the employee will use multilingual skills; and

3. Certification by the appointing authority that the employee has completed multilingual testing and received a standard level of multilingual proficiency rating. This certification shall include the name of the testing facility or organization, the format of the test taken (oral, written, or a combination of oral and written), and the level of proficiency granted in the request for the multilingual premium.

(d) Once authorized, the multilingual hourly premium shall apply to all employees in that agency who are regularly assigned to complete work in a specified foreign language once the employees

are individually approved in accordance with this subsection.

(e) An employee shall not receive a multilingual hourly premium after reassignment, reclassification, transfer, promotion, reallocation, or demotion to a position which no longer requires work in a specified foreign language.

(f) An employee who ceases to perform work duties in a specified foreign language shall not be eligible to receive a multilingual hourly premium.

(g) The secretary may rescind the multilingual hourly premium authorization provided to an agency or individual employee at any time.

(h) The multilingual hourly premium shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

Section 9. Employee Recognition Award (ERA). (1) On the 16th day of a month, an appointing authority may grant an employee an ~~employee recognition award, or~~ ERA~~;~~ in the form of a lump sum payment of any whole percentage from one (1) up to ten (10) percent of the grade midpoint under the following conditions:

(a) The employee has established an annual increment date and has worked at least twenty-four (24) consecutive months in KRS Chapter 18A state service, twelve (12) consecutive months of which is in the department or office granting the award;

(b) The employee has not received an ERA~~or a distinguished service award~~ in the preceding twenty four (24) months, nor an Adjustment for Continuing Excellence~~(continuing excellence)~~ (ACE) award in the preceding twelve (12) months; and

(c)1. The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens;~~or~~

2. The employee has exhibited distinguished performance during participation in special projects that have had a significant beneficial impact on the department, office, or governmental operations;~~or~~

3. The employee has demonstrated a sustained level of exceptional job performance.

(2) An employee shall not be eligible for an ERA under this section for an act or idea that has been approved or submitted for consideration as an Employee Suggestion System Award. An employee who has received an ERA shall not be eligible to be considered for an Employee Suggestion System Award for those acts or ideas upon which the ERA is based.

(3) The granting of an ERA shall be within the sole discretion of the appointing authority.

(4) If an appointing authority grants an ERA, the justification for the award shall be stated in writing, and placed in the employee's personnel files.

(5) An appointing authority shall not grant an ERA to more than twenty-five (25) percent of the total number of full-time employees in a~~the~~ department or office in a calendar year.

(6) An appointing authority shall submit a written justification~~(letter or memorandum)~~ to the Personnel Cabinet~~(cabinet)~~ to award an ERA. The justification~~(letter or memorandum)~~ shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. Sufficient funds are available within the department or office; and

2. The criteria and limitations established in this section have been met.

Section 10. Adjustment for Continuing Excellence (ACE) Award. (1) On the 16th day of a month, an appointing authority may grant a salary adjustment of any whole percentage from one (1) up to ten (10) percent of the grade midpoint to a full-time employee's base pay as an ACE award~~(adjustment for continuing excellence award (ACE))~~ under the following conditions:

(a) The employee has an established annual increment date;

(b) The employee has worked at least twenty-four (24)

consecutive months in KRS Chapter 18A state service, twelve (12) consecutive months of which shall have been served in the department or office granting the award;

(c) The employee has not received an ACE award~~or a distinguished service award~~ in the preceding twenty-four (24) months or an ERA~~(employee recognition award (ERA))~~ in the preceding twelve (12) months; and

(d)1. The employee has demonstrated a sustained level of exceptional job performance;

2. The employee has assumed a significant level of additional job responsibilities or duties consistent with the assigned job classification, and has performed them in an exceptional manner; or

3. The employee has acquired professional or technical skills or knowledge through department or office directed or authorized attainment of a job related licensure, certification, or formal training that will substantially improve job performance.

(2) An employee shall not be eligible for an ACE award under this section if an educational achievement award has been granted for the same training.

(3) The granting of an ACE award shall be within the sole discretion of the appointing authority.

(4) An appointing authority shall not grant an ACE award to more than twenty-five (25) percent of the total number of full-time employees in a department or office, in a calendar year~~, shall not receive an ACE award~~.

(5) An appointing authority shall submit a written justification~~(letter or memorandum)~~ to the Personnel Cabinet~~(cabinet)~~ to grant an ACE award. The justification~~(letter or memorandum)~~ shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. The criteria and limitations established in this section have been met; and

2. Sufficient funds are available within the department's or office's current recurring base budget to support the award.

Section 11. Adoption Benefit Program. The provisions of the Adoption Benefit Program established in 101 KAR 2:120 shall apply to an employee in the unclassified service.~~(1) A state employee who finalizes a legal adoption procedure for the adoption of a child, other than the child of a spouse, on or after November 1, 1998, shall be eligible to receive reimbursement for actual costs associated with the adoption of a special needs child, as defined by KRS 199.555(1), or any other child. Total state funds for this program shall not exceed \$150,000 in a fiscal year.~~

~~(2) The eligible employee shall receive:~~

~~(a) Up to \$5,000 in unreimbursed direct costs related to the adoption of a special needs child; or~~

~~(b) Up to \$3,000 in unreimbursed direct costs related to the adoption of any other child.~~

~~(3) Unreimbursed direct costs related to the adoption of a special needs child or other child shall include:~~

~~(a) Licensed adoption agency fees;~~

~~(b) Legal fees;~~

~~(c) Medical costs;~~

~~(d) Court costs; and~~

~~(e) Other reasonable fees or costs associated with child adoption in accordance with state and federal law and after review and approval by the court at the finalization of the adoption.~~

~~(4) Application for financial assistance shall be made by submitting a completed State Employee Adoption Assistance Application to the Secretary of Personnel along with documentary evidence of:~~

~~(a) Finalization of the adoption;~~

~~(b) Certification by the Secretary of the Cabinet for Health and Family Services that the adopted child is a special needs child, if reimbursement for special needs adoption is sought; and~~

~~(c) A copy of an affidavit of expenses related to the adoption filed with and approved by the court at the time of finalization of the adoption.~~

~~(5) If both adoptive parents are executive branch state~~

employees, the application for financial assistance shall be made jointly and the amount of reimbursement shall be limited to that specified in subsection (2) of this section.

(6) Upon approval of the application for financial assistance, the employee's agency shall disburse funds in the amount authorized by the Secretary of Personnel.

Section 12. Incorporation by Reference. (1) "State Employee Adoption Assistance Application", May 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, Third Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

THOMAS B. STEPHENS, Secretary
MATTHEW G. BEVIN, Governor

APPROVED BY AGENCY: June 5, 2018

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

CONTACT PERSON: Lesley Bilby, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email Lesley.Bilby@ky.gov.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, August 14, 2018)**

201 KAR 2:015. Continuing education.

RELATES TO: KRS 315.065, 315.120

STATUTORY AUTHORITY: KRS 315.065, 315.110(1), 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.065(2) and (3) require[requires] the Board of Pharmacy to establish continuing education requirements for pharmacists. This administrative regulation establishes requirements for the continuing pharmacy education of registered pharmacists and requires all registered pharmacists holding a license issued by the board to participate in continuing pharmacy education as a means of renewal of their licenses.

Section 1. Definitions. (1) "Continuing education unit" or "CEU" is defined by KRS 315.010~~(8)~~~~(7)~~.

(2) "Sponsor" means a person, school, association, company, corporation, or group who wishes to develop a continuing education program.

Section 2. (1) Continuing education hours for credit shall be relevant to the practice of pharmacy and free of commercial bias.

(2) Continuing education hours shall be approved if approved by:

(a) The Accreditation Council for Pharmacy Education (ACPE); or

(b) The board, [may be compiled in the following areas if the sponsor grants the participant a certificate of completion: (1) Cassette and audiovisual presentation;

(2) In-company professional seminars;

(3) Accredited school of pharmacy continuing education programs;

(4) Postgraduate courses in pharmaceutical sciences;

(5) Correspondence courses;

(6) Programs granted continuing education credit by other states;

(7) The Accreditation Council for Pharmacy Education;

(8) Continuing education television series;

(9) Programs sponsored by allied professional groups; or

(10) Professional society and association sponsored programs.]

Section 3. (1) Continuing education sponsors shall submit an Application for Provider CE Approval to the board;

(a) At least sixty (60) days prior to the presentation date, if pre-approval is sought; or

(b) Between sixty (60) days prior and thirty (30) days after the presentation date, if pre-approval is not sought [for final accreditation continuing education programs for participants. (1) Programs shall be submitted to the board at least sixty (60) days prior to planned participation so the participants can know the value of the experience prior to actual participation].

(2) Program changes shall be submitted to and approved [accredited] by the board, or the approval [evaluation and accreditation] of the program shall be void.

(3) Continuing education credit shall be given only once for each program per participant.

(4) Sponsors shall retain a file of each participant's program completion for three (3) years.

(5) Board approval [The board approval] of each program shall expire [at the end of] three (3) years after the date of approval.

Section 4. (1) Pharmacists [Sponsors and pharmacists] requesting approval of individually obtained continuing pharmacy education shall submit an Application for Pharmacist CE Approval to the board within thirty (30) days of completion of the educational presentation [the Kentucky Board of Pharmacy Continuing Education Program Approval Form. Pharmacists shall keep valid records, receipts, and certifications of continuing pharmacy education programs completed for three (3) years and submit the certification to the board on request].

(2) The board shall notify the requesting pharmacist whether the application request has been approved or denied [Submission of a fraudulent statement or certificate concerning continuing pharmacy education shall subject the pharmacist to discipline as provided in KRS 315.121].

(3) Continuing education that has not been approved by ACPE or the board shall not be used to meet continuing education requirements for renewal or issuance of a license.

Section 5. (1) A pharmacist shall:

(a) Complete a minimum of one and five-tenths (1.5) CEU (fifteen (15) contact hours) annually between January 1 and December 31; and

(b) Not transfer or apply excess hours or units for future years.

(2) A pharmacist may be granted a deferral on a year-to-year basis at the discretion of the board for illness, incapacity, or other extenuating circumstances.

(3) A pharmacist first licensed by the board within twelve (12) months immediately preceding the annual renewal date shall be exempt from the continuing pharmacy education provisions for that year.

(4) Pharmacists shall:

(a) Keep valid records, receipts, and certifications of continuing pharmacy education programs completed for three (3) years; and

(b) Submit that documentation to the board upon [en] request.

(5) Submission of a fraudulent statement or certificate concerning continuing pharmacy education shall subject the pharmacist to discipline as provided in KRS 315.121.

Section 6. All pharmacists shall keep the board informed of their correct addresses.

Section 7. CEU may be transferred from another state to Kentucky if the transfer state recognizes Kentucky CEU.

Section 8. A licensee who failed to timely renew his or her license shall:

(1) Comply with the applicable provisions of KRS 315.120(2) or (3); and

(2) Complete fifteen (15) hours of continuing education for each year the applicant failed to renew his or her license, up to a maximum of seventy-five (75) hours.

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

(a) [The] "Application for Provider CE Approval", June 2018;

~~and~~ ~~the~~ "Kentucky Board of Pharmacy Continuing Education Program Approval Form", 2002, ~~is incorporated by reference~~.

~~(b) The "Application for Pharmacist CE Approval", June 2018, is incorporated by reference.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CATHY HANNA, R.Ph., President

APPROVED BY AGENCY: May 16, 2018

FILED WITH LRC: June 7, 2018 at 1 p.m.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, August 14, 2018)**

301 KAR 1:115. Propagation of aquatic organisms.

RELATES TO KRS [450.025, 150.280,] 150.290, 150.485

STATUTORY AUTHORITY: KRS 150.025, 150.180, 150.280, 150.450, 50 C.F.R. 17.11

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife, restrict the places where taking is permitted, and to make administrative regulations apply to a limited area or to the entire state. KRS 150.180 authorizes the department to promulgate administrative regulations regarding the buying, selling, and transporting of mussels and fishes by licensed fish propagation permit holders. KRS 150.280 requires ~~authorizes~~ the department to promulgate administrative regulations governing the propagation or holding of protected wildlife. KRS 150.450 requires the department to promulgate reasonable administrative regulations governing the taking of minnows and crayfish from the waters of the Commonwealth. 50 C.F.R. 17.11 establishes federally threatened and endangered fish species ~~provides that no person shall propagate or hold wildlife without a permit~~. This administrative regulation establishes the requirements for obtaining a propagation permit for aquatic organisms and establishes the requirements for propagation ~~that shall be followed by~~ permit holders.

Section 1. Definitions. (1) "Aquatic organisms" means fishes, frogs, crayfish, and other aquatic vertebrates and invertebrates.

(2) "Live bait fishes" means:

(a) Rough fishes, except Asian carp and federally threatened or endangered species as established in 50 C.F.R. 17.11; or

(b) Redear sunfish less than six (6) inches in length ~~"Minnows" are defined in 301 KAR 1:130~~.

(3) "Permit" means a fisheries commercial propagation permit.

(4) "Water supply lake" means a lake that ~~is~~:

(a) Is owned by a municipality or other public water supply entity;

(b) Provides potable water supply for the public;

(c) Is not owned by the state; and

(d) Is not managed by the department.

Section 2. Permit Requirements and Application Procedures.

(1) Before acquiring or propagating aquatic organisms, a person shall obtain a permit from the department by:

(a) Completing an application provided by the department; and

(b) Paying the permit fee as established in 301 KAR 3:022.

(2) The department shall issue a free permit to elementary, middle, and secondary schools and similar educational institutions if the propagated organisms are to be used for educational purposes ~~A permit applicant shall obtain the permit application form from the department~~.

Section 3. Acquisition of Brood Stock from Public Waters. (1) A permit holder may obtain from public waters a maximum of 1,500 live bait fishes or crayfish per surface acre of water used for propagation of a particular species.

(2) Each permit holder shall obtain brood stock from public waters no more than one (1) time for both live bait fishes ~~minnows~~ and crayfish.

(3) A conservation officer shall supervise the acquisition of brood stock from public waters.

(4) A permit holder shall use gear as established in ~~authorized by~~ 301 KAR 1:130 to acquire aquatic organisms from public waters. ~~[(a) Upon request at the time of application for a permit, the department may authorize an applicant to use seines larger than ten (10) feet in length, gillnets, and other fish collection gear.~~

~~(b) A permit holder shall attach a metal tag, furnished by the department, to authorized seines over ten (10) feet, gillnets, and other fish collection gear showing:~~

1. The name of the owner;

2. Gear type; and

3. The date the permit expires.

~~(c) A permit holder shall use approved fish collection gear in waters designated in the application.]~~

~~[(5) Section 4. Sale of Aquatic Organisms.] A permit holder may sell propagated aquatic organisms. [Section 5. The department may issue a permit with no fee to elementary, middle and secondary schools and similar educational institutions if the propagated organisms are to be used for educational purposes.]~~

Section 4[6]. A person may request ~~a~~ the commissioner may grant approval and issue a permit for paddlefish to be stocked and reared in a ~~approved~~ water supply lake ~~lakes~~ for aquaculture purposes as established ~~provided for~~ in 301 KAR 1:110 by completing a permit application and submitting it to the department.

(1) A municipality may allow a permitted second party to rear paddlefish ~~if the commissioner grants approval and issues a permit for paddlefish to be stocked and reared~~ in a ~~an approved~~ water supply lake.

(2) If a municipality or other public water supply entity allows a second party to rear paddlefish, a contractual agreement between the two (2) granting permission to use the lake for rearing paddlefish shall be required for the extent of the rearing period. A copy of the contractual agreement shall be submitted to the department before a permit is issued.

(3) Water supply lakes that are currently open to sport fishing shall be required to remain open to sport fishing throughout the length of the rearing of paddlefish.

(4) Paddlefish shall be the only species permitted to be stocked by the permit holder in a ~~the approved~~ water supply lake ~~lakes~~.

(5) The number of paddlefish stocking events for each rearing period shall be limited to one (1) for each approved water supply lake. Any additional stocking events shall require prior approval by the commissioner.

(6) The permit applicant shall list the name of each water supply lake on the permit application.

(7) A permit shall be obtained for every year of the paddlefish rearing period.

(8) The department shall not:

(a) Enforce the protection of the stocked paddlefish; or

(b) Establish paddlefish sport fish administrative regulations in any of the approved water supply lakes.

(9) Paddlefish that escape in the stream, either above or below the lake, shall not be considered property of the permit holder.

(10) The department shall not be responsible for any corrective actions associated with fish populations in the approved water supply lakes used for aquaculture purposes.

(11) If a municipality rears paddlefish without a contractual agreement with a second party, it shall provide the department with a name of a person responsible for the rearing of the paddlefish in the approved water supply lake ~~lakes~~.

(12) A permit holder may use gill nets to take paddlefish only from the approved water supply lakes listed on the permit. A

permit holder or a designated representative in possession of a valid copy of the permit shall be on site each time gill nets are used in the ~~approved~~ water supply lakes.

(a) The department shall be notified at least three (3) days ~~one (1) week~~ in advance of any paddlefish harvest from ~~a~~ approved water supply ~~lake~~ lakes, including the random sampling of the stocked paddlefish that require the use of gill nets.

(b) Gill nets shall only be used in ~~a~~ the approved water supply ~~lake~~ lakes from ~~November~~ December 1 through March 31.

(c) Gill nets shall not have a bar mesh size smaller than five (5) inches.

(d) A permit holder shall attach a metal tag provided by the department to each gill net used.

(e) Paddlefish shall be the only species of fish harvested, ~~and~~ any other species of fish captured shall be immediately released without undue injury.

Section ~~5~~ 7. Inspection of Facilities and Revocation of Permits.

(1) A permit holder shall allow a conservation officer to inspect his or her facilities.

(2) The department shall:

(a) Revoke the permit of a person who violates ~~found guilty of violating~~ a statute or administrative regulation pertaining to propagation of aquatic organisms; ~~and~~

(b) Deny a permit for a person who has violated any department statute or administrative regulation within the last year; and

(c) Not renew the permit for a period of up to two (2) years of a person that has been found guilty of violating a statute or administrative regulation pertaining to propagation of aquatic organisms.

(3) Fees paid for revoked permits shall not be refunded.

(4) An individual whose permit has been denied, ~~or~~ revoked, or to whom a non-renewal period has been applied may request an administrative hearing pursuant to KRS Chapter 13B.

Section ~~6~~ 8. Incorporation by Reference. (1) "Fisheries Commercial Propagation Permit Application", 2006 ~~edition, Department of Fish and Wildlife Resources,~~ is incorporated by reference.

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

FRANK JEMLEY III, Acting Commissioner

REGINA STIVERS,

For DON PARKINSON, Secretary

APPROVED BY AGENCY: June 12, 2018

FILED WITH LRC: June 14, 2018 at noon

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, August 14, 2018)

301 KAR 2:172. Deer hunting seasons, zones, and requirements.

RELATES TO: KRS 150.010, 150.177, 150.180, 150.411(3), 150.990, 237.110

STATUTORY AUTHORITY: KRS 150.025(1), 150.170, 150.175, 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.170 authorizes exemptions for certain people from hunting license and permit requirements. KRS 150.175 authorizes the kinds of licenses and

permits to be issued by the department. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or KAR Title 301 ~~[KAR]~~. This administrative regulation establishes deer hunting seasons and zones, legal methods of taking, and checking and recording requirements for deer hunting.

Section 1. Definitions. (1) "Additional deer permit" means a permit that allows the holder to take up to two (2) additional deer beyond those allowed by the statewide permit in the following combinations:

(a) One (1) antlered deer and one (1) antlerless deer; or

(b) Two (2) antlerless deer.

(2) "Additional deer permit" means a permit that allows the holder to take up to two (2) additional deer beyond those allowed by the statewide permit in the following combinations:

(a) One (1) antlered deer and one (1) antlerless deer; or

(b) Two (2) antlerless deer.

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

(3) ~~(2)~~ (3) "Air gun" means a pneumatic gun fired by a charge of compressed air.

(4) ~~(3)~~ (4) "Antlered deer" means a male or female deer, excluding male fawns, with a visible antler protruding above the hairline.

(5) ~~(4)~~ (5) "Antlerless deer" means a male or female deer with no visible antler protruding above the hairline.

(6) ~~(5)~~ (6) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(7) ~~(6)~~ (7) "Arrow" means the projectile fired from a bow or crossbow.

(8) ~~(7)~~ (8) "Centerfire" means a type of gun that detonates a cartridge by the firing pin striking a primer in the middle of the end of the cartridge casing.

(9) ~~(8)~~ (9) "Crossbow" means a bow with a string designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(10) ~~(9)~~ (10) "Deer" means a member of the species *Odocoileus virginianus*. (10) "Deer management permit" means a permit that allows the holder to take up to fifteen (15) additional deer beyond those allowed by the statewide permit in the following combinations:

(a) One (1) antlered deer and no more than fourteen (14) antlerless deer; or

(b) No more than fifteen (15) antlerless deer.

(11) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(12) "License year" means the period from March 1 through the [following] last day of February.

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

(14) "Muzzle-loading gun" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(15) "Novice deer hunter" means a person who has not harvested more than two (2) deer in Kentucky in the last ten (10) years.

(16) "Special deer hunt" means a one (1) or two (2) day deer hunt sponsored and overseen by the department on private land that:

(a) Allows a novice deer hunter to use a modern gun outside of modern gun deer season; and

(b) Shall be made available only to a:

1. Kentucky resident;

2. Person enrolled as a resident or non-resident student in a public or non-public postsecondary institution located in Kentucky; or

3. Member of the United States military or his or her spouse or children stationed at a military base in Kentucky [department-sponsored one (1) or two (2) day deer hunt on private land that allows novice deer hunters to use a modern gun outside of modern gun deer season].

(17) ~~(16)~~ (17) "Statewide deer hunting requirements" means the

season dates, zone descriptions, bag limits, and other requirements for deer hunting established in this administrative regulation.

(18) "Statewide deer permit" means a permit, which, in conjunction with appropriate licenses, seasons, and methods, allows the holder to take:

(a) One (1) antlered deer and no more than three (3) [one (1)] antlerless deer; or

(b) No more than four (4) [Two (2)] antlerless deer.

(19)[(47)] "Youth" means a person under the age of sixteen (16) by the date of the hunt.

(20) "Youth deer permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to take:

(a) One (1) antlered deer and no more than three (3) antlerless deer; or

(b) No more than four (4) antlerless deer.

(21)[(48)] "Zone" means an area consisting of counties designated by the department within which deer hunting season dates and limits are set for the management and conservation of deer in Kentucky.

Section 2. License and Deer Permit Requirements. (1) Unless license exempt, as established in [exempted by] KRS 150.170, a person shall carry proof of purchase of a valid Kentucky hunting license and valid deer permit while hunting.

(2) ~~[A] In lieu of a statewide deer permit or a license or permit that grants statewide deer hunting privileges, a person possessing a valid junior statewide hunting license shall not use more than two (2) junior deer hunting permits.~~

(3) ~~An additional [deer management permit shall not be valid unless accompanied by a valid Kentucky hunting license and a statewide deer permit or a license or permit that grants statewide deer hunting privileges.~~

(3) Unless license exempt, as established in KRS 150.170, a youth shall carry proof of purchase of a valid Kentucky youth hunting license and a valid youth deer permit while hunting.

Section 3. Hunter Restrictions. (1) A deer hunter shall not:

(a) Take a deer except during daylight hours;

(b) Use dogs, except leashed tracking dogs, to recover a wounded deer;

(c) Take a deer that is swimming;

(d) From a vehicle, boat, or on horseback, take a deer, except that a hunter with a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform; and

(e) Possess or use a decoy or call powered by electricity from any source.

(2) A person shall only use the equipment established in paragraphs (a) through (e) of this subsection to take a deer:

(a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A firearm:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger; and

2. Loaded with centerfire, single projectile ammunition designed to expand upon impact;

(c) A muzzle-loading gun;

(d) A shotgun loaded with a shell containing single projectile ammunition designed to expand upon impact; or

(e) An air gun:

1. Of .35 caliber or larger;

2. Charged by an external tank; and

3. Loaded with single projectile ammunition designed to expand upon impact.

(3) A person shall only use a weapon that complies with the appropriate season established in Section 5 of this administrative regulation to take a deer.

(4) A crossbow shall contain a working safety device.

(5) A person shall not use a magazine capable of holding more than ten (10) rounds to take a deer.

Section 4. Hunter Orange Clothing Requirements. (1) During

the modern gun deer season, muzzle-loader season, and any youth gun season, a person hunting any species during daylight hours and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest except while hunting waterfowl.

(2) During an elk firearm season, as established in 301 KAR 2:132, a person hunting any species and any person accompanying a hunter within the elk restoration zone, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except while hunting waterfowl.

(3) The hunter orange portions of a garment worn to fulfill the requirements of this section:

(a) May display a small section of another color; and

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

(4) A camouflage-pattern hunter orange garment worn without additional solid hunter orange on the head, back, and chest shall not meet the requirements of this section.

Section 5. Statewide Season Dates. (1) A deer hunter may use archery equipment to hunt deer statewide from the first Saturday in September through the third Monday in January.

(2) A deer hunter may take deer with a modern gun statewide beginning the second Saturday in November for:

(a) sixteen (16) consecutive days [in Zones 1 and 2; and

(b) Ten (10) consecutive days in Zones 3 and 4].

(3) A deer hunter may use a muzzle-loading gun to hunt deer statewide:

(a) For two (2) consecutive days beginning the third Saturday in October;

(b) For nine (9) consecutive days beginning the second Saturday in December; and

(c) During any season in which a modern gun may be used to take deer.

(4) A deer hunter may use a crossbow to hunt deer statewide:

(a) From October 1 through the end of the third full weekend in October;

(b) From the second Saturday in November through December 31; and

(c) During any season in which a gun may be used to take deer.

(5) A legal resident hunter sixty-five (65) years or older may hunt with a crossbow from the first Saturday in September through the third Monday in January.

(6) There shall be a youth gun season[-] for two (2) consecutive days beginning on the second Saturday in October, in which a youth deer hunter[-]

~~(a) May take antlered or antlerless deer and shall use a legal method to do so; and~~

~~(b) shall comply with this administrative regulation and all other statewide deer hunting requirements.~~

(7) There shall be a free youth weekend for two (2) consecutive days beginning on the Saturday after Christmas during which a youth:

(a) Shall not be required to have a hunting license or deer permit; and

~~(b) [May take antlered or antlerless deer and shall use a legal method to do so; and~~

~~(c) Shall comply with this administrative regulation and all other statewide deer hunting requirements. [(8) A deer hunter may take antlerless deer with a modern gun in Zone 1 counties for two (2) consecutive days beginning on the last Saturday in September.]~~

Section 6. Zones. (1) Zone 1 shall consist of Anderson, Ballard, Boone, Bracken, Bullitt, Caldwell, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Franklin, Fulton, Gallatin, Grant, Graves, Green, Hardin, Harrison, Hart, Henderson, Henry, Hickman, Hopkins, Jefferson, Kenton, Larue, Livingston, Lyon, Marshall, Mason, McClean, McCracken, Mercer, Muhlenberg, Nelson, Oldham, Owen, Pendleton, Robertson, Scott, Shelby, Spencer, Todd, Trigg, Trimble, Union, Washington, Webster, and Woodford Counties.

(2) Zone 2 shall consist of Adair, Allen, Barren, Bath, Bourbon,

VOLUME 45, NUMBER 3 – SEPTEMBER 1, 2018

Boyd, Boyle, Breckinridge, Butler, Carter, Casey, Clark, Daviess, Edmonson, Fayette, Fleming, Grayson, Greenup, Hancock[~~Hart, Henderson~~], Jessamine, Lawrence, Lewis, Lincoln, Logan, Madison, Marion, Meade, Metcalf, Monroe, Montgomery[~~Mason, McLean, Mercer, Muhlenberg~~], Nicholas, Ohio, Taylor[~~Todd~~], and Warren[~~Union~~] Counties.

(3) Zone 3 shall consist of[~~Adair, Allen, Barren, Bath, Boyle, Breckinridge, Butler, Casey, Clark,~~] Cumberland,[~~Daviess, Edmondson,~~] Elliott, Estill, Garrard[~~Hancock~~], Johnson, Laurel[~~Lincoln, Madison, Meade, Metcalf, Monroe, Montgomery,~~] Morgan, Powell, Pulaski, Rowan, Simpson, Wayne[~~Taylor, Warren~~], and Wolfe Counties.

(4) Zone 4 shall consist of Bell, Breathitt, Clay, Clinton, Floyd,[~~Garrard,~~] Harlan, Jackson, Knott, Knox,[~~Laurel,~~] Lee, Leslie, Letcher, Magoffin, Martin, McCreary, Menifee, Owsley, Perry, Pike,[~~Pulaski,~~] Rockcastle, Russell,[~~Wayne,~~] and Whitley Counties.

Section 7. Season and Zone Limits. (1) A person shall not take more deer than what each zone allows, as established in this section.

~~(2)[than four (4) deer statewide in a license year except:~~

~~(a) As authorized in 301 KAR 2:111, 2:176, 2:178, and 3:100; and~~

~~(b) A person may take an unlimited number of antlerless deer in Zone 1 if the person has purchased the appropriate additional deer permits[if the person has purchased the appropriate additional deer permits].~~

~~(3)[(2)] A person shall not take more than one (1) antlered deer per license year, regardless of the permit type used, except as established in 301 KAR 2:111, 2:178, and 3:100.~~

~~(4) A person may take a total of four (4) deer in Zone 2.~~

~~(5)[(3)] In Zone 3, a person may take up to a total of four (4)[two (2)] deer, except that a firearm or air gun shall not be used to take a total of more than one (1) antlerless deer[with a gun].~~

~~(6)[(4)] In Zone 4, a person may take one antlerless deer, but only during:~~

~~(a) Archery season;~~

~~(b) Crossbow season;~~

~~(c) Any youth weekend; or~~

~~(d) The last three (3) days of the December muzzleloader season. **[(7) A person shall purchase a deer management permit in order to harvest more than four (4) deer]**[Only two (2) deer with a gun; and~~

~~(b) Only antlered deer during:~~

~~1. Modern gun season;~~

~~2. Early muzzleloader season; and~~

~~3. The first six (6) days of the December muzzleloader season.~~

~~(5) The aggregate bag limit for Zones, 2, 3, and 4 shall be four (4) deer per hunter[.]~~

Section 8. Supervision of Youth Gun Deer Hunters. (1) An adult shall:

(a) Accompany a person under sixteen (16) years old; and

(b) Remain in a position to take immediate control of the youth's gun.

(2) An adult accompanying a youth hunter shall not be required to possess a hunting license or deer permit if the adult is not hunting.

Section 9. Harvest Recording. (1) Immediately after taking a deer, and prior to moving the carcass, a person shall record, in writing:

(a) The species taken;~~;~~

(b) The date taken;~~;~~

(c) The county where taken; and

(d) The sex of the deer taken on one (1) of the following:

1. The hunter's log section on the reverse side of a license or permit;

2. The hunter's log produced in a hunting guide;

3. A hunter's log printed from the Internet;

4. A hunter's log available from any KDSS agent; or

5. An index or similar card.

(2) The person shall retain and possess the completed hunter's log while the person is in the field during the current hunting season.

Section 10. Checking a Deer. (1) A person shall check a

harvested deer before 11:59 p.m. on the day the deer is recovered by:

(a) Calling (800) 245-4263 and providing the requested information; or

(b) Completing the online check-in process at fw.ky.gov.

(2) A person who has checked in a deer shall record the confirmation number on a hunter's log.

(3) If a hunter removes the hide or head of a harvested deer before the deer is checked in, then the hunter shall retain the deer parts established in paragraphs (a) and (b) of this subsection:

(a) For antlered deer, the:

1. Head with antlers; or

2. Testicles, scrotum, or penis attached to the carcass; or

(b) For antlerless deer, the:

1. Head; or

2. Udder or vulva attached to the carcass.

(4) If a hunter transfers possession of a harvested deer, the hunter shall attach to the carcass a hand-made tag that contains the following information:

(a) The confirmation number;

(b) The hunter's name; and

(c) The hunter's telephone number.

(5) A person shall not provide false information while:

(a) Completing the hunter's log;

(b) Checking a deer; or

(c) Creating a carcass tag.

Section 11. Transporting and Processing Deer. (1) A person shall:

(a) Not transport an unchecked deer out of Kentucky;

(b) Have proof that a deer or parts of deer brought into Kentucky were legally taken; or

(c) Not sell deer hides except to a licensed:

1. Fur buyer;

2. Fur processor; or

3. Taxidermist.

(2) A taxidermist or an individual who commercially butchers deer shall not accept a deer carcass or any part of a deer without a valid disposal permit issued by the department pursuant to KRS 150.411(3) or a proper carcass tag as established in Section 10 of this administrative regulation.

(3) An individual who commercially butchers deer shall keep accurate records of the hunter's name, address, confirmation number, and date received for each deer in possession and retain the records for a period of one (1) year.

Section 12. Special Deer Hunt Program. (1) A special deer hunt shall:

(a) Consist of a minimum of ten (10) novice deer hunters selected on a first-come, first-served basis;

(b) Take place on private land with the permission of the landowner;

(c) **Only** be overseen and sponsored by department employees; and

(d) Take place during the archery deer season.

(2) A special deer hunt participant shall possess a valid hunting license and deer permit, except if the participant is license-exempt, as established in KRS 150.170.

Section 13. Antler Traps. A person shall not use a device that is designed to entangle or trap the antlers of a deer.

KAREN WALDROP, Deputy Commissioner

For FRANK JEMLEY, Acting Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: April 11, 2018

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

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

GENERAL GOVERNMENT CABINET

Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, August 14, 2018)

302 KAR 29:020. General provisions for structural pest control.

RELATES TO: KRS Chapter 217B, 7 U.S.C. 136l, 49 U.S.C. 51
STATUTORY AUTHORITY: KRS 217B.050

NECESSITY, FUNCTION AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes requirements related to structural pest control, including~~for~~ recordkeeping, the storage and handling of restricted use~~restricted-use~~ pesticides, trainee supervision, and certification denial, suspension, modification, or revocation.

Section 1. Pesticide Sales Agents. There shall be two (2) classifications of pesticide sales agent licenses: resident pesticide sales agent and remote pesticide sales agent. (1) An individual located within the Commonwealth of Kentucky who sells or distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user shall be licensed as a resident pesticide sales agent.

(2) An individual located outside the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky shall be licensed as a remote pesticide sales agent.

(3) An individual located outside the Commonwealth of Kentucky and employed by a dealer registered in Kentucky may be licensed as a resident pesticide sales agent.

(4) A resident pesticide sales agent license or remote pesticide sales agent license shall not be issued unless the applicant holds a valid Category 12 certification as provided in 302 KAR 28:050.

(5) An employee or agent of a manufacturer who sells pesticides solely to a dealer for redistribution or resale shall be exempt from licensure under this administrative regulation.

Section 2. Recordkeeping Requirements. (1) Pesticide sales agents. A remote pesticide sales agent shall provide the agent's~~his~~ license number to the purchaser at the commencement of the transaction and upon delivery of the pesticides, and shall have and maintain a system to ensure that restricted-use ~~restricted use~~ pesticides are delivered only to properly certified individuals. A resident pesticide sales agent or remote pesticide sales agent who is not employed by a dealer shall maintain the following records with respect to each sale of restricted use pesticides:

- (a) Brand, amount, and type of restricted use pesticide sold;
- (b) Buyer's name and address;
- (c) Certification number of the purchaser; and
- (d) Intended use: target pest or resale.

(2) Commercial and noncommercial structural applicators. Each~~All~~ commercial and noncommercial structural applicator ~~who applies~~~~applicators who apply~~ pesticides or any termiticides shall maintain the following records:

- (a) Date of application;
- (b) Name and address of person receiving services and location of performance of services;
- (c) Beginning~~time of~~ application and ending time of an application, if made in a school;
- (d) The target pests to be treated;
- (e) Brand or product name of pesticides applied;
- (f) A description of the use of the area where the pesticide application is made;
- (g) Estimated amount of each pesticide applied; and
- (h) Name of applicator.

(3) Retention.

(a) Each person~~All persons~~ required to maintain records under subsection (1) of this section shall retain the records for a period of at least two (2) years from the date of the sale and shall

submit copies monthly to the Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601.

(b) Each person~~All persons~~ required to maintain records under subsection (2) of this section shall retain the records for a period of at least three (3) years from the date of use or application.

(c) Maintenance of duplicate records shall not be required.

(d) If a use or application of a pesticide is made in the name of a person or business entity, maintenance of only one (1) set of records for each job or use shall be required by that person or business entity, even though one (1) or more persons may have used or applied pesticides.

(4) Availability. Records required under this section shall be made available to the department upon request.

Section 3. Storage and Handling of Pesticides. (1) Applicability. This administrative regulation shall apply to all persons holding a Category 7(a), Category 7(b), Category 8, or Category 12 license who have occasion to store pesticides.

(2) Standards for storage:

(a) Sites for the storage of pesticides shall be of sufficient size to store all stocks in designated areas;

(b) Storage sites shall be cool, dry, and well ventilated~~airy~~ or have an exhaust system installed to reduce concentrations of toxic fumes and to regulate temperatures and moisture. If an exhaust system is installed to reduce fumes, heat, or moisture, the ventilation exhaust shall not connect with offices or other areas frequented by people;

(c) Storage sites shall be adequately lighted so that labels and label information can be easily read;

(d) 1. Floor sweep compound of adsorptive clay, sand, sawdust, hydrated lime, or similar materials shall be kept on hand to absorb spills or leaks.

2. The contaminated material shall be disposed of per label directions; and

(e) Restricted-use~~Restricted use~~ pesticides shall be located in designated and segregated areas apart from general use pesticides.

1. These Segregated areas may remain open if the entire storage area is locked while~~when~~ authorized personnel cannot control access to the area.

2. Entrance to these segregated areas shall be plainly labeled on the outside with signs containing the words:

a. "Pesticide storage area"; and

b. "Danger" or "poison."

(3) Standards for transportation of pesticides. All pesticides transported on or in vehicles owned or operated by commercial structural applicators shall be transported consistent with 49 U.S.C. 51.

Section 4. Denial, Suspension, or Revocation of Pesticide Certification. The department shall review for possible denial, suspension, or revocation, the license or certification of any person if the licensee or certified person has been convicted or is subject to a final order imposing a civil or criminal penalty pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act of 1972, as amended, 7 U.S.C. 136l.

Section 5. Pesticide Application by Structural Commercial and Noncommercial Applicators. Any person governed by this administrative regulation shall be certified in Category 7(a), Structural Pest Control, pursuant to 302 KAR 29:060, before making application of pesticides to a structure, except new employees being trained pursuant to KRS 217B.560.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: June 14, 2018

FILED WITH LRC: June 14, 2018 at 11 a.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(As Amended at ARRS, August 14, 2018)

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", August 14/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[2/40/44])
- 400.1 Health Services (Amended 07/10/18[03/30/18] [2/40/44])
- 401 Health Services Administration and Personnel (Amended 03/30/18[2/40/44])
- 402 Access to Treatment and Continuity of Care [Medical, Dental, and Mental Health] (Amended 07/10/18[03/30/18] [2/40/44])
- 402.1 Continuity of Care and Medical Discharge (Amended 03/30/18[2/40/44])
- 403 Medical Records (Amended 03/30/18[2/40/44])
- 404.1 Admission Screening for Physical and Behavioral Health[Mental] Challenges (Amended 3/30/18[12/15/17] [2/40/44])
- 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[2/40/44])
- 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[2/40/44])
- 404.13 Preventative Health Care (Amended 03/30/18[10/11/13])
- 404.14 Family Planning Services (Amended 03/30/18[2/40/44])
- 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] [2/40/44])
- 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[2/40/44])
- 405.5 Behavioral[Mental] Health Emergencies (Amended 07/10/18[03/30/18] [10/11/13])
- 405.6 Psychiatric Hospitalization (Amended 03/30/18[2/40/44])
- 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[Orthoses], Prostheses[Protheses] and Other Aids to Reduce the Effects of Impairment[Impairments] (Amended 08/14/18[07/10/18] 03/30/18 [10/11/13])
- 411 Notification in Emergencies (Amended 03/30/18[2/40/44])
- 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[2/40/44])
- 424.1 Emergency Plans for Central Office (Amended 03/30/18[10/11/13])
- 426 Dietary Services (Amended 03/30/18[2/40/44])
- 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[2/40/44])
- 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, 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.

PUBLIC PROTECTION CABINET
Kentucky Department of Insurance
Agent Licensing Division
(As Amended at ARRS, August 14, 2018)

806 KAR 9:360. Pharmacy Benefit Manager License.

RELATES TO: KRS 304.1-050, 304.2-310, 304.9-053, 304.9-054, 304.9-133, 304.10-040, 304.17A-163, 304.17A-165, 304.17A-607, 45 C.F.R. 156.122

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-053(2), 304.9-054(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes[provides that] the Commissioner of Insurance to promulgate[may make] reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-053(2) requires a pharmacy benefit manager seeking a license to apply to the commissioner in writing on a form provided by the department. KRS 304.9-054(6) requires the department to promulgate administrative regulations to implement and enforce the provisions of KRS [304.9-054], 304.9-053, 304.9-054, 304.9-055, and 304.17A-162. This administrative regulation establishes requirements for the licensure of pharmacy benefit managers.

Section 1. Definitions. (1) "Admitted insurer" is defined by KRS 304.10-030(1).

(2) "Commissioner" is defined by KRS 304.1-050(1).

(3) "Department" is defined by KRS 304.1-050(2).

(4) "Maximum allowable cost" is defined by KRS 304.17A-161(3).

(5) "Nonadmitted insurer" is defined by KRS 304.10-030(8).

(6) "Pharmacy benefit manager" is defined by KRS 304.9-020(15).

Section 2. Initial License and Renewal. (1) An applicant for a pharmacy benefit manager license or renewal license from the commissioner shall submit the following in hard copy format to the department:

(a) The Pharmacy Benefit Manager License Application;

(b) The fee set forth in KRS 304.9-053(3) and the penalty fee, if applicable, set forth in KRS 304.9-053(5);

(c) The following evidence of financial responsibility:

1. A certificate of insurance from either an admitted insurer or a nonadmitted insurer~~[The certificate of an insurer authorized to write legal liability insurance in this commonwealth], in accordance with KRS 304.10-040~~, stating that the insurer has and will keep in effect on behalf of the pharmacy benefit manager a policy of insurance covering the legal liability of the licensed pharmacy benefit manager's erroneous acts or failure to act in his or her capacity as a pharmacy benefit manager, and payable to the benefit of any aggrieved party in the sum of not less than \$1,000,000~~[one million dollars (\$1,000,000)]~~; or

2. A cash surety bond issued by a corporate surety authorized to issue surety bonds in this commonwealth, in the sum of \$1,000,000~~[one million dollars (\$1,000,000)]~~, which shall be subject to lawful levy of execution by any party to whom the licensee has been found to be legally liable;

(d) The name of at least one (1) responsible individual who shall be responsible for the pharmacy benefit manager's compliance with KRS Chapter 304 and KAR Title 806~~[the insurance laws and administrative regulations of this state]~~ and who is:

1. Licensed as an administrator in Kentucky; and

2. Designated in accordance with KRS 304.9-133;

(e) If performing utilization review in accordance with KRS 304.17A-607, the pharmacy benefit manager's utilization review registration number;

(f) The following written policies and procedures to be used by the pharmacy benefit manager:

1. Appeals dispute resolution process;

2. Maximum allowable cost appeals process;

3. Exceptions policy and override policy required by 45 C.F.R. 156.122(c) and KRS 304.17A-163 and KRS 304.17A-~~f~~165; and

4. Pharmacy and Therapeutics committee membership standards and duties as required by 45 C.F.R. 156.122(a); and

(g) Proof of registration with the Kentucky Secretary of State.

(2)(a) Upon receipt of a complete application as required by subsection (1) of this section, the commissioner shall review the application and:

1.a. Approve the application; and

b. Issue the applicant the pharmacy benefit manager license;

2. Notify the applicant that additional information is needed in accordance with paragraph (b) of this subsection; or

3. Deny the application in accordance with paragraph (c) of this subsection.

(b)1. If supplemental or additional information is necessary to complete the application, the applicant shall submit that information within thirty (30) days from the date of the notification from the commissioner.

2. If the missing or necessary information is not received within thirty (30) days from the date of the notification, the commissioner shall deny the application unless good cause is shown. To determine if the applicant has demonstrated good cause, the commissioner shall weigh the justification provided against any other issues, such as if the applicant had submitted any prior good cause excuses for the same request. Some examples of good cause include:

a. Personnel related issues, such as the individual responsible for responding was transferred, terminated, or became incapacitated due to illness;

b. A need to obtain information that was not immediately

available and had to be requested from other sources;

c. A lack of sufficient resources to respond to large requests; and

d. Information technology (IT), operational, or equipment malfunctions causing unexpected delays.

(c) If the commissioner determines that the applicant does not meet the requirements for licensure, or if the application is denied pursuant to paragraph (b)2. of this subsection, the commissioner shall:

1. Provide written notice to the applicant that the application has been denied; and

2. Advise the applicant that a request for a hearing may be filed in accordance with KRS 304.2-310.

(3)(a) Except as provided in paragraph (b) of this subsection, a pharmacy benefit manager license shall:

1. Be renewed annually as required by subsection (4)~~[(5)]~~ of this section; or

2. Expire on March 31.

(b) If the license was issued on or before January 1, 2017, the license shall expire on March 31, 2018, if not renewed as required by subsection (4)~~[(5)]~~ of this section.

(4)(a) A renewal application shall include the items required by subsection (1) of this section.

(b) If the renewal application is submitted between April 1 and May 31, the application required by subsection (1) of this section shall be accompanied by a penalty fee of \$500 in accordance with KRS 304.9-053(5).

Section 3. Notice of Changes. Within thirty (30) days of any change, a licensee shall notify the commissioner of all changes among its members, directors, officers, and other individuals designated or registered to the license, and any changes to its written policies and procedures submitted pursuant to Section 2(1)(f) of this administrative regulation.

Section 4. Incorporation by Reference. (1) "Pharmacy Benefit Manager License Application", Form PBM, 01/2017~~[09/2016]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

NANCY G. ATKINS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: June 14, 2018

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

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.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Aging and Independent Living

Division of Quality Living

(As Amended at ARRS, August 14, 2018)

910 KAR 1:090. Personal care attendant program and assistance services.

RELATES TO: KRS Chapter 13B, 205.455(4), 205.900 - 205.925~~[-337.275]~~

STATUTORY AUTHORITY: KRS 194A.050(1), 205.910, 205.920

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.910 requires the Cabinet for Health and Family Services to establish an eligibility standard for personal care assistance services which takes into consideration the unique economic and social needs of severely physically disabled adults. KRS 205.920 authorizes the cabinet to promulgate administrative regulations to implement provisions concerning personal care assistance services. This

administrative regulation establishes the Personal Care Attendant Program.

Section 1. Definitions. (1) "Administrative support personnel" means staff designated within a contract agency who offer technical assistance to, and monitor the activities of, the qualified agency.

(2) "Approved plan" means an agreement between the department and a contract agency to administer the personal care attendant program.

(3) "Assessment" means the collection and evaluation of information:

(a) About a person's situation and functioning;

(b) To determine the applicant's or participant's service level; and

(c) To develop a plan of care utilizing a holistic, person centered approach by the evaluation team.

(4) "Attendant" means a person who provides personal care assistance services.

(5)[(4)] "Contract agency" means the agency with which the cabinet has contracted to administer the personal care attendant program.

(6)[(5)] "Department" means the Department for Aging and Independent Living or its designee["District" is defined by KRS 205.455(4)].

(7)[(6)] "Evaluation team" is defined by KRS 205.900(2).

(8)[(7)] "Evaluation team's recommendations" means the official response of the evaluation team signed by all three (3) team members.

(9) "Immediate family" means a legal guardian, parent, step parent, foster parent, adoptive parent, sibling, grandparent, child, or spouse.

(10)[(8)] "Income eligibility standard" means a formula to determine an applicant's income eligibility for the personal care attendant program[which addresses the "unique economic needs of severely physically disabled adults"] pursuant to KRS 205.910(1).

(11) "Natural supports" means a non-paid person or persons or community resource, that can provide, or has historically provided, assistance to the participant or due to the familial relationship, would be expected to provide assistance.

(12)[(9)] "Participant" means a person accepted into the personal care attendant program and who has met the eligibility requirements of a severely physically disabled adult.

(13)[(10)] "Personal care assistance services" is defined by KRS 205.900(3).

(14)[(11)] "Prescreening" means a process that assesses whether or not an applicant appears to meet the basic requirements for eligibility.

(15)[(12)] "Qualified agency or organization" is defined by KRS 205.900(4).

(16) "Reassessment" means reevaluation of the situation and functioning of a client.

(17)[(13)] "Service area" means those counties listed in an approved plan of the qualified agency or organization.

(18)[(14)] "Severely physically disabled adult" is defined by KRS 205.900(6).

(19)[(15)] "Subsidy" means a financial reimbursement paid by the cabinet to an adult who qualifies to receive personal care assistance services in accordance with KRS 205.905(1).

(20)[(16)] "Work agreement" means an agreement of time and tasks developed by the participant as the employer[,] for the attendant as the employee.

Section 2. Eligibility. (1) To be eligible for participation in the personal care attendant program an applicant shall:

(a) Be a severely physically disabled adult who:

1. Meets the qualifications required by KRS 205.905(1); and

2. Has the ability to be responsible for performing the functions required by KRS 205.905(2) to receive a subsidy;

(b) Agree to obtain an initial assessment[evaluation] for eligibility and a re-assessment[re-evaluation] at least annually[biennially] by an evaluation team in accordance with KRS

205.905(2)(b)1 and 2;

(c) Be able to reside or reside in a non-institutional setting;

(d) Work with a program coordinator in establishing a work agreement between the participant and attendant;[and]

(e) Be responsible for attendant payroll reports and computing required employer tax statements;

(f) Have immediate family or natural supports to meet the individual's needs if[when] a paid attendant is not available; and

(g) Not be receiving the same services obtainable from any federal, state, or combination of federal and state funded programs. If the individual's needs cannot be met with the funding received from any of those programs, the individual may be eligible to receive personal care attendant program services above and beyond what the other programs provide.

(2) An applicant shall be accepted for service if:

(a) The evaluation team[A program coordinator] determines that the applicant is eligible to participate in the program in accordance with this section;[and]

(b) The department agrees that[with] the determination in accordance with this section; and

(c) Funds are available.

(3)[(4)] An applicant shall be income eligible if they are eligible for:

(a)[receives] Supplemental Security Income; or

(b) Medicaid[health care, the applicant shall be income eligible].

(4) If an applicant's gross annual income is less than 200 percent of the official poverty income guidelines published annually in the Federal Register by the United States Department of Health and Human Services, the applicant shall be income eligible.

(5) If an applicant is not eligible pursuant to subsections (3) or (4) of this section, the income eligibility standard shall be determined by a program coordinator using the[with a DAIL-PCAP-05[08] Income Eligibility form as follows:

(a) The program coordinator shall determine the adjusted gross income by deducting:

1. The cost of unreimbursed[un-reimbursed] extraordinary medical expenses[verified with a DAIL-PCAP-03 Authorization Statement for Extraordinary Medical Expenses], and impairment-related expenses as recorded on the PCAP-05;

2. An amount adjusted for family size based on 200[400] percent of the official poverty guidelines published annually in the Federal Register by the United States Department of Health and Human Services; and

3. Dependent care expenses.

(b) If the adjusted gross income is less than 200 percent of the annual federal poverty guidelines, the applicant shall be[is] income eligible.

(c) If the adjusted gross income is more than 200 percent of the annual federal poverty guidelines, the following shall be used to determine the applicant's contribution to cost of care:

1. From the adjusted gross income subtract a current annual standard deduction for one (1) as determined by the Internal Revenue Service;

2. Divide the remaining income by two (2) to allow for the unique economic and social needs of the severely disabled adult;

3. Divide the final income by fifty-two (52) weeks; and

4. Calculate the estimated cost of personal care services by multiplying the estimated number of hours of personal care assistance services per week times the cost per hour of service.

(d)1. If the resulting monetary amount in paragraph (c)3₁ of this subsection is less than the estimated cost of services calculated in paragraph (c)4₁ of this subsection[of this section], the qualified agency shall provide the full subsidy.

2. If the resulting monetary amount in paragraph (c)3₁ of this subsection is more than the estimated cost of services calculated in paragraph (c)4₁ of this subsection, the participant shall pay the difference between the cost of services and the qualified agency's maximum hourly rate.

(6) The income eligibility criteria set out in subsections (3) through[-] (5) of this section shall be applied to a current participant at the time of the participant's next reassessment[re-evaluation].

Section 3. Application and Evaluation. (1) A referral to the personal care attendant program may be made by:

- (a) The applicant[Self];
- (b) Family;
- (c) Another person; or
- (d) Agency.

(2) If an opening for services is available, a program coordinator shall:

(a) Visit and assist an applicant in the completion of a [DAIL-]PCAP-01 Application for Services; and

(b) Complete and have all evaluation team members sign a [DAIL-]PCAP-04[07] Evaluation Team Findings and Recommendations.

(3) A qualified agency shall:

(a) Report an evaluation team's findings and recommendations to the[a] contract agency for final review of the applicant or participant; and

(b) Notify the applicant or participant if the findings and recommendations are accepted by the contract agency.

(4) A contract agency shall:

(a) Review recommendations of the evaluation team and notify the qualified agency in writing of the final determination within ten (10) business days of receipt of the recommendations; and

(b) Notify the applicant or participant in writing within twenty (20) business days of receipt of the recommendations in accordance[compliance] with KRS 205.905(3):

1. Whether the recommendations of the evaluation team are accepted or not accepted; and
2. The reasons for the contract agency's decision.

Section 4. Waiting List. (1) If the personal care attendant program is at capacity, an eligible applicant shall be placed on an approved waiting list and, as a vacancy occurs, be accepted for services in priority order based on the following categories:

(a) Emergency situation because of an imminent[eminent] danger to self or at risk of institutionalization;

(b) Urgent situation because there are no community supports; or[and]

(c) Stable because there is a currently reasonable support system.

(2) Every effort shall be used to provide referrals to other services if personal care assistance services are not available.

Section 5. Relocation. (1) If an eligible participant receiving personal care assistance services relocates to another service area to complete a training or educational course, the participant shall remain a client of the service area of origin, if the:

(a) Participant considers the personal care attendant program service area[district] of origin to be his or her place of residence; and

(b) Participant's purpose for relocation is to complete a course of education or training to increase employment skills.

(2) The receiving service area shall provide courtesy monitoring to coordinate the aspects of program requirements.

(3) The service area of origin shall retain responsibility for:

(a) Payment of a subsidy, if the participant meets eligibility for the duration of the educational or training course; and

(b) Monthly programmatic and financial reports.

(4) The receiving service area shall forward a copy of reports to the service area of origin.

(5) If a participant moves from one service area of origin to another for any reason other than relocation for a training or educational course, the participant's program funding shall be transferred to the receiving service area.

(6) If a participant's personal care assistance services terminate, the program funding shall return to the original[original] service area of origin.

Section 6. Suspension of Services. (1) Suspension of services shall occur for the following reasons:

(a) Condition improved – on reassessment[re-evaluation] a participant is determined to need less than fourteen (14) hours of care per week;

(b) Condition worsened – on reassessment[re-evaluation] a participant is determined to need more hours of care than the program can provide and to be in danger if left alone due to lack of other caregivers;

(c) Participant's behavior clearly presents a danger to the program coordinator or attendant;

(d) Participant does not submit required employer taxes to the qualified agency;

(e) Participant moves from Kentucky;

(f) Participant moves into an area of Kentucky where no services are contracted, unless the closest qualified agency determines that it remains feasible to provide services to the relocation area[such relocation remains feasible for the closest qualified agency, feasibility being determined by the qualified agency];

(g) Participant fails to hire an attendant;

(h) Participant dies;

(i) Participant chooses to:

1. Give up personal care assistance services; and

2. Be admitted to a long-term care facility; or

(j) Participant requests suspension of services.

(2) Services may be suspended if either of the following occurs:

(a) A non-return of an overpayment of services; or

(b) may result in services being suspended.

(3) An intentional deception to obtain services may result in services being suspended.

(3) Suspension of services shall occur if there are any substantiated deceptive practices of paying for services that are:

(a) Not actually provided; or

(b) Duplicative services obtained through another program or agency at the same time.

Section 7. Participant Responsibilities. A participant shall:

(1) Meet the eligibility requirements to receive a subsidy set out in Section 2(1) of this administrative regulation;

(2) Select an attendant for personal care assistance services including screening and interviewing the attendant for employment;

(3) Instruct the attendant on specific personal care assistance services;

(4) Evaluate the attendant's personal care assistance services;

(5) Discuss and come to a written agreement with each attendant about:

(a) What Services that shall be provided; and

(b) The terms of employment including:

1. Time;

2. Hours;

3. Duties; and

4. Responsibilities;

(6) Keep records and report to the qualified agency attendant hours worked for payment to the attendant;

(7) Be responsible for all requirements of being an employer, including[computing]:

(a) Employee payroll;

(b) Withholdings;

(c) Actual payment of required withholdings; and

(d) Taxes appropriate to being an employer; and

(e) Issuing the employee a W-2 as required by the Internal Revenue Service;

(8) Negotiate for room and board for an attendant as specified in Section 9(4)[(5)](a) of this administrative regulation; and

(9) Coordinate with a program coordinator the aspects of program requirements.

Section 8. Attendant Responsibilities. (1) An attendant shall:

(a) Enter into and comply with the written agreement for terms of work required by Section 7(5) of this administrative regulation;

(b) Perform personal care assistance services and other tasks that may include:

1. Turning;

2. Repositioning;

3. Transferring;

4. Assistance with oxygen;

5. Hygiene;
 6. Grooming;
 7. Washing hair;
 8. Skin care;
 9. Shopping;
 10. Transportation;
 11. Chores;
 12. Light correspondence;
 13. Equipment cleaning; and
 14. Emergency procedures, if necessary;
 (c) Perform tasks consistent with the work agreement as instructed by the participant;
 (d) Report to work as scheduled;
 (e) Maintain the privacy and confidentiality of the participant;
 (f) If unable to report for work as scheduled, notify the participant at least six (6) hours in advance unless an emergency arises;
 (g) Maintain a list of emergency numbers;
 (h) Attend attendant training provided by the participant related to specific care needs;
 (i) Keep a daily record of hours worked and services rendered;
 (j) Submit to the participant documents and material necessary to comply with the formal payment process;
 (k) Meet with the participant and program coordinator for monitoring and coordinating the aspects of the program;
 (l) Disclose misdemeanor or felony convictions to the applicant or participant through a law enforcement agency;
 (m) Authorize a qualified agency to obtain Kentucky nurse ~~aid~~Aid-Abuse registry, central registry, Adult Protective Services caregiver misconduct registry, and criminal background checks as specified in Section 11(6) of this administrative regulation; and
 (n) Notify the program coordinator of conditions which seriously threaten the health or safety of the participant or attendant.
 (2) An individual shall not be hired as an attendant if the individual:
 (a) Has not submitted to the background checks specified in subsection (1)(m) of this section;
 (b) Is on any of the following registries:
 1. Kentucky nurse ~~aid~~Aid-Abuse registry~~[maintained in accordance with 906 KAR 4:100];~~
 2. Adult Protective Services caregiver misconduct registry; or
 3. Central registry;
 (c) Has pled guilty or been convicted of committing:
 1. A felony[sex crime or violent] crime related to theft or drugs; or
 2. A misdemeanor or felony crime related to sexual or violent offenses including assault; or[and]
 (d) Is not able to understand and carry out a participant's instructions.

Section 9. Attendant Payment. (1) The amount of attendant payment~~determined~~ shall be in compliance with the following:

(a) The maximum hourly subsidized rate for direct personal care assistance services shall be no more than ten (10) percent over the current minimum wage rate established by KRS 337.275.

(b) If the hourly subsidized rate established in paragraph (a) of this subsection is insufficient to obtain direct personal care assistance services in a specific Kentucky service area~~[district]~~, a provider may request a higher rate by mailing a written request and justification of the need for a higher rate to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Minimum hours for direct personal care assistance services per week shall be fourteen (14).

(d) Maximum hours for direct personal care assistance services per week shall be forty (40).

(2) In an extreme situation that results in a temporary increased need for services, such as the illness of the participant, or illness or death of a caregiver, a temporary waiver of maximum hours and the resulting cost may be granted by the contract agency.

(3) A special night rate may be negotiated:

(a) If a participant does not:

1. Require an attendant during the day; or
 2. Need direct personal care assistance services from this attendant; or

(b) To provide for caregiver respite service.

(4)(a) It shall be the responsibility of the participant who is in need of a live-in attendant to directly negotiate, if necessary, with a potential attendant on room and board for personal care assistance services.

(b) A live-in attendant shall not be excluded from employment as a part-time attendant.

(c) Maximum payment under this arrangement shall be for forty (40) hours of personal care assistance services per week, and overtime shall not be provided or paid.

Section 10. Program Coordinator Qualifications and Responsibilities. (1) A program coordinator shall meet at least one (1) of the following minimum qualifying requirements:

(a) A bachelor's degree with two (2) years experience working in the disability community; or

(b) ~~Completion of~~Complete fifty-four (54) semester hours of college with four (4) years ~~[experience]~~ working in the disability community.~~;~~

(2) The department may waive the education requirements required by subsection (1) of this section based on consideration of work experience involving:

(a) Interviewing to select an employment candidate;

(b) More than five (5) years of experience working with the disability community~~[Community services work]~~;

(c) Administrative work involving:

1. The review of assessment criteria~~;~~;

2. Monitoring program compliance;

3. Training program participants, employees and staff regarding program requirements; or

(d)~~[Reviewing]~~;

(e) ~~Monitoring~~;

(f) ~~Training~~; or

(g) Determination~~[Determining]~~ of eligibility for human services programs.

(3) If employed, a program coordinator shall complete the following hours of training:

(a) Within thirty (30) working days of hire:

1. Complete a minimum of sixteen (16) hours of orientation program training; and

2. Shadow an experienced program coordinator for one (1) to two (2) days;

(b) Within the first six (6) months of employment, complete a minimum of fourteen (14) hours of initial program coordination training; and

(c) Complete follow-up quarterly trainings with the department and contract agency.

(4) A program coordinator shall:

(a) Collaborate with the evaluation team to determine if an applicant is eligible to participate in the personal care attendant program in accordance with Section 2 of this administrative regulation;

(b) Complete the application process required by Section 3(2)(a) of this administrative regulation;

(c) Maintain a waiting list~~[s]~~ of eligible applicants who are unable to be funded for program participation until an opening occurs; and

(d) Perform the assessments~~[evaluations]~~ required in Section 12(2) of this administrative regulations.

(5) A program coordinator or program coordinator's designee shall:

(a) Identify severely physically disabled adults who may be eligible for participation in the personal care attendant program;

(b) Prescreen an applicant for eligibility to participate in the personal care attendant program;

(c) Assist a participant in learning how to conduct an interview and screen a prospective attendant;

(d) Assist in or arrange for the training of the attendant, if necessary;

(e) Review with the participant the results of an assessment or

~~reassessment~~~~[evaluation or re-evaluation]~~ signed by an evaluation team;

(f) Assist the participant in completing and updating a ~~[DAIL-]PCAP-06[9] Plan of~~~~Individual~~ Care~~[Plan]~~;

(g) Assist the participant in developing a work agreement between the participant and attendant;

(h) Obtain a~~participant's agreement of release of information with a DAIL-]PCAP-02~~ Authorization for Release of Confidential Information from the participant;

(i) Monitor the program with each participant on a quarterly basis, including:

1. A face-to-face visit with the participant during at least two (2) of the quarters; and

2. Making verbal contact with the participant in the quarters that a face-to-face visit is not made;

(j) Assist the participant in finding a back-up attendant for:

1. An emergency; or

2. The regular attendant's time off;

(k) Assist in the recruitment and referral of an attendant, if requested;

(l) Submit monthly activity reports to a qualified agency as specified in Section 15(2) of this administrative regulation; and

(m) Assure that the participant:

1. Enters into agreement to pay employee taxes with a

~~[DAIL-]PCAP-03 Employer[04 Employee] Tax Agreement; and~~

2. Receives training in recordkeeping and tax responsibilities related to services.

Section 11. Qualified Agency Responsibilities. A qualified agency shall:

(1) Employ or contract with an evaluation team pursuant to KRS 205.905(2);

(2) Provide monthly programmatic and financial reports on an attendant per participant to the contract agency;

(3) Develop a procedure for:

(a) Payment of a subsidy; and

(b) Establishment of appropriate fiscal control within the qualified agency;

(4) Employ or contract for the services of a program coordinator;

(5) Oversee the training requirements for a program coordinator as specified in Section 10(3) of this administrative regulation;

(6) Obtain the following~~[checks]~~ on a potential attendant:

1. The results of a criminal record check from the Kentucky Administrative Office of the Courts ~~and[er]~~ equivalent out-of-state agency, if the potential attendant resided or worked outside of Kentucky during the year prior to employment;

2. Within ~~thirty (30)[fourteen-(14)]~~ days of the date of hire, the results of a central registry check as described in 922 KAR 1:470; and

3. Prior to employment, the results of a nurse aide ~~[abuse]~~ registry check as described in 906 KAR 1:100;

(7) Report evaluation team findings and recommendations to a contract agency as specified in Section 3(3) of this administrative regulation;~~[and]~~

(8) Maintain participant records as required by Section 15(1) of this administrative regulation; ~~and[.]~~

(9) Provide accessibility to services through proper evaluation of applicants who are deaf or hard-of-hearing by utilizing an interpreter service in accordance with KRS 12.290.

Section 12. Evaluation Team Members and Responsibilities.

(1) An evaluation team:

(a) Shall consist of a program coordinator; and

(b) May consist of:

1. An occupational or physical therapist;

2. A registered nurse;

3. A director or executive director of the qualified agency;

4. A fiscal officer of the qualified agency;

5. A mental health provider;

6. An in-home services coordinator; or

7. Another entity involved in the participant's care.

(2) The program coordinator of the evaluation team shall complete:

(a) An applicant's initial ~~assessment~~~~[evaluation with a DAIL-]PCAP-05 Evaluation]~~ to establish eligibility pursuant to KRS 205.905(2)(b)1; and

(b) A participant's ~~reassessment~~~~[re-evaluation with a DAIL-]PCAP-06 Annual Re-evaluation]~~, at least ~~annually~~~~[biennially]~~ for continuing services pursuant to KRS 205.905(2)(b)2, or more frequently if changes occur in the participant's situation.

Section 13. Contract Agency Responsibilities. The contract agency shall:

(1) Implement a personal care attendant program according to an approved plan;

(2) Assume fiscal accountability for state funds designated for the program;

(3) Provide necessary administrative support personnel within a contract agency office;

(4) Provide an appeals procedure and hearing process in compliance with:

(a) KRS Chapter 13B; and

(b) KRS 205.915;

(5) Monitor management practices, including program evaluation, to assure effective and efficient program operation and compliance with cabinet financial audit requirements;

(6) Provide, in conjunction with a qualified agency, a procedure for attendant payment;

(7) Review recommendations of an evaluation team and notify a participant and qualified agency as specified in Section 3(4) of this administrative regulation;

(8) Submit monthly program reports to the department as specified in Section 15(3) of this administrative regulation; and

(9) Maintain files and records for cabinet audit, including participant records and statistical reports.

Section 14. Department Responsibilities. The department shall:

(1) Provide a format for the approved plan for the personal care attendant program;

(2) Review proposed plans submitted by a contract agency to administer the personal care attendant program;

(3) Inform the contract agency in writing of the action taken regarding the proposed plan for administration of the personal care attendant program that shall include one (1) of the following outcomes:

(a) Approve the plan as submitted;

(b) Require the contract agency to revise the plan; or

(c) Reject the plan;

(4) Monitor the contract agency at least annually;

(5) Develop and revise program and fiscal requirements;

(6) Allocate available funding;

(7) Advocate for program expansion; and

(8) Provide technical assistance.

Section 15. Reporting and Recording. (1) An individual record for each participant shall be maintained by the qualified agency and shall include:

(a) The forms specified in Section 17 of this administrative regulation;

(b) A chronological record of contacts with[a]:

1. The participant;

2. The family;

3. The physician; and

4. Others involved in care with quarterly monitoring reports; and

(c) An assessment record of eligibility.

(2) A program coordinator shall:

(a) Submit completed reports for monthly activities to a qualified agency by a designated date in the contract; and

(b) Forward a copy to the contract agency.

(3) A contract agency shall make a copy of reports on monthly activities available to the department.

Section 16. ~~Appeals~~~~[Request for Fair Hearing]~~. An applicant or

participant may request an appeal[a fair hearing]:

- (1) In accordance with:
 - (a) KRS Chapter 13B; and
 - (b) KRS 205.915; and
- (2) Within thirty (30) days of any decision by the:
 - (a) Cabinet;
 - (b) Contract agency; or
 - (c) Qualified agency.

Section 17. Incorporation by Reference. (1) The following forms are incorporated by reference:

- (a) "[DAIL]-PCAP-01 Application for Services", edition 4/2018[2/08];
- (b) "[DAIL]-PCAP-02 Authorization for Release of Confidential Information", edition 4/2018[2/08];
- (c) "[DAIL]-PCAP-03 Employer Authorization Statement for Extraordinary Medical Expenses, edition 2/08
- (d) "[DAIL]-PCAP-04 Employee Tax Agreement", edition 4/2018[2/08];
- (e) "[DAIL]-PCAP-04[05 Evaluation", edition 2/08
- (f) "[DAIL]-PCAP-06 Annual Re-evaluation, edition 2/08;
- (g) "[DAIL]-PCAP-07 Evaluation Team Findings and Recommendations", edition 4/2018 [2/08];
- (e)[(h)] "[DAIL]-PCAP-05[08] Income Eligibility", edition 4/2018[2/08]; and
- (f) [(i)] "[DAIL]-PCAP-06 Plan of Care[09 Individual Care Plan]", edition 4/2018[2/08].

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

TIMOTHY E. FEELEY, Acting Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 12, 2018

FILED WITH LRC: June 14, 2018 at noon

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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Operations and Support
(As Amended at ARRS, August 14, 2018)

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;LI
- (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[40]. 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[44]. 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, if[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; and

(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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS, August 14, 2018)

921 KAR 3:030. Application process.

RELATES TO: KRS 116.048, 7 C.F.R. 273.2, 273.10, 7 U.S.C. 2020(e)(2)(B)(ii), (iii), (iv), 42 U.S.C. 2000d, 52 U.S.C. 20506, Pres. EO 13166

STATUTORY AUTHORITY: KRS 116.048(1), 194A.050(1), 7 C.F.R. 271.4, 7 C.F.R. 273.2(i), 7 U.S.C. 2020(e)(2)(B), 7 U.S.C. 2011-2029, 52 U.S.C. 20506

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 U.S.C. 2011 to 2029 and 7 C.F.R. 271.4 authorize the cabinet to administer a Supplemental Nutrition Assistance Program (SNAP) and prescribe the manner in which the program shall be implemented. 7 U.S.C. 2020(e)(2)(B) requires the cabinet to develop a uniform application process. KRS 116.048(1) designates the cabinet as a voter registration agency in accordance with 52 U.S.C. 20506. This administrative regulation establishes the application and the voter registration processes used by the cabinet in the administration of the SNAP.

Section 1. Right to Apply or Reapply. (1) An individual shall have the right to apply or reapply for SNAP benefits on the same day that the household first contacts the Department for Community Based Services (DCBS) office in person during office hours.

(2) The cabinet shall make the application process readily accessible to a household.

(3) In accordance with the procedures established/described in 920 KAR 1:070, interpreter services shall be provided for a person who is:

- (a) Deaf; or
- (b) Hard of hearing.

(4) In accordance with 42 U.S.C. 2000d and Presidential EO 13166, interpreter services shall be provided for a person who is Limited English Proficient.

(5) An application shall be considered filed if:

(a) A FS-1, Application for SNAP, containing the name, address, and signature of the applicant is received by a DCBS office; or

(b) Application for benefits and another public assistance program is made in accordance with 921 KAR 2:040 and Section 6 of this administrative regulation.

(6) An application shall be processed after the:

(a) Applicant or representative is interviewed;

(b) Required information and verification for the application is provided to the DCBS office; and

(c) Application and related documents are received by the DCBS office, in accordance with/as specified in Section 3(1) of this administrative regulation.

Section 2. Who May Sign an Application. An application for SNAP shall be signed by:

(1) An adult or emancipated child who is a responsible member of the household; or

(2) The household's authorized representative.

Section 3. Where an Application is Filed. (1) Except as provided in subsection (2) of this section, an application shall be filed in any DCBS office or online at benefind.ky.gov.

(2) A concurrent application for Supplemental Security Income (SSI) and SNAP shall be filed in the service area office of the Social Security Administration.

Section 4. Prompt Action on an Application. The cabinet shall provide an eligible household that completes the initial SNAP application process an opportunity to participate as soon as possible. The cabinet shall not provide an opportunity to participate later than:

(1) Thirty (30) days after the application is filed for a household ineligible for expedited services; or

(2) The fifth calendar day following the date an application is filed for a household eligible for expedited services.

Section 5. Expedited Service. The cabinet shall provide expedited services to a household that is eligible in accordance with 7 C.F.R. 273.2(i).

Section 6. Public Assistance Application Process. (1) A household applying for Kentucky Transitional Assistance Program (KTAP) shall be allowed to simultaneously apply for SNAP benefits. A single interview shall be conducted for both programs.

(2) Time standards established/specified in Section 4 of this administrative regulation shall not apply to a public assistance application. A public assistance application shall be governed by the time standards established/specified in 921 KAR 2:035, Section 3.

(3) A household in which every member receives, or is authorized to receive, SSI shall be considered categorically eligible unless:

(a) The entire household is institutionalized;

(b) A household member is ineligible due to a drug-related felony conviction;

(c) A household member is disqualified due to an intentional program violation established/specified in 921 KAR 3:010; or

(d) The head of the household is disqualified for failure to comply with the work requirements established/specified in 921 KAR 3:042.

(4) A household in which any member receives, or is authorized to receive cash, in-kind, or other benefits funded under Temporary Assistance for Needy Families (TANF) Block Grant[(TANF)] shall be considered categorically eligible unless:

(a) The entire household is institutionalized;

(b) A household member is ineligible due to a drug-related felony conviction;

(c) A household member is disqualified due to an intentional program violation established/specified in 921 KAR 3:010; or

(d) The head of household is disqualified for failure to comply with the work requirements established/specified in 921 KAR 3:042.

(5) If verified by the program, a categorically eligible household shall not be required to verify the following eligibility factors:

- (a) Resources;
- (b) Gross and net income;
- (c) Social Security number;
- (d) Sponsored alien information; and
- (e) Residency.

(6) A household that receives a TANF information sheet at application, which makes the household aware of other programs for which the household may qualify, shall be considered expanded categorically eligible.

(7) If verified by the program, an expanded categorically eligible household shall not be required to verify the following factors:

- (a) Resources;
- (b) Social Security number;
- (c) Sponsored alien information; and
- (d) Residency.

Section 7. Joint SSI and SNAP Application Process. A household in which every member is an applicant or recipient of SSI shall be allowed to simultaneously apply for both SSI and SNAP in accordance with/as specified in Section 3(2) of this administrative regulation.

Section 8. Voter Registration. (1) In accordance with KRS 116.048 and 52 U.S.C. 20506, a SNAP applicant or recipient shall be provided the opportunity to complete an application to register to vote or update current voter registration if the applicant or recipient is:

(a) Age eighteen (18) or over; and

(b) Not registered to vote or not registered to vote at his current address.

(2) PAFS-706, Voter Registration Rights and Declination, shall be utilized to document a SNAP applicant or recipient's choice to:

- (a) Register to vote;
- (b) Not register to vote; or
- (c) Indicate that they are currently registered to vote.

(3) A voter registration application shall be completed if a SNAP applicant or recipient wants to:

- (a) Register to vote; or

(b) Update voter registration to provide a new address.

(4) The voter registration process shall not apply to an individual not included in the assistance application, such as an authorized representative.

(5) All information utilized in the voter registration process shall remain confidential and be used only for voter registration purposes.

(6) The State Board of Elections shall approve the application to register to vote and send a confirmation or denial notice to the voter registration applicant.

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

(a) "FS-1, Application for SNAP", 10/18~~2/17~~; and

(b) "PAFS-706, Voter Registration Rights and Declination", 8/10.

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

ADRIA JOHNSON, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 6, 2018

FILED WITH LRC: June 7, 2018 at 4 p.m.

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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 5:002. Definitions for 401 KAR Chapter 5.

RELATES TO: KRS 224.1-010[224.01-010], 224.1-070[224.01-070], 224.1-400[224.01-400], 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. 35, 116, 122, 130, 131, 133, 136, 141, 401-471, 15 U.S.C. 2601 - 2629, 33 U.S.C. 1251 - 1387, 42 U.S.C. 6901-6992k, 7401 - 7671q, 9601, 11023[EO-2008-507, 2008-531]

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.10-110, 224.16-050, 224.16-060, 224.70-110, 40 C.F.R. 116, 122, 130, 131, 136, 401-471, 15 U.S.C. 2601 - 2629, 33 U.S.C. 1251 - 1387[EO-2008-507, 2008-531]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution.[EO-2008-507 and 2008-531, effective June 16, 2008; abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.] This administrative regulation establishes definitions for terms used in 401 KAR Chapter 5. These definitions are not more stringent than the federal counterparts.

Section 1. Definitions. (1) **"Abandoned well" means a well not currently in use and not intended for future use.**

(2) "Activity" means, in 401 KAR 5:050 through 401 KAR 5:080 and if used in conjunction with "facility", a KPDES point source, or other activity, including land or related appurtenances, that is subject to regulation under the KPDES program.

(3)(2) "Administrator" is defined by 40 C.F.R. 122.2[EO-2008-507, effective July 1, 2008].

(4) **"Agriculture operation" is defined by KRS 224.71-100.**

(5)(3) "Agricultural wastes handling system" means a structure or equipment that conveys, stores, or treats manure from an animal feeding operation prior to land application.

(6)(4) "Alternative effluent limitations" is defined by 40 C.F.R. 125.71(a)[EO-2008-507, effective July 1, 2008].

(7) **"Analysis category" means one (1) of the following analyte groups for which an analysis can be performed by a wastewater laboratory:**

(a) **Inorganic general chemistry;**

(b) **Inorganic metals;**

(c) **Organic chemistry volatiles;**

(d) **Organic chemistry semi-volatiles;**

(e) **Organic chemistry pesticides, herbicides, or PCBs;**

(f) **Organic chemistry dioxins;**

(g) **Microbiology;**

(h) **Whole effluent toxicity; and**

(i) **Field analysis.**

(8)(5) "Animal feeding operation" or "AFO" is defined by 40 C.F.R. 122.23(b)[means a lot or facility, other than an aquatic animal production facility, that meets one (1) of the following descriptions:

(a) 1. "Large animal feeding operation" as defined in subsection (71) of this section; or

2. "Medium animal feeding operation" as defined in subsection (83) of this section; and

(b) If:

1.a. Animals other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in a twelve (12) month period; and

b. Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(c) Two (2) or more animal feeding operations under common ownership are considered to be a single animal feeding operation because they adjoin each other or if they use a common area or

system for the disposal of wastes].

(9)(6) "Applicable standards and limitations" means all standards and limitations to which a discharge or a related activity is subject pursuant to KRS Chapter 224 and 401 KAR Chapters 4 through 11, including effluent limitations, water quality standards, standards of performance, or toxic effluent standards.

(10)(7) "Application" means the documentation[document] submitted by an applicant to the cabinet that provides information used by the cabinet to make a final determination to issue or deny a permit or certification[in the issuance of a permit or approval].

(11)(8) "Approved POTW pretreatment program", "POTW pretreatment program", "pretreatment program", or "program" means a program administered by a POTW that meets the criteria established in 401 KAR 5:055[5-057] and that has been approved by the cabinet.

(12)(9) "Aquaculture project" is defined by 40 C.F.R. 122.25(b)(1)[EO-2008-507, effective July 1, 2008].

(13)(10) **"Authorized representative" is defined by 40 C.F.R. 122.22[means a person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility, with express permission to act on behalf of the owner or operator of a facility that is subject to the regulations established in 401 KAR Chapter 5].**

(14)(11)(10) "Available" means located within the planning area and:

(a) Located within one and zero-tenths (1.0) mile of a regional facility for a WWTP with an average daily design capacity larger than 1,000 gpd; or

(b) For new construction if the distance is one and zero-tenths (1.0) mile or more, where it is cost-effective to connect as determined by a twenty (20) year present worth cost analysis.

(15)(12)(11) "BAT" means best available technology economically achievable.

(16)(13)(12) "Best management practices" or "BMPs" means:

(a) For agriculture operations, as defined by KRS 224.71-100[3]; or

(b) For all other purposes:

1. Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the commonwealth; and

2. Treatment requirements, operating procedures, practices to control site run-off, pollution of surface water and groundwater from nonpoint sources, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(17)(14)(13) "Biochemical oxygen demand", "BOD", or "BOD₅" is defined by 40 C.F.R. 133.101(d)[EO-2008-507, effective July 1, 2008].

(18) **"Borehole" means a hole drilled into the subsurface for exploratory or sampling purposes.**

(19)(15)(14) "BPT" means best practicable technology currently available.

(20)(16)(15) "Building sewer" means that part of the drainage system that extends from the end of the building drain, beginning two (2) feet outside the building wall, and conveys its discharge to a downstream manhole, sewer line, pump station, or sewage disposal system.

(21) **"Bulk quantities" means undivided quantities of any substance equal to or greater than fifty-five (55) U.S. gallons liquid measure or one hundred (100) pounds net dry weight transported or held in an individual container.**

(22)(17)(16) "Bypass" means the intentional diversion of sewage or waste-streams from a portion of a facility or industrial user's treatment facility.

(23)(18)(17) "Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not including the nitrogenous oxygen demand of the wastewater.

(24) **"Certified", for 401 KAR 5:320, means that the cabinet has determined that a wastewater laboratory meets the**

regulatory performance criteria and the standard of quality established in 401 KAR 5:320 and has issued a certification.

(25)(19)(18) "Certified operator" means an individual who holds an active certified operator's certificate issued in accordance with 401 KAR 11:050.

(26)(20)(19) "cfm" means cubic feet per minute.

(27)(21)(20) "Chronic toxicity" means lethality, reduced growth or reproduction or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests due to long-term exposures, relative to the life span of the organisms or a significant portion of their life span, due to toxic substances or mixtures of toxic substances.

(28)(22)(24) "Combined sewer" or "combined sewer line" means a sewer or sewer line designed to carry ~~stormwater~~[storm water] runoff as well as sanitary wastewater.

(29)(23)(22) "Combined sewer overflow" or "CSO" means the flow from a combined sewer in excess of the interceptor or regulator capacity that is discharged into a receiving water without going to a POTW.

(30) "Commercial" means services at stores, offices, restaurants, warehouses, and other service and nonmanufacturing activities, excluding households and industries.

(31)(24)(23) "Concentrated animal feeding operation" or "CAFO" is defined by 40 C.F.R. 122.23(b)(2)[means one (1) of the following:

(a) "Large concentrated animal feeding operation" as defined in subsection (72) of this section;

(b) "Medium concentrated animal feeding operation" as defined in subsection (84) of this section; or

(c) "Small concentrated animal feeding operation" as defined in subsection (150) of this section].

(32)(25)(24) "Consolidation sewer" means a conduit, without direct sanitary connections that intercepts and transports combined sewer storm overflows to a treatment facility or a single combined sewer overflow point.

(33) "Container" means any portable enclosure in which a material is stored, transported, treated, disposed, or otherwise handled.

(34)(26)(25) "Continuous facility discharge" means a discharge that occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(35)(27)(26) "Conventional pollutant" is defined by 40 C.F.R. 401.16[means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, E. coli, or phosphorus].

(36) "Core hole" means a hole drilled for the purpose of obtaining a rock sample.

(37) "Corrective action", for 401 KAR 5:037, means an activity or measure taken to remedy groundwater pollution.

(28)(27) ["Criteria" means elements of state water quality standards expressed as constituent concentrations, levels, or narrative statements, that represent a quality of water that supports a particular use][specific concentrations or ranges of values, or narrative statements of water constituents that represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health].]

(38)(29)(28) "Date of program approval" means September 30, 1983, the effective date of the administrator's approval of Kentucky's KPDES regulatory program pursuant to 33 U.S.C. Section 1342.

(39)(30)(29) "Day" means a twenty-four (24) hour period.

(40)(31)(30) "Design flow" means the long-term daily average flow the wastewater treatment plant can treat and remain in compliance with the overall performance requirements during its design life.

(41)(32)(31) "Direct discharge" means the discharge of a

pollutant into waters of the commonwealth if the discharge is not included under the definition of indirect discharger and does not include a discharge of animal waste onto land by land application if the discharge does not reach the waters of the commonwealth.

(42)(33)(32) "Disappearing stream" means an intermittent or perennial surface stream that terminates and drains underground through caves, fractures, or swallets in the stream bed.

(43)(34)(33) "Discharge" or "discharge of a pollutant" means the addition of a pollutant or combination of pollutants to waters of the commonwealth from a point source.

(44)(35)(34) "Discharge monitoring report" or "DMR" means the report including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by KPDES permittees.

(45)(36)(35) "Division" means the Kentucky Division of Water, within the Department for Environmental Protection, Energy and Environment Cabinet.

(46)(37)(36) "Domestic" means relating to household wastes or other similar wastes. It is used to distinguish municipal, household, or commercial water or wastewater services from industrial water or wastewater services.

(47)(38)(37) "Domestic sewage" means sewage devoid of industrial or other wastes and that is typical of waste received from residential facilities. It may include wastes from commercial developments, schools, restaurants, and other similar developments.

(48)(39)(38) "Draft permit" means a document prepared pursuant to 401 KAR 5:075 indicating the cabinet's preliminary decision to issue or deny, modify, revoke and reissue, revoke, or reissue a permit. It includes a notice of intent to revoke a permit and a notice of intent to deny a permit as provided in 401 KAR 5:075. It does not include a proposed permit; a denial of a request for modification, revocation, and reissuance; or a denial of a request for revocation.

(49)(40)(39) "Effluent ditch" means that portion of a treatment system that is a discrete, person-made conveyance, either totally owned, leased or under valid easement by the discharger that transports a discharge to surface waters of the commonwealth.

(50)(41)(40) "Effluent limitation" is defined by KRS 224.1-010[224.01-010(12)].

(51)(42)(41) "Effluent limitations guideline" is defined by 40 C.F.R. 122.2[, effective July 1, 2008].

(52)(43)(42) "Environmental Protection Agency", "EPA", or "U.S. EPA" means the U.S. Environmental Protection Agency.

(53)(44)(43) "E. coli" or "Escherichia coli" means an aerobic and facultative anaerobic gram negative, nonspore forming, rod shaped bacterium that[~~can grow at forty-four and five tenths (44.5) degrees Celsius, that~~] is ortho-nitrophenyl-B-D-galactopyranoside (ONPG) positive, and Methylumbelliferyl glucuronide (MUG) positive. It is a member of the indigenous fecal flora of warm-blooded animals.

(54) "Equivalency of certification", for 401 KAR 5:320, means certification of a wastewater laboratory by an entity, other than the cabinet, whose requirements for certification are determined by the cabinet to meet the requirements of 401 KAR 5:320.

(55)(45)(44) "Exceptional water" means a surface water categorized as exceptional by the cabinet pursuant to 401 KAR 10:030.

(56)(46)(45) "Excessive infiltration" means a high groundwater period induced peak infiltration rate that:

(a) Results in an operational problem and permit violation at the WWTP or results in recurring overflows from the sewer system or the WWTP; and

(b) Does not include:

1. An overflow that results from blockages, power failures or other temporary mechanical failures, or flood waters entering the sewer system directly; or

2. A resulting overflow if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements.

(57)(47)(46) "Excessive inflow" means a rainfall induced

peak inflow rate that:

(a) Results in operational problems and permit violations at the WWTP or results in recurring overflows from the sewer system or the WWTP; and

(b) Does not include:

1. A combined sewer system if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements; or

2. An overflow that results from blockages, power failures or other temporary mechanical failures, or flood waters entering the sewer system directly.

(58) [(48)] [(47)] "Facility" means:

(a) In 401 KAR 5:005 or [401-KAR] 5:006, a sewage system as defined by [in] KRS 224.1-010 [224.01-010] except for septic tanks, pretreatment facilities regulated by an approved pretreatment program or intermunicipal agreement, and disposal wells as used in 401 KAR 5:090; or

(b) In 401 KAR 5:050 through [401-KAR] 5:080 and if used in conjunction with activity, any KPDES point source, or any other facility, including land or related appurtenances, that is subject to regulation under the KPDES program.

~~[(48)] "Fecal coliform" means the portion of the coliform group of bacteria that are present in the intestinal tract or the feces of warm-blooded animals. It includes organisms that are capable of producing gas from lactose broth in a suitable culture medium within twenty-four (24) hours at forty-four and five-tenths (44.5) degrees plus or minus two-tenths (0.2) degrees C].~~

(59) "Field analysis" means a measuring of:

(a) Conductivity;

(b) Dissolved oxygen;

(c) pH;

(d) Residual chlorine;

(e) Sulfite;

(f) Temperature; and

(g) Turbidity.

(60) [(49)] "Flood relief sewer" means a conduit, without direct sanitary connections, that is used to transport sewage if a flood control structure or overflow detention basin is in operation.

(61) "Field-only wastewater laboratory" means a wastewater laboratory that performs a measurement for only the parameters identified as field analysis, regardless of whether the measurement takes place outdoors, in an on-site room used as a laboratory, or in an off-site laboratory.

(62) "Floor drain" means an opening in the floor used to collect spills, water, or other liquids.

(63) [(50)] "Force main" means a conduit used to transport sewage from a pump discharge to a sewer line, pump station, or WWTP.

(64) [(51)] "General permit" means a:

(a) "General permit" as defined by 40 C.F.R. 122.2; or

(b) A KPDES permit issued pursuant to 401 KAR 5:055 authorizing a category of discharges or non-discharging facilities under KRS Chapter 224 within a geographical area, issued pursuant to 401 KAR 5:055].

(65) "General wastewater laboratory" means a wastewater laboratory that performs an analysis for at least one (1) analysis category other than field analysis, regardless of whether the general wastewater laboratory also performs a field analysis measurement.

(66) "Generic groundwater protection plan" means a groundwater protection plan that can be applied to activities conducted at different locations because the activities are substantially identical and because the potentials of the activities to pollute groundwater are substantially the same.

(67) [(52)] "GPD" or "gpd" means gallons per day.

(68) [(53)] "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table and perched water zones below the B soil horizon including water circulating through fractures, bedding planes, and solution conduits.

(69) "Groundwater pollution" means water pollution as defined in KRS 224.1-010 of groundwaters of the Commonwealth.

(70) "Hydrogeologic sensitivity" means an assessment of the potential ease and speed of vertical infiltration or recharge of a liquid through the soil and the unsaturated zones combined with assessments of the maximum potential flow rate and dispersion potential after entry into the principal or uppermost saturated zone.

(71) "Industrial" means manufacturing or industrial processes, including:

(a) Electric power generation;

(b) Fertilizer or agricultural chemicals;

(c) Food and related products or by products;

(d) Inorganic chemicals;

(e) Iron and steel manufacturing;

(f) Leather and leather products;

(g) Nonferrous metals manufacturing or foundries;

(h) Organic chemicals;

(i) Plastics and resins manufacturing

(j) Pulp and paper manufacturing;

(k) Rubber and miscellaneous plastic products;

(l) Stone, glass, clay, and concrete products;

(m) Textile manufacturing;

(n) Transportation equipment; and

(o) Water treatment.

(72) [(54)] "Industrial wastewater treatment plant" or "IWWTP" means a privately owned WWTP with more than ninety (90) percent of the influent flow from sources of industrial waste.

(73) [(55)] "Infiltration" is defined by 40 C.F.R. 35.2005 [35.905, effective July 1, 2008].

(74) [(56)] "Inflow" is defined by 40 C.F.R. 35.2005 [35.905, effective July 1, 2008].

(75) [(57)] "Injection" means a type of land application in which the waste is placed directly beneath the land surface.

(76) [(58)] "Interference" is defined by 40 C.F.R. 403.3(k); effective July 1, 2008].

(77) "Interim certification", for 401 KAR 5:320, means a wastewater laboratory certification approved by the cabinet if the cabinet determines through documentation review that the wastewater laboratory meets the requirements of 401 KAR 5:320. Interim certification is applicable to method-analyte pairing until the cabinet has a completed an on-site audit for that method-analyte pairing.

(78) [(59)] "Intermediate facility" means an intermediate WWTP or a sewer line of 2,500 feet to 5,000 feet in length including appurtenances.

(79) [(60)] "Intermediate nonpublicly-owned treatment works" means a facility with a design flow rate of between 10,000 gpd and 49,999 gpd of wastewater containing only conventional pollutants and that is not a POTW.

(80) [(61)] "Intermediate WWTP" means a WWTP with an average daily design capacity of 10,000 to 49,999 gpd.

(81) [(62)] "Interstate agency" means an agency of which Kentucky and one (1) or more states is a member established by or under an agreement or compact, or any other agency, of which Kentucky and one (1) or more other states are members, having substantial powers or duties pertaining to the control of pollution as determined and approved by the secretary or administrator pursuant to 33 U.S.C. 1251 – 1387 or KRS Chapter 224.

(82) [(63)] "Karst" means the type of geologic terrain underlain by carbonate rocks where significant solution of rock has occurred due to flowing groundwater.

(83) [(64)] "Kentucky Intersystem Operational Permit" or "KISOP" means a permit issued pursuant to 401 KAR 5:005 for operating a sewer system that has more than 5,000 linear feet of sewer line that discharges to a sewer system, or a WWTP that is owned by another person.

(84) [(65)] "Kentucky No Discharge Operational Permit" or "KNDOP" means a permit issued pursuant to 401 KAR 5:005 for operating a WWTP that does not have a discharge to a stream, including agricultural waste handling systems and spray irrigation systems.

(85) [(66)] "Kentucky Pollutant Discharge Elimination System" or "KPDES" means the Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring and enforcing permits

to discharge, and imposing and enforcing pretreatment requirements.

(86) "Key personnel" means a wastewater laboratory employee who:

(a) Performs or supervises sample analysis or quality assurance;

(b) Is a primary analyst or technician as defined in this administrative regulation; or

(c) Is primarily responsible for or essential to wastewater laboratory daily operations.

(87)[(67)] "KPDES permit" means a Kentucky Pollutant Discharge Elimination System permit issued to a facility, including a POTW, or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.

(88)[(68)] "Land application" means the uniform placement of animal waste on or in the soil by spraying or spreading on the surface, incorporation into the soil, or injection directly beneath the surface.

(89)[(69)] "Land application area" is defined by 40 C.F.R. 122.23(b)(3)[, effective July 1, 2008].

(90)[(70)] "Land treatment" or "land disposal" means the application or incorporation of a pollutant onto or into the soil.

(91)[(71)] "Large animal feeding operation" means an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories:

- (a) 700 mature dairy cows, whether milked or dry;
- (b) 1,000 veal calves;
- (c) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, or cow or calf pairs;
- (d) 2,500 swine each weighing fifty-five (55) pounds or more;
- (e) 10,000 swine each weighing less than fifty-five (55) pounds;
- (f) 500 horses;
- (g) 10,000 sheep or lambs;
- (h) 55,000 turkeys;
- (i) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;

(j) 125,000 chickens other than laying hens, if the AFO uses other than a liquid manure handling system;

(k) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;

(l) 30,000 ducks, if the AFO uses other than a liquid manure handling system; or

(m)[(4)] 5,000 ducks, if the AFO uses a liquid manure handling system.

(92)[(72)] "Large concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(b)(4)[, effective, July 1, 2008].

(93)[(73)] "Large facility" means a WWTP with an average daily design capacity of 50,000 GPD or more, or a sewer line of more than 5,000 feet in length including appurtenances.

(94)[(74)] "Large nonpublicly-owned treatment works" means a facility that has a design flow rate of greater than or equal to 50,000 gpd of wastewater containing only conventional pollutants and that is not a POTW.

(95)[(75)] "Large WWTP" means a WWTP with an average daily design capacity of 50,000 GPD or more.

(96) "Loading and unloading area" means areas used for loading and unloading, and related handling of raw materials, intermediate substances, products, wastes, or recyclable materials. Loading and unloading areas include areas used to load and unload drums, trucks, and railcars.

(97)[(76)] "Long-term CSO control plan" means a control plan that complies with the Combined Sewer Overflow Control Policy issued by the U.S. EPA in the "Federal Register" on April 19, 1994 (59 FR 18688).

(98)[(77)] "Manure" is defined by 40 C.F.R. 122.23(b)(5)[, effective, July 1, 2008].

(99)[(78)] "Maintenance replacement" means replacement of:

(a) Existing component parts with component parts that have similar characteristics and capacity; or

(b) A section of sewer or force main with the same size, alignment, and slope; and

(c) The term Does not include replacement of an entire WWTP with a new WWTP.

(100)[(79)] "Major facility" means a KPDES facility or activity[; **(a)** classified as a major[KPDES] facility by the cabinet in cooperation with the regional administrator[; or

(b) That scores greater than or equal to eighty (80) on the U.S. EPA NPDES Permit Rating Worksheet].

Designation as a major industry as used in KRS 224.70-120[; does not indicate automatic classification as a major facility.

(101)[(80)] "Major industry" means a fee category as established in 401 KAR 5:310 for an industry that generates and discharges process-related wastewater while engaged in commercial activities including resource recovery, manufacturing, products distribution, or wholesale and retail trade. Each[industry] has a design flow rate of greater than or equal to 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. A major industry designation is not a criterion for classification as a major facility.

(102)[(81)] "Major municipal separate storm sewer outfall" or "major outfall" is defined by 40 C.F.R. 122.26(b)(5)[, effective, July 1, 2008].

(103)[(82)] "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(104)[(83)] "Medium animal feeding operation means an AFO that stables or confines the type and number of animals within any of the following ranges:

- (a) 200 to 699 mature dairy cows, whether milked or dry;
- (b) 300 to 999 veal calves;
- (c) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, or cow or calf pairs;
- (d) 750 to 2,499 swine each weighing fifty-five (55) pounds or more;
- (e) 3,000 to 9,999 swine each weighing less than fifty-five (55) pounds;

(f) 150 to 499 horses;

(g) 3,000 to 9,999 sheep or lambs;

(h) 16,500 to 54,999 turkeys;

(i) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(j) 37,500 to 124,999 chickens, other than laying hens, if the AFO uses other than a liquid manure handling system;

(k) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(l) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system; or

(m) 1,500 to 4,999 ducks if the AFO uses a liquid manure handling system.

(84) "Medium concentrated animal feeding operation is defined by 40 C.F.R. 122.23(b)(6)[, effective, July 1, 2008].

(105)[(84)] "µg/l" means micrograms per liter, same as ppb, assuming unit density.

(106)[(85)] "mgd" or "MGD" means million gallons per day.

(107)[(86)] "Milligrams per liter" or "mg/l" means the milligrams of substance per liter of solution and is equivalent to parts per million in water, assuming unit density.

(108)[(87)] "Minor industry" means a fee category as established in 401 KAR 5:310 for an industry that generates and discharges process-related wastewater while engaged in commercial activities and has a design flow rate of less than 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants.

(109)[(88)] "Minor modification to a WWTP" means[; a modification that does not change the WWTP average daily design hydraulic or organic treatment capacity of the WWTP or discharge location.

(110)[(89)] "Mixing zone" means a domain of a water body contiguous to a treated or untreated wastewater discharge with quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

(111)[(90)] "Municipal separate storm sewer system" or "MS4" is defined by 40 C.F.R. 122.26(b)(8)[, effective, July 1,

2008].

(112)(91)(92) "Municipality" means a city, district, or other public body created by or under the Kentucky Revised Statutes and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency pursuant to 33 U.S.C. 1288.

(113)(92)(93) "National Pollutant Discharge Elimination System" or "NPDES" is defined by 40 C.F.R. 122.2[~~effective July 1, 2008~~].

(114)(93)(94) "National pretreatment standard", "pretreatment standard", or "standard" is defined by 40 C.F.R. 403.3(l)[~~effective July 1, 2008~~].

(115)(94)(95) "Natural Resources Conservation Service" or "NRCS" means the organization created pursuant to 7 U.S.C. 6962 in the U.S. Department of Agriculture.

(116)(95)(96) "New discharger" is defined by 40 C.F.R. 122.2[means, as used in 401 KAR 5:060 through 5:080, a building, structure, facility or installation:

- (a) 1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. That has never received a finally effective NPDES or KPDES permit for discharges at that site; and
4. That is not a new source.

(b) This definition includes an indirect discharger that commences discharging into the waters of the commonwealth after August 13, 1979. It also includes any existing mobile point source that begins discharging at a site for which it does not have a permit].

(117)(96)(97) "New source" is defined by 40 C.F.R. 122.2[means as used in 401 KAR 5:060 through 5:080, a building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

- (a) After promulgation of U.S. EPA's standards of performance pursuant to 33 U.S.C. 1316 that are applicable to the source; or
- (b) After publication of U.S. EPA's standards of performance pursuant to 33 U.S.C. 1316 that are applicable to the source, but only if the federal standards are promulgated within 120 days of publication].

(118)(97)(98) "Nonpoint" means any source of pollutants not defined by a point source.

(119)(98)(99) "Nutrient management plan" means the plan for an individual operation developed for the purpose of recycling nutrients from animal waste onto cropland or pasture.

(120) "On-site sewage disposal system", "on-site sewage system", and "on-site system means a complete system installed on a parcel of land, under the control or ownership of any person, which accepts sewage for treatment and ultimate disposal under the surface of the ground, including:

(a) A conventional system consisting of sewage pretreatment unit, distribution box, and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system, or wasteload to overcome the site limitations;

(c) An alternative system consisting of a sewage pretreatment unit, necessary site modifications, wasteload modifications, and a subsurface soil absorption system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) Cluster systems that accept effluent from more than one (1) structure's or facility's sewage pretreatment unit and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption systems or conventional, modified, or alternative design; and

(e) A holding tank that provides limited pretreatment and storage for off-site disposal in situations in which site limitations preclude immediate installation of a subsurface soil absorption system or connection to a municipal sewer.

(121)(99)(100) "Operator" means a person involved in the operation of a facility or activity.

(122)(100)(101) "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and other foreign substances not included within the definitions of industrial wastes and sewage that may cause or contribute to the pollution of waters of the commonwealth.

(123)(101)(102) "Outfall" means, for municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to waters of the Commonwealth, but does not include open conveyances connecting two (2) municipal separate storm sewers, or pipes, tunnels, or other conveyances that connect segments of the same stream or other waters of the Commonwealth and are used to convey waters of the Commonwealth.

(124)(102)(103) "Outstanding state resource water" means a surface water designated by the cabinet as an outstanding state resource water pursuant to 401 KAR 10:031.

(125)(103)(104) "Overburden" means material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

(126)(104)(105) "Overflow" means any intentional or unintentional diversion of flow from a facility.

(127)(105)(106) "Owner" means a person who has legal ownership of a facility or activity regulated pursuant to 401 KAR Chapter 5.

(128)(106)(107) "Package WWTP" means a factory-built WWTP that is transported to and assembled or set in place at the site.

(129)(107)(108) "Permit" means, as used in 401 KAR 5:005 or 5:006:

(a)[As used in 401 KAR 5:005 or 401 KAR 5:006,] A document issued by the cabinet that authorizes the permittee to construct, modify, or operate a facility; or

(b)[As used in 401 KAR 5:050 through 5:080,] A KPDES permit.

(130) "Pesticide" means a substance or mixture of substances intended to:

(a) Prevent, destroy, control, repel, attract, or mitigate any pest;

(b) Be used as a plant regulator, defoliant, or desiccant; or
(c) Be used as a spray adjuvant.

(131)(108)(109) "Plan of study" means a report that contains the following information required for a regional facility plan by 401 KAR 5:006, Section 2[4]:

- (a) Planning area maps;
- (b) A discussion of the need for sewer service in the area;
- (c) Population projections; and
- (d) An estimation of the twenty (20) year cost by category.

(132)(109)(110) "Planning area" means the geographic area proposed to be served by a regional planning agency in a projected twenty (20) year period.

(133)(110)(111) "Point source" is defined by 33 U.S.C. 1362(14). The term does not include agricultural stormwater[storm water] run-off or return flows from irrigated agriculture.

(134)(111)(112) "Pollutant" is defined by KRS 224.1-010.

(135)(112)(113) "POTW" means publicly owned[publicly-owned] treatment works as defined in KRS 224.1-010[224.01-040].

(136)(113)(114) "POTW treatment plant" is defined by 40 C.F.R. 403.3(r)[~~effective July 1, 2008~~].

(137)(114)(115) "Pretreatment" is defined by 40 C.F.R. 403.3(s)[~~effective July 1, 2008~~].

(138)(115)(116) "Pretreatment requirement" is defined by 40 C.F.R. 403.3(r)[~~effective July 1, 2008~~].

(139)(116)(117) "Pretreatment standard" means a national pretreatment standard.

(140) "Primary analyst or technician" means an analyst or technician who performs a specific method-analyte pairing analysis more often than any other analyst or technician at that wastewater laboratory.

(141)(117)(118) "Primary responsibility" means:

(a) Personal, first-hand responsibility to conduct or actively oversee and direct procedures and practices necessary to ensure

that the wastewater treatment plant or wastewater collection system is operated in accordance with accepted practices and with KRS Chapter 224 and 401 KAR Chapters 5 and 11, and

(b) Having the authority to conduct the procedures and practices necessary to ensure that the wastewater system or any portion thereof is operated in accordance with accepted practices, laws, and administrative regulations of the commonwealth, or to supervise others in conducting these practices.

(142)(141) "Privately owned [~~Privately-owned~~] treatment works" is defined by 40 C.F.R. 122.2[~~], effective July 1, 2008~~].

(143)(149) "Production area" means, for animal feeding operations, the area defined by 40 C.F.R. 122.23(b)(8)[~~], effective July 1, 2008~~].

(144)(140) "Professional engineer" or "engineer" is defined by KRS 322.010(2).

(145)(141) "Project priority list" means the list developed by the cabinet pursuant to KRS Chapter 224A that includes a priority ranking of applicants for the construction of wastewater treatment works under 33 U.S.C. 1313(e)(3)(H).

(146)(142) "Proposed permit" means a KPDES permit prepared after the close of the public comment period and, if applicable, any public hearing and administrative appeals that are[is] sent to U.S. EPA for review before final issuance by the cabinet. A proposed permit is not a draft permit.

(147)(143) "Public water system" is defined by 40 C.F.R. 141.2[~~], effective July 1, 2008~~].

(148)(144) "Publicly owned treatment works" or "POTW" is defined by KRS 224.1-010.

(149)(145) "RCRA" means the Resource Conservation Recovery Act as amended, 42 U.S.C. 6901 - 6992k.

(150)(146) "Recommencing discharger" means a source that recommences discharge after terminating operations.

(151)(147) "Recurring discharge" means, as it relates to a sewer system overflow, a discharge that occurs two (2) or more times in a twelve (12) month period.

(152)(148) "Regional administrator" means the regional administrator of the Region IV office of the U.S. EPA or the authorized representative of the regional administrator.

(153)(149) "Regional facility" means a facility that is:

(a) Owned by a city, county, or other public body created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220; and

(b) Designated by a regional facility plan or water quality management plan to provide wastewater collection, transportation, or treatment services for a specific area.

(154)(130) "Regional facility plan" means a type of water quality management plan addressing point sources of pollution for the purpose of areawide waste treatment management planning prepared by the designated regional planning agency pursuant to 33 U.S.C. 1251 - 1387 to control point sources of pollution within a planning area.

(155)(131) "Regional planning agency" means a governmental agency, such as a city, county, or other public body created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220, that has been designated pursuant to 33 U.S.C. 1288 and 40 C.F.R. 130 to provide planning for the treatment of wastewater and for controls and recommendations relating to wastewater for a particular area; and those existing agencies that have developed plans pursuant to 33 U.S.C. 1281, 1285, 1288, and 1313(e) to provide planning related to wastewater collection, transportation, or treatment for a particular area.

(156)(132) "Regional sewage collection system" means a sewage collection system designated by a regional planning agency that is owned by a city, county, or other public body that was created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220.

(157)(133) "Run-off coefficient" means the fraction of total rainfall that will appear at a conveyance as run-off.

(158)(134) "SARA" means the Superfund Amendments and Reauthorization Act, 42 U.S.C. 9601 – 9675.

(159)(135) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with KRS Chapter 224 and 401 KAR Chapters 4

through 11.

(160)(136) "SDWA" means Safe Drinking Water Act, 42 U.S.C. 300f – 300j-26.

(161)(137) "Secondary treatment" means that degree of treatment that results in an effluent quality that meets the minimum requirements of 401 KAR 5:045.

(162)(138) "Service area" means that geographic area currently being served by a regional facility.

(163)(139) "Seven-Q-ten" or "7Q₁₀" means that minimum average flow that occurs for seven (7) consecutive days with a recurrence interval of ten (10) years.

(164)(140) "Sewage" means the water-carried human or animal wastes from residences, buildings, or other places together with industrial wastes or groundwater, surface water, stormwater, [~~underground, surface, storm~~] or other water, as may be present.

(165)(141) "Sewage sludge" is defined by 40 C.F.R. 122.2[~~], effective July 1, 2008~~].

(166)(142) "Sewer line" means a device used for collecting, transporting, pumping, or disposing of sewage, but not a building sewer that serves an individual building. A sewer line begins at the junction of two (2) building sewers that serve different buildings. Sewer lines include gravity sewer lines, pump stations, and force mains.

(167)(143) "Sewer line extension" means a proposed construction project which extends a sewer system; it includes gravity sewer lines, pump stations, and force mains.

(168)(144) "Sewer system" means the network of sewer lines, pump stations, and force mains that discharge to a common WWTP.

(169)(145) "SIC" means standard industrial classification.

(170)(146) "Significant industrial user" or "SIU" is defined by 40 C.F.R. 403.3(v)[~~], effective July 1, 2008~~].

(171)(147) "Silvicultural point source" is defined by 40 C.F.R. 122.27(b)(1)[~~], effective July 1, 2008~~].

(172)(148) "Sinkhole" means a naturally occurring topographic depression in a karst area. Its drainage is subterranean and serves as a recharge source for groundwater. It is formed by the collapse of a conduit or the solution of bedrock.

(173) "Sinking stream" means a surface stream in a karst region that disappears underground usually through gradual seepage of flow along the channel bottom.

(174)(149) "Site" means, as used in 401 KAR 5:060 through 5:080, the land or water area where a facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(175)(150) "Sludge requirements" is defined by 40 C.F.R. 403.7(a)(ii)[~~], effective July 1, 2008~~].

(176)(151) "Small concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(b)(9)[~~], effective July 1, 2008~~].

(177)(152) "Small facility" means a WWTP with an average daily design capacity less than 10,000 GPD or a sewer line of less than 2,500 feet in length including appurtenances.

(178)(153) "Small nonpublicly-owned treatment works" means a facility that has a design flow rate of less than 10,000 gpd of wastewater containing only conventional pollutants and that is not a POTW.

(179)(154) "Small WWTP" means a WWTP with an average daily design capacity of less than 10,000 gpd.

(180)(155) "Source" means a building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(181) "Storing" means the containing of materials, products, substances, wastes, or other pollutants on a temporary basis in a manner that does not constitute disposal.

(182)(156) "Stormwater" [~~"Storm-water"~~] is defined by 40 C.F.R. 122.26(b)(13)[~~], effective July 1, 2008~~].

(183)(157) "Stormwater" [~~"Storm-water"~~] discharge associated with industrial activity" is defined by 40 C.F.R. 122.26(b)(14)[~~], effective July 1, 2008~~].

~~(184)~~~~(158)~~~~(157)~~ "Stormwater" ~~Storm—water~~ discharge associated with small construction activity" is defined by 40 C.F.R. 122.26(b)(15) ~~effective July 1, 2008~~, except that:

(a) Waters of the "United States" means waters of the Commonwealth of Kentucky; and

(b) "Director" means "cabinet" if "director" refers to the director of an approved state program.

~~(185)~~~~(159)~~~~(158)~~ "Supernatant" means the water that accumulates in the upper portion of a lagoon and contains not greater than two and zero-tenths (2.0) percent total solids by dry weight analysis.

~~(186)~~ "Surface impoundment" means a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials, including those lined with manmade materials, which is designed to hold an accumulation of liquids or solids.

~~(187)~~~~(160)~~~~(159)~~ "Surface mining operation" means only those facilities required to have a permit by 405 KAR Chapters 7 through 26.

~~(188)~~~~(161)~~~~(160)~~ "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Lagoons used for waste treatment and effluent ditches that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the commonwealth.

~~(189)~~~~(162)~~~~(161)~~ "Total dissolved solids" or "TDS" is defined by 40 C.F.R. 122.2 ~~effective July 1, 2008~~.

~~(190)~~~~(163)~~~~(162)~~ "Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources.

~~(191)~~~~(164)~~~~(163)~~ "Total suspended solids" or "TSS" means the total suspended solids (nonfilterable residue) as determined by use of the method specified in 40 C.F.R. 136.

~~(192)~~~~(165)~~~~(164)~~ "Toxic pollutant" is defined by 40 C.F.R. 122.2 ~~means, as used in 401 KAR 5:060 through 5:080, a pollutant listed as being toxic in 401 KAR 5:080~~.

~~(193)~~~~(166)~~~~(165)~~ "UIC" means Underground Injection Control.

~~(194)~~~~(167)~~~~(166)~~ "Underground injection control well" means a well used for the emplacement of fluids into the subsurface.

~~(195)~~~~(168)~~~~(167)~~ "Upset" is defined by 40 C.F.R. 122.41(n) ~~effective July 1, 2008~~.

~~(196)~~~~(169)~~~~(168)~~ "USGS" means the U.S. Geological Survey.

~~(197)~~~~(170)~~~~(169)~~ "Variance" means a mechanism or provision pursuant to 401 KAR Chapter 5 that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines.

~~(198)~~ "Wastewater laboratory" means a laboratory that performs an analysis, measurement, or laboratory test for an activity subject to 33 U.S.C. 1342.

~~(199)~~~~(171)~~~~(170)~~ "Wastewater system" means a sewage system as defined by ~~in~~ KRS 224.1-010 ~~224.01-010~~(25).

~~(200)~~~~(172)~~~~(171)~~ "Wastewater treatment plant" or "WWTP" means a facility used for the treatment and disposal of sewage.

~~(201)~~~~(173)~~~~(172)~~ "Water" or "Waters of the Commonwealth" is defined by KRS 224.1-010 ~~224.01-010~~(33).

~~(202)~~~~(174)~~~~(173)~~ "Water quality management plan" or "WQM plan" means:

(a) A plan consisting of initial plans produced in accordance with 33 U.S.C. 1288 and 1313 and certified and approved updates to those plans; or

(b) A state or areawide waste treatment management plan developed and updated in accordance with 33 U.S.C. 1281, 1285, 1288, and 1313e and 40 C.F.R. Part 130.

~~(203)~~~~(175)~~ "Water quality criteria" means the elements of state water quality standards established in 401 KAR Chapter 10 expressed as constituent concentrations, levels, or narrative statements, that represent a quality of water that supports a particular designated use.

~~(204)~~~~(176)~~~~(174)~~ "Water quality standard" means ~~an administrative regulation promulgated by the cabinet establishing~~ the designated use of a surface water of the commonwealth and the water quality criteria and antidegradation requirements necessary to maintain and protect that designated use ~~as established in 401 KAR Chapter 10~~.

~~(205)~~ "Water Resources Information System" or "WRIS" means the water and wastewater system infrastructure database housed at and supported by the Kentucky Infrastructure Authority that is used for infrastructure planning, management, and financing purposes.

~~(206)~~~~(177)~~~~(175)~~ "Well" or "water well" ~~means:~~

(a) for 401 KAR 5:005 ~~and 5:037~~, ~~is~~~~as~~ defined by KRS 223.400(7).

~~(207)~~~~(178)~~~~(176)~~ "Wellhead protection area" means:

(a) The surface and subsurface area surrounding a water well, well field, or spring, supplying a public water system, through which pollutants are reasonably likely to move toward and reach the water well, well field, or spring; or

(b) An area defined as a wellhead protection area in ~~an approved wellhead protection~~~~a county water supply~~ plan.

~~(208)~~~~(179)~~~~(177)~~ "Wetlands" is defined by 40 C.F.R. 122.2 ~~effective July 1, 2008~~.

Section 2. Incorporation by Reference. (1) "Combined Sewer Overflow Control Policy", 59 Fed. Reg. 18688, April 19, 1994, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m].

~~(209)~~ "Zone of saturation" means the zone in which all the subsurface voids in the rock or soil are filled with water.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 3, 2018

FILED WITH LRC: August 7, 2018 at 10 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions used in 401 KAR Chapter 5.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide clarity and consistency to terms that have special meaning in 401 KAR Chapter 5.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of water pollution. 401 KAR Chapter 5 establishes administrative regulations for the issuance of permits to construct, modify, and operate facilities which discharge pollutants to waters of the Commonwealth. This regulation provides definitions for terms used in 401 KAR Chapter 5.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides clarity and consistency for terms used throughout 401 KAR Chapter 5.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds definitions that have been removed from 401 KAR 5:037 and 5:320, specifically: "abandoned well", "agricultural operation", "analysis category", "borehole", "bulk quantities", "certified", "commercial", "container", "core hole", "corrective action", "equivalency for certification", "field analysis",

"field-only wastewater laboratory", "floor drain", "general wastewater laboratory", "generic groundwater protection plan", "groundwater pollution", "hydrogeologic sensitivity", "industrial", "interim certification", "key personnel", "loading and unloading area", "on-site sewage disposal system, on-site sewage system, or on-site system", "pesticide", "primary analyst or technician", "sinking stream", "storing", "surface impoundment", "wastewater laboratory", and "zone of saturation". The amendment also removes the definition of "criteria" for clarity, removes a temperature from the definition of "E. coli" or "Escherichia coli" because the temperature previously listed is not inclusive of other EPA-approved testing methods for E. coli, which can grow at temperatures other than the one in the current definition, removes a reference to the U.S. EPA NPDES Permit Rating Worksheet from the definition of "major facility" because it is not yet incorporated by reference in a regulation within 401 KAR Chapter 5, and clarifies the definition of "well" or "water well" by including its applicability to 401 KAR 5:037.

(b) The necessity of the amendment to this administrative regulation: The amendment removes definitions from 401 KAR 5:037 and 5:320 and consolidates all definitions for 401 KAR Chapter 5 into one regulation, removes the definition of "criteria" for clarity, and allows inclusion of EPA-approved testing methods for E. coli that can grow at temperatures other than the one listed in the current definition. The amendment also eliminates a reference to a document that is not yet incorporated by reference in a regulation within 401 KAR Chapter 5.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-110 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and provide for the prevention, abatement, and control of water pollution, which is regulated in part by 401 KAR Chapter 5. This administrative regulation clarifies terms used throughout 401 KAR Chapter 5.

(d) How the amendment will assist in the effective administration of the statutes: The amendment consolidates all definitions for 401 KAR Chapter 5 into one regulation for ease of reference, and clarifies other definitions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 10,000 individuals, businesses, and organizations that have, or apply for, KPDES permits. After analysis of the current types of permits, the regulation is expected to impact the following number of entities:

a. Individuals: Approximately 1,200 construction, KPDES, or KNDOP permits for family residences are affected by this administrative regulation, but no new impacts are expected.

b. Businesses: Approximately 5,900 KPDES permits for construction or industrial-related stormwater discharges, sanitary wastewater, commercial or industrial-related wastewater, and KNDOPs related to Animal Feeding Operations, are affected by this administrative regulation, but no new impacts are expected.

c. Organizations: Approximately 100 KPDES permits for civic, non-profit, professional, or religious organizations, and KNDOPs related to sanitary wastewater treatment, are affected by this administrative regulation, but no new impacts are expected.

d. State or Local Government: Approximately 1640 KPDES permits for construction or industrial-related stormwater, sanitary wastewater, and municipal wastewater for state or local government entities, and KNDOPs related to sanitary wastewater treatment, are affected by this administrative regulation, but no new impacts are expected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not need to take any action to comply with this regulation that defines terms for 401 KAR Chapter 5.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): This administrative regulation only contains definitions and will not result in additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will be able to reference one regulation for all definitions in 401 KAR Chapter 5 which have been clarified.

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

(a) Initially: This amendment will not result in additional costs.

(b) On a continuing basis: This amendment will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing permit fees, General Funds, and EPA funds. This amendment does not change funding sources.

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

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

(9) TIERING: Is tiering applied? This administrative regulation establishes definitions that do not require tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects units of state or local government that have a KPDES discharge, KNDOP, or KISOP permit.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224.10-110, 224.16-050, 224.16-060, 224.70-110, 40 C.F.R. 116, 122, 130, 131, 136, 401-471, 15 U.S.C. 2601 - 2629, 33 U.S.C. 1251 - 1387

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This administrative regulation establishes definitions for 401 KAR Chapter 5. It will not result in additional costs or revenue.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 116, 122, 130, 131, 136, 401-471, 15 U.S.C. 2601 - 2629, 33 U.S.C. 1251 - 1387

2. State compliance standards. KRS 224.10-100(5), 224.10-110, 224.16-050, 224.16-060, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. Kentucky is an NPDES delegated state. All NPDES delegated states must have compatible state regulations.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional, or different responsibilities or requirements.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)**

401 KAR 5:005. Permits to construct, modify, or operate a facility.

RELATES TO: KRS 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. 144.26, 26 U.S.C. 501(c)(3), 42 U.S.C. 300f-300j, EO 2008-507, 2008-531]

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.10-110, 224.16-050, 224.16-060, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100[224.10-100(5)] requires the cabinet to develop and conduct a comprehensive program for the management of water resources, to issue permits for the construction, modification, or extension of water treatment systems, and to provide for the prevention, abatement, and control of water pollution. [KRS 224.10-110 requires the cabinet to establish programs for the construction, modification, or extension of water treatment systems.] [EO 2008-507 and 2008-531, effective June 16, 2008; abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.] This administrative regulation establishes administrative procedures for the issuance of permits for the construction, modification, and operation of facilities authorized by KRS Chapter 224 and establishes conditions for construction of facilities under 401 KAR Chapter 5. This [The] administrative regulation also establishes a schedule of fees to recover the costs of issuance for certain classes of permits. [There is not a federal law or regulation relating to construction requirements for wastewater treatment plants or the operational requirements for no discharge operations; therefore, this administrative regulation is not more stringent than the federal requirements.]

Section 1. Applicability. (1) This administrative regulation shall apply to an owner and an operator of a sewage system, except:

(a) 1. A septic tank with a subsurface discharge;

2. [(b)] A pretreatment facility regulated by a pretreatment program or intermunicipal agreement, approved pursuant to 401 KAR 5:055[5:057]; or

3. [(c)] An authorization by permit or rule that is prepared to assure that underground injection will not endanger a drinking water supply, pursuant to the Safe Drinking Water Act, 42 U.S.C.300f-300j, and that are issued pursuant to a state or federal Underground Injection Control program; and

(b) [(d)] An underground injection control well that is permitted pursuant to 40 C.F.R. 144 if the permit:

1. [The permit] Is protective of public health and welfare; and

2. [The permit] Prevents the pollution of ground and surface waters.

(2) Unless exempted pursuant to subsection (3)(b) of this section or paragraph (a) of this subsection, a person shall not construct, modify, or operate a facility without having received a permit from the cabinet.

(a) A construction or modification permit shall not be required for maintenance replacement for components of an existing facility or for changes that do not affect the treatment processes of the

facility, but shall be required for replacement of an entire wastewater treatment plant (WWTP).

(b) The operational permit provisions of Section 27 of this administrative regulation shall be satisfied by those facilities that have a valid KPDES permit.

(3) This subsection shall apply to an agricultural waste handling system, industrial WWTP, or a stormwater[storm-water] WWTP.

(a) The following requirements shall apply to an agricultural waste handling system:

1. An agricultural waste handling system that conveys, stores, or treats manure from a concentrated animal feeding operation shall obtain a:

a. ~~[Obtain a]~~ Permit to construct or modify the facility, pursuant to Sections 2 and 24 of this administrative regulation; and

b. ~~[Obtain a]~~ KPDES permit; and

2. All other agricultural waste handling systems shall obtain a:

a. ~~[Obtain a]~~ Permit to construct, modify, or operate the facility pursuant to Sections 2, 24, 25, 27, and 30(1)[(h) and (i)] of this administrative regulation; and

b. ~~[Obtain a]~~ Kentucky No Discharge Operational Permit (KNDOP).

(b) The following shall apply to industrial wastewater treatment plants (IWWTPs):

1. An IWWTP with a closed loop system or a system that uses spray irrigation for disposal shall:

a. Obtain a KNDOP permit;

b. Comply with Sections 2, 25, 27, and 30(1)(e) through (h) of this administrative regulation; and

c. Not be required to obtain a permit to construct or modify the facility;

2. An IWWTP with a discharge to the waters of the Commonwealth shall:

a. Comply with Section 4(2) of this administrative regulation[the Five Mile Limit Policy];

b. Obtain a KPDES permit to discharge into the waters of the Commonwealth;

c. Comply with any other applicable standard or requirement of 401 KAR Chapter 5; and

d. Not be required to obtain a permit to construct or modify the facility; and

3. A sewer line that conveys wastewater to an IWWTP shall not be required to obtain a construction permit.

(c) The following requirements shall apply to a WWTP that collects, conveys, or treats only stormwater[storm-water]:

1. A permit to construct or modify the facility shall not be required for a WWTP[WTP] that collects, conveys, or treats only stormwater[storm-water] and discharges into the waters of the Commonwealth.

a. These facilities shall comply with 401 KAR 5:037[5:035] through 5:080 and 401 KAR 10:026 through 10:031.

b. 401 KAR 5:060 establishes if these facilities shall obtain a KPDES permit.

2. A WWTP[WTP] that collects, conveys, or treats only stormwater[storm-water] and does not discharge into the waters of the Commonwealth shall obtain an operational permit pursuant to Sections 2, 25, 27, and 30(1)(e) through (h) of this administrative regulation.

Section 2. Application Submittal. (1) An application to construct, modify, or operate a facility, or renew the operational permit for a facility shall be submitted on the applicable forms established in this subsection and shall include the applicable supporting information pursuant to Section 3 of this administrative regulation, applicable construction permit fees pursuant to Section 5 of this administrative regulation, applicable modification or operating permit fees, and plans and specifications for the proposed construction or modification pursuant to Section 6 of this administrative regulation.

(a) For construction of a sewer line extension, the applicant shall submit a completed Construction Permit Application for Clean Water Collection System, DEP No. 7071-S1 (4/2018)[Sewer Line Extension].

(b) For construction of a WWTP or WWTP with a sewer line with a direct discharge, the applicant shall submit or shall have submitted:

1. The completed KPDES applications pursuant to 401 KAR 5:060; and

2. A completed Construction Permit Application for Wastewater Treatment Plant, DEP No. 7071-W1 (4/2018).

(c) For a WWTP construction project without a discharge other than an agricultural waste handling system, the applicant shall submit:

1. A completed Construction Permit Application for Wastewater Treatment Plant, DEP No. 7071-W1 (4/2018)[Form W-1]; and

2. A completed Kentucky No Discharge Operational Permit Application, DEP 7033-ND (3/2018)[Form ND].

(d) For an operational permit or renewal of a Kentucky No Discharge Operational Permit (KNDOP) other than an agricultural waste handling system, the applicant shall submit a completed Kentucky No Discharge Operational Permit for Closed Loop and Spray Irrigation Systems Application, DEP 7033-ND (3/2018)[Form ND].

(e)[4.] For construction, renewal, modification, or operation of agricultural waste handling systems that do not discharge and do not intend to discharge, the applicant shall submit a completed Kentucky No Discharge Operational Permit Application for Agricultural Wastes Handling Systems, Short Form B, DEP 7033-B-ND (3/2018). [2. For a construction approval, an applicant shall also submit a completed Site Survey Request.]

(f) For construction of minor modifications to a WWTP, the applicant shall submit a completed Construction Permit Application for Wastewater Treatment Plant, DEP 7071-W1 (3/2018).

(g) For WWTP construction projects with a discharge for an individual residence, the applicant shall submit a completed notice of intent for coverage under a general permit issued pursuant to 401 KAR 5:055.

(h) For operational permits or renewals of operational permits for publicly owned sewer systems that have at least 5,000 linear feet of sewer line and that discharge to a sewer system or a WWTP that is owned by another person, the applicant shall submit a completed Kentucky Inter-System Operational Permit Application, DEP 7103 (3/2018).

(2) Signatures.

(a) An application and all reports required by the permit shall be signed as established in 40 C.F.R. 122.22(a) through (c). [An application and all reports required by the permit shall be signed by the responsible corporate officer or the person having primary responsibility for the overall operation of the facility.

1. For a municipality, state, federal, or other public agency, the signee shall be a principal executive officer or ranking elected official or the designee.

2. An application or report may be signed by a duly authorized representative, if the authorization has been made in writing by the responsible person].

(b) Certification. A person signing a document in accordance with paragraph (a) of this subsection shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for known violations."

Section 3. Application; Construction Permit Supporting Information. For those facilities required to submit a Construction Permit Application for Wastewater Treatment Plant or Construction Permit Application for Clean Water Collection System[Sewer Line Extensions], the following information shall be submitted with the application pursuant to Section 2 of this administrative regulation:

(1)(a) The applicant shall identify who will inspect and certify that the facility under construction conforms to the plans and specifications approved by the cabinet in accordance with this administrative regulation.

(b) Facilities designed by an engineer shall be inspected and certified by an engineer;

(2) The applicant shall provide:

(a) An estimate for the cost of the facility and the sources of project funding;

(b) A USGS 7.5 minute topographic map with the proposed project site identified;

(c) The North American Datum 1983 (NAD 83), degree, minutes, and seconds measurement of the proposed project's latitude and longitude; and

(d) An estimate, and the basis for the estimate, for the average daily flow added by the proposed project;

(3) Closure plan.

(a) If an existing facility or a portion of a facility will be taken out of service, the applicant shall submit a closure plan discussing the following items:

1. How the facility will be constructed and how the sewage will be diverted to the new construction without a bypass to a stream. If a bypass is unavoidable during construction, the applicant shall submit:

a. An explanation of why construction cannot occur without the bypass;

b. An estimate of the shortest duration for the construction to be completed;

c. A description of all equipment, material, labor, and any other item necessary to complete the construction; and

d. An estimate of when the necessary items for the construction will be on-site;

2. How the contents of the facility will be removed and properly disposed;

3. How any remaining sludge will be removed and properly disposed;

4. How the abandoned facility will be removed or filled and covered; and

5.[4.] How the abandoned sewers will be plugged and manholes filled and covered.

(b) If an existing WWTP discharge is eliminated, the owner of the WWTP shall submit a completed No Discharge Certification, DEP 7032-NDC (3/2018), within thirty (30) days after the elimination of the discharge;

(4) Preliminary submittal. Applicants for WWTP construction permits may submit the following information prior to formal submittal of the construction application, to allow the applicant to receive a preliminary determination on the suitability of the proposed discharge location and preliminary effluent limits used in the design of the facility.

(a) If the information in this subsection is not submitted prior to the formal submittal, the information shall be submitted with the construction application.

(b) The preliminary determination shall be valid for up to one (1) year after issuance of the preliminary determination or until the issuance of the KPDES permit, whichever occurs first.

(c) The preliminary determination shall not be a guarantee of final permit limits and may be changed as a result of information presented during the public notice phase of the KPDES permitting procedure.

(d) The preliminary effluent limits shall be contingent upon the validity, accuracy, and completeness of the following information that the applicant shall submit:

1. A reproducible copy of a USGS 7.5 minute topographic map with the projected service area outlined, the proposed WWTP location, and the discharge point identified on the map;

2. A letter from the regional planning agency stating whether the applicant's project is compatible with the regional facility plan or water quality management plan;

3. a. For a new or an expansion of an existing regional facility pursuant to 401 KAR 5:006, a regional facility plan or water quality management plan.

b. The planning requirements of Recommended Standards for Wastewater Facilities, 2014 Edition, A Report of the Wastewater Committee of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, 2014 (Ten States' Standards) shall be satisfied by the cabinet's approval of a regional facility plan or a water quality management plan;

4. For a WWTP project, a demonstration that the users of the proposed WWTP cannot be served by an existing regional facility. The applicant shall provide a detailed evaluation of alternatives by conducting a twenty (20) year present worth cost analysis.

a. The distance criteria for determining availability shall not apply to a WWTP with an average daily design capacity less than or equal to 1,000 gpd.

b. The distance shall be measured along the most feasible route of connection to a point where the downstream sewer has capacity to carry the additional flow; and

5. An estimate and the basis for the estimate of the average daily flow added by the proposed project;

(5) For a WWTP project, the applicant shall submit the following influent design values:

- (a) Average daily flow;
- (b) Peak daily flow;
- (c) Peak hourly flow;
- (d) Peak instantaneous flow;
- (e) BOD;
- (f) Influent suspended solids;
- (g) Phosphorus; and
- (h) Ammonium nitrogen (NH₃-N);

(6) For a WWTP project, if the discharge point of a proposed WWTP fails to coincide with a stream indicated as a blue line on a USGS 7.5 minute topographic map, the applicant shall demonstrate that the applicant has a recorded deed, recorded other right of ownership, or recorded right of easement to discharge the applicant's effluent across any land owner's property that comes between the point of discharge and a blue line stream;

(7) For a WWTP project, the applicant shall submit a copy of the plat or survey clearly indicating the property boundaries, the position of the proposed facility, and the position of the dwellings within 200 feet of the WWTP;

(8) For a WWTP project, the applicant shall provide a sludge management plan that includes the method of sludge processing and ultimate sludge disposal;

(9) For a WWTP project, the applicant shall indicate that laboratory services shall be provided for self-monitoring and process control to ensure that the WWTP operation complies with the permit; and

(10) For a WWTP project, the applicant shall submit:

- (a) A schematic drawing of the WWTP layout and detailed explanation of the proposed facility and its method of operation;
- (b) The WWTP's reliability category and a demonstration of how the WWTP complies with the reliability requirements in Section 13 of this administrative regulation; and
- (c) The design calculations used to size the unit processes.

Section 4. Application; Preliminary Considerations. (1) A permit shall not be granted to a facility that is not compatible with a regional facility plan or with a water quality management plan approved by the cabinet or the U.S. EPA.

(2) A permit shall not be granted to construct a new or expanded wastewater treatment plant five (5) miles or less upstream of a surface water intake.

(a) The cabinet may issue a variance to the five (5) mile limitation established in this subsection if the applicant demonstrates that the proposed wastewater treatment plant incorporates design and reliability features necessary to protect water quality at surface water intakes located five (5) miles or less downstream of the proposed wastewater treatment plant, and that the wastewater treatment plant discharge will not significantly affect the quality of the water at the downstream source water intake.

(b) An applicant for a variance on the five (5) mile limitation established in this subsection to construct a new or expanded wastewater treatment plant shall submit to the cabinet a plan of study describing in detail how the applicant plans to undertake the demonstration required by subparagraph (a) of this subsection. At a minimum the plan of study shall include the:

- 1. Methodologies to be used;
- 2. Source and extent of existing data to establish quantitative and qualitative background conditions or tentative plan to generate

a data base that will establish quantitative and qualitative background conditions;

3. Parameters to be measured and equipment to be used for measurement and analysis;

4. Means by which the discharge flow and resulting plume will be simulated to include estimates of maximum concentrations expected at the discharge point and the downstream surface water intake; and

5. Distribution of instream sampling points and the frequency at which samples will be taken.

(c) An applicant for a permit to construct a new or expanded wastewater treatment plant shall not commence field work on the demonstration required by subparagraph (a) of this subsection until the plan of study has been reviewed and approved by the cabinet.

(d) An applicant for a permit to construct new or expanded wastewater treatment plant greater than five (5) miles upstream of a surface water intake may be required to demonstrate that the proposed wastewater treatment plant discharge will not significantly affect the quality of the water at the downstream surface water intake.

(3) [(2)] A new open-top component of a WWTP shall not be located within 200 feet of an existing dwelling or property line; except:

(a) A WWTP that serves an individual residence shall not be required to be at least 200 feet from the dwelling that it serves; and

(b) An open-top component of a WWTP may be located within 200 feet of another dwelling that the WWTP does not serve or a property line if:

- 1. The WWTP or component is enclosed within a building that controls odors and dampens noise; or
- 2. The applicant demonstrates that an equivalent method for noise and odor control shall be provided.

(4) [(3)] A discharge point or direct discharge into a wellhead protection area shall comply with Section 4(2) of this administrative regulation [Water Policy Memorandum No. 84-02, Five Mile Limit Policy.] if that public drinking water well or spring is under the direct influence of surface water.

(5) [(4)] The initial suitability of a location for a proposed discharge point or spray irrigation field shall be determined by the cabinet after site inspection. In determining the suitability of the location, the cabinet shall consider the:

- (a) Distance to the nearest dwelling;
- (b) Distance to water intake used for a public water supply;
- (c) Downstream land use;
- (d) Physical characteristics and current use of the stream;
- (e) Physical characteristics of the proposed spray field including karst topography;
- (f) Need for easements;
- (g) Location of property boundaries; and
- (h) Other items consistent with this administrative regulation and KRS Chapter 224.

(5) If the discharge from the WWTP enters a sinkhole directly or enters a disappearing stream, the applicant shall submit a proposal for a groundwater tracer study or results from a previously conducted study to the cabinet.

(a) The cabinet shall accept a groundwater tracer study or a proposal for a groundwater tracer study if it is sufficiently scientifically rigorous to establish if a hydrologic connection exists with:

1. [Establish if a hydrologic connection exists with] Surface waters that may result in additional or more stringent permit limitations;

2. [Establish if a hydrologic connection exists with] Domestic water supply intakes within five (5) miles; and

3. [Establish if a hydrologic connection exists with] Drinking water wells within five (5) miles.

(b) The cabinet shall notify that applicant of the cabinet's acceptance or denial of a proposed groundwater tracer study.

(c) If the cabinet accepts a proposal for a groundwater tracer study, the applicant shall conduct the groundwater tracer study and submit the completed groundwater tracer study to the cabinet.

(d) The cabinet shall issue, deny, or modify the permit based upon the findings of a scientifically rigorous groundwater tracer

study.

(6) The cabinet may condition or deny a permit to construct or expand a facility based on its compatibility with a regional facility plan or the availability of a regional facility.

(a) Permits to construct, expand, or operate a sewage system shall require connection to a regional facility if one (1) becomes available and shall not be renewed, reissued, or modified to remove that requirement unless a regional facility is no longer available.

(b) The distance criteria to determine if a regional facility is available shall be measured along the most feasible route of connection to a point where the downstream sewer has capacity to carry the additional flow.

(7) Pursuant to 401 KAR 5:075~~[5:300]~~, the cabinet may coordinate issuance of a construction permit for WWTPs that require a new KPDES permit or modification to a KPDES permit with the issuance of the KPDES permit to ensure that public comments received as a result of the public notice requirements of 401 KAR 5:075 shall be considered in the issuance of the construction permit.

(a) The cabinet may also coordinate issuance of construction approval for the associated sewer lines with the issuance of the construction permit for the WWTP.

(b) The cabinet may condition or deny the construction permit based on those public comments.

(8)(a) The cabinet shall issue a notice of deficiency for the deficiencies in the application, fees, supporting information, or plans and specifications.

(b) Failure of the applicant to respond to a notice of deficiency within thirty (30) days shall result in the application being terminated without the issuance of a construction permit.

Section 5. Fees. (1) Except as specified in KRS 224.10-100, 224.16-050, and subsection (5) of this section, the applicant shall submit a construction permit fee as provided in subsection (4) of this section with the construction permit application and any applicable KPDES fee.

(2) If the cabinet denies a construction permit for a WWTP or sewer line, the fee for the construction permit shall be retained by the cabinet, unless the fee is for a WWTP that serves only an individual residence.

(3) The applicant shall make checks or money orders payable to the Kentucky State Treasurer.

(4) Construction permit fees shall be as established in the table in this subsection~~[shown on the following schedule]~~, except as provided in subsection (5) of this section.

Facility Category	Construction Permit Fee
Large Facility: WWTP	\$1,800
Intermediate Facility: WWTP	\$900
Small Facility: WWTP	\$450
Minor Modification to a WWTP:	\$200
Small Facility for Nonprofit Organizations pursuant to KRS 224.16-050(5):	\$50
Large Facility: Sewer Lines	\$800
Intermediate Facility: Sewer Lines	\$400
Small Facility: Sewer Lines	\$200

(5) Fees established in this section shall not apply to an agricultural waste handling system or to a renewal of a KNDOP permit.

(6) The WWTP fee shall apply to the WWTP project and sewers or pump stations located on the plant property.

(a) A sewer fee shall apply to all sewers, force mains, and pump stations that are bound together as one (1) set of plans.

(b) If a WWTP project includes sewers, force mains, or pump stations located off of the plant property, at least two (2) fees shall be submitted.

(7) To qualify for the reduced fee in subsection (4) of this section, nonprofit organizations shall submit proof that they are qualified pursuant to 26 U.S.C. 501(c)(3).

Section 6. Plans and Specifications. (1) The applicant shall

submit to the cabinet at least one (1) set~~[three (3) sets]~~ of detailed plans and specifications for the facility and one (1) digital copy. Plans for gravity sewer lines and force mains shall include a plan view and a profile view.

(2) The cabinet may request additional information as is necessary to evaluate the facility to ensure compliance with this administrative regulation.

(3) If cabinet approval is obtained, changes shall not be made to the plans and specifications that would alter or affect the location, capacity, type of treatment process, discharge location, or quality of effluent without issuance of a modified permit from the cabinet.

(4) If a proposed facility will become a part of a sewer system served by a regional facility or has a projected average daily design capacity of 10,000 gpd or more, the plans and specifications shall be prepared, stamped, signed, and dated by a professional engineer.

(5) The plans shall be accompanied by engineering calculations necessary for the understanding of the basis and design of the facility.

(6) If a proposed facility's design capacity is less than 10,000 gpd, the cabinet may require the plans to be prepared, stamped, signed, and dated by a professional engineer if there is not sufficient operating data available from previous similar installations. Operation data shall demonstrate that water quality standards have not been violated and that there have not been significant operational problems.

Section 7. Design Considerations. (1)(a) Facilities, except an extended aeration package WWTP with an average daily design capacity less than 100,000 gpd, shall be designed in accordance with the Recommended Standards for Wastewater Facilities, 2014 Edition, A Report of the Wastewater Committee of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, 2014~~[Recommended Standards for Wastewater Facilities of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers]~~, commonly referred to as Ten States' Standards.

1. A deviation from the Ten States' Standards requirements may~~[shall]~~ be approved if the applicant submits a written request for a deviation with the basis for the request pursuant to this paragraph.

2. The basis for the deviation request shall be supported by current engineering practice such as that found in Wastewater Engineering: Treatment and Reuse, Metcalfe and Eddy Inc., 5th Edition (2013)~~[Some references to current engineering practice may be found in the Wastewater Engineering Treatment, Disposal, Reuse by Metcalfe and Eddy, Inc.]~~

3. Design calculations and other supporting documentation to support the deviation shall be submitted to the cabinet.

(b) Other practices may be required when~~[by the cabinet based on the cabinet's best professional judgment that the practices are]~~ necessary for the protection of public health and the environment.

(c) Other practices may~~[shall]~~ be approved by the cabinet if sufficient operational experience is available from previous similar installations to indicate operational problems have not occurred, that water quality standards have not been violated, and design calculations and documentation to support the other practice have been submitted to the cabinet.

(2) The applicant shall demonstrate that the effluent from a proposed facility shall:

(a) Protect those minimum conditions listed in 401 KAR 10:031 that are applicable to all waters of the Commonwealth;

(b) Not cause those waters designated by 401 KAR 10:026 or categorized by 401 KAR 10:030 to be of lesser quality than the numeric criteria applicable to those waters in 401 KAR 10:031 or the requirements of 401 KAR 10:030; and

(c) Be in accordance with any facility requirement established in 401 KAR Chapter 5.

(3) Each WWTP shall have a flow measuring device at the plant capable of measuring the anticipated flow, including variations, with an accuracy of \pm ten (10) percent.

(a) The flow measuring device shall measure all flow

discharged by the WWTP including any bypasses.

(b) An indicating, recording, and totalizing flow measuring device shall be installed at each large WWTP.

(c) A flow measuring device for new large WWTPs shall meet the requirements of Section 12 of this administrative regulation.

(4) A bypass or overflow structure of any type shall not be constructed in a sewer line or pump station or at a WWTP unless construction of the bypass or overflow structure is necessary to prevent loss of life, personal injury, or severe property damage and there is not an[a] alternative.

Section 8. Requirements for Sewer Line Extensions. (1) If the applicant does not own all of the proposed sewer line extension, the applicant shall identify the owner and the portion of the sewer line extension owned by the other person.

(2) The applicant shall submit letters from the owner of the:

(a)[~~The owner of the~~] Sewer line extension stating that the owner shall accept operation and maintenance responsibilities for the sewer line extension as it is constructed;

(b)[~~The owner of the~~] Sewer system stating that the owner approves the connection and accepts responsibility for the additional flow; and

(c)[~~The owner of the~~] WWTP stating that the owner approves the connection and accepts responsibility for the additional flow.

(3)(a) The applicant shall demonstrate that the portion of the sewer system used by the connection has adequate capacity to transport the current and anticipated peak flow to the WWTP and that the portion of the sewer system used by the connection shall not be subject to excessive infiltration or excessive inflow.

(b) The cabinet may deny a sewer line extension for that portion of the sewer system if the portion of the system is subject to excessive infiltration or excessive inflow unless a plan for investigation and remediation that addresses these conditions has been submitted and is being implemented.

(4)(a) The applicant shall demonstrate that the WWTP that receives the waste has adequate capacity to treat the current and the anticipated flow and is not subject to excessive infiltration or excessive inflow.

(b) The cabinet may deny the sewer line extension if the WWTP does not have adequate capacity to treat the flow or is subject to excessive infiltration or excessive inflow unless a plan for investigation and remediation that addresses these conditions has been submitted and the plan is being implemented.

(5) The entrance of groundwater into, or loss of waste from, a new gravity sewer line shall be limited to 200 gpd per inch of diameter per mile of the gravity sewer line and shall include[~~This limitation includes~~] manholes, gravity sewer lines, and appurtenances.

(6)(a) The integrity of a new gravity sewer line shall be verified by either the infiltration-exfiltration or low pressure air testing method.

1. An infiltration-exfiltration test shall be performed with a minimum positive head of two (2) feet.

2. A deflection test shall be performed for each new flexible pipe; pipe deflection shall not exceed five (5) percent.

3. Each new manhole shall be tested for watertightness.

(b) The integrity of a new force main shall be verified by leakage tests. The applicant shall describe the proposed testing methods and leakage limits in the specifications submitted with the permit application.

(7) The construction of a new combined sewer shall not be permitted unless it is a consolidation sewer, flood relief sewer, or a replacement of a combined sewer that:

(a) Conforms with the long-term CSO control plan that complies with the Combined Sewer Overflow (CSO) Control Policy, U.S. EPA, 59 Federal Register 18688, April 1994;

(b) Enhances water quality; and

(c) Protects public health and safety.

(8) A gravity sewer line and a force main shall be designed and constructed to give mean velocities, when flowing full, of not less than two and zero-tenths (2.0) feet per second.

(a) The roughness coefficient used in the Manning or Kutter's formula shall be 0.013, or the "C" factor used in the Hazen-

Williams Formula shall be 100.

(b) If the specifications allow only plastic pipe, a roughness coefficient of 0.011 or a "C" factor of 120 may be used.

(c) A roughness coefficient between 0.013 and 0.011 may be used for other pipe materials if sufficient documentation of experimental testing is submitted to the cabinet and if the testing supports the use of the design roughness coefficient.

(9) A gravity sewer line and a force main shall have a minimum of thirty (30) inches of cover or provide comparable protection.

(10) If a gravity sewer line and a force main are to be constructed in fill areas, the fill areas shall be compacted to ninety-five (95) percent density as determined by the Standard Proctor Density test or to a minimum of ninety (90) percent density as determined by the Modified Proctor Density test prior to the installation of the sewer lines.

(11) The minimum diameter for a conventional gravity sewer line shall be eight (8) inches, except that:

(a) The minimum diameter for an extension to an eight (8) inch or larger sewer line if a future extension is not feasible shall be six (6) inches;

(b) The minimum diameter for an extension to a six (6) inch sewer line shall be six (6) inches; and

(c) A sewer line shall be sized based upon engineering calculations consistent with current engineering practices.

(12) A manhole shall be provided at the junction of two (2) building sewers. This subsection shall not apply to building sewers that serve a single-family residence.

(13) The following building sewers shall be exempt from the requirements of this administrative regulation:

(a) A gravity sewer that:

1. Discharges directly to the sewer main; and
2. Serves a single building; and

(b) A force main sewer, regardless of the location of the pump station that:

1. Discharges directly to a gravity sewer main; and
2. Serves a single building.

(14) Except as provided in paragraph (b) of this subsection, a sewer line shall be located at least fifty (50) feet away from an intermittent or perennial stream except where the sewer alignment crosses the stream.

(a) The distance shall be measured from the top of the stream bank.

(b) The applicant may request a variance from the requirement established in this subsection.

(15) A gravity sewer line and a force main that cross streams shall be constructed by a method that maintains normal stream flow and allows for a dry excavation.

(a) Water pumped from the excavation shall be contained and allowed to settle prior to reentering the stream.

(b) Excavation equipment and vehicles shall operate outside of the flowing portion of the stream.

(c) Spoil material from the sewer line excavation shall not be allowed to enter the flowing portion of the stream.

(16) A pump station wetwell shall be sized so[~~such~~] that, based on the average flow, the time to fill the wetwell from the pump-off elevation to the pump-on elevation shall not exceed thirty (30) minutes.

(17) A pump station wetwell shall have a vent.

(18) A pump station shall provide a minimum of two (2) hours of detention, based on the average design flow, above the high level alarm elevation or provide an alternate source of power with wetwell storage providing sufficient time for the alternative power source to be activated.

(19) Each high point in the force main shall have an automatic air release valve.

(20) The applicant shall submit a performance curve for a proposed pump station.

(21) A simplex design shall be used only for a pump station that serves an individual residence or business, and a spare pump shall be available for immediate installation.

Section 9. Municipal Water Pollution Prevention Program. This section applies to owners of regional WWTPs, sewer systems

served by regional WWTPs, and political subdivision facilities with KISOPs. (1) For each regional WWTP, the cabinet shall review the WWTP's reported monthly flows and organic loads for the most recent twelve (12) months. If the annual average flow or organic load, or for systems with combined sewer lines the lowest monthly flow and associated organic load, exceed the following values, the cabinet shall advise the owner of the WWTP of the need to address the potential overload condition pursuant to subsections (2) and (3) of this section:

(a) For a regional WWTP with a design capacity of ten (10) mgd or less, ninety (90) percent of the WWTP's average daily design capacity; or

(b) For a regional WWTP with a design capacity of more than ten (10) mgd, ninety-five (95) percent of the WWTP's average daily design capacity.

(2) The cabinet shall give written notice to the owner of the WWTP that the wastewater collection system shall not accept any additional flow until the owner of the WWTP:

(a) Agrees to address the potential overload condition identified in subsection (1) of this section in accordance with subsection (3) of this section; or

(b) Demonstrates to the cabinet that the additional flow will not result in an increase in monthly flows at the WWTP and receives cabinet approval to accept the additional flow.

(3) The cabinet shall deny the approval of a sewer line extension until the owner of the WWTP agrees to address the potential overload condition identified in subsection (1) of this section. The owner shall address the condition by:

(a)1. Demonstrating, with supporting documentation, that the average daily design capacity of the plant is greater than the permitted amount.

2. The cabinet shall review the request and if justified, shall issue a revised average daily design capacity for the WWTP by issuing a modification to the KPDES permit;

(b) Expanding the WWTP to a size sufficient to handle the anticipated flows and loads; or

(c) Performing other remedial measures that address the condition.

(4)(3) The cabinet shall deny a sewer line extension that is of sufficient flow or adds load sufficient to exceed the remaining design capacity of the WWTP or exacerbate water quality problems until the owner of the WWTP agrees to address the design capacity or water quality problem.

(5)(4) The owners of the following facilities shall conduct a study of the sewer system or the affected portion of the sewer system that complies with subsections (5) and (6) of this section:

(a) A regional WWTP with a reported average flow or organic load that exceeds the percent identified in subsection (1)(a) or (b) of this section, as applicable, or a political subdivision KISOP facility that either:

1. Receives more than 275 gallons per capita per day of sewage flow based on the maximum flow received during a twenty-four (24) hour period exclusive of industrial flow; or

2. Receives more than 120 gallons per capita per day of sewage flow based on the annual average of daily flows exclusive of industrial flow; or

(b) If subject to excessive infiltration or excessive inflow, a regional WWTP, sewer system served by a regional WWTP, or a political subdivision facility with a KISOP.

(6)(5) The study shall determine if the infiltration-inflow can be removed in a cost-effective manner by using a twenty (20) year present worth cost analysis and if it cannot be, shall identify the modifications to the sewer system, affected portion of the sewer system, or affected portion of the WWTP necessary to transport and treat the infiltration-inflow.

(a) A schedule for completion of the necessary modifications shall also be prepared.

(b)1. The study and schedule shall be submitted to the cabinet for review and approval.

2. Approval shall be based on cost and length of time required to correct the infiltration-inflow.

(7)(6) For the infiltration-inflow study of the sewer system or the affected portion of the sewer system, the owner shall:

(a) Use a map of the sewer system or the affected portion of the sewer system to select manholes for the installation of flow monitoring equipment;

(b) Install equipment to monitor flow at the key manholes, groundwater levels, and rainfall volume and duration for a period of thirty (30) to ninety (90) days;

(c) Conduct physical surveys, smoke tests, and dye water studies of the affected portion of the sewer system;

(d) Evaluate the cost-effectiveness of transportation and treatment versus correction of the infiltration-inflow sources by using a twenty (20) year present worth cost analysis;

(e) Internally inspect the sewer lines in the affected portion of the sewer system to determine the rehabilitation locations and methods if the rehabilitation locations and methods cannot be established by other analysis;

(f) Develop plans for rehabilitation of the affected portion of the sewer system or modifications to the affected portion of the facility necessary to transport and treat all flows; and

(g) Develop a schedule for completion of the rehabilitation or modifications.

(8)(a)(7)(a) The owner of the facility shall complete the necessary rehabilitation or modifications in accordance with the schedule to which the applicant and cabinet agree.

(b) The cabinet may deny a further sewer line extension if the owner is not meeting the schedule or is not making progress that follows the schedule.

Section 10. Extended Aeration Package WWTP Requirements. This section shall apply to an extended aeration package WWTP intended to treat only domestic sewage but shall not apply to an extended aeration package WWTP that serves an individual residence. (1) A bar screen shall be provided for each plant, except those with trash traps pursuant to Section 14 of this administrative regulation.

(2) The aeration chamber shall have a minimum detention time of twenty-four (24) hours based on the average design flow.

(3) A minimum of 2,050 cubic feet of air shall be provided per pound of BOD.

(4) The clarifier shall have:

(a) A minimum detention time of four (4) hours based on the average design flow;

(b) A surface overflow rate of less than 1,000 GPD/ft²; and

(c) A solids loading of less than thirty-five (35) lb/ft² based on the peak daily design flow rate.

(5) A positive sludge return shall be provided.

(6)(a) A source of water shall be provided for cleanup.

(b) If a potable source is provided, backflow preventers shall be installed to protect the water supply.

(7) Fencing with a lockable gate shall be installed around the plant site.

(8) An all-weather access road to the plant shall be provided.

(9) A sludge holding system shall be provided for each large WWTP. The sludge holding system shall:

(a) Provide two (2) cubic feet of volume per 100 gallons of WWTP design treatment capacity;

(b) Provide thirty (30) cubic feet per minute (cfm) of air per 1,000 cubic feet of tank volume;

(c) Be designed to prevent overflows; and

(d) Transport supernatant to the aeration chamber.

(10) For a large WWTP, motors and blowers shall be installed sufficient to handle the load if the largest unit is taken out of service.

(11) Post aeration, if required by effluent limits, shall be designed to raise the effluent dissolved oxygen from two (2) mg/l to the required effluent concentration.

(a) If a diffused air system is used, a minimum blower capacity of 0.154 cubic feet per minute (cfm) per 1,000 gallons of average daily design capacity shall be provided.

(b) If a step aeration ladder is used, a minimum drop of nineteen (19) feet shall be provided.

(12) A WWTP with a monthly average permit limit for CBOD of twenty (20) mg/l or less shall provide additional treatment.

(13) A WWTP that serves a restaurant or other similar

establishment where food is prepared and served and a food grinder is used shall be designed to treat the additional BOD loading.

(14) Effluent discharge piping for a new WWTP, except a regional facility, shall be designed to transport sewage to facilitate a future connection to a regional facility.

(15) A used package extended aeration WWTP may be used if the manufacturer or a professional engineer certifies that the tank is structurally sound and all mechanical equipment has been reconditioned.

Section 11. Disinfection. (1) All WWTPs shall have a disinfection process that meets the following requirements:

(a) An ultraviolet disinfection system designed to treat the anticipated peak hourly flow with two (2) banks in series;

(b) A chlorination system with a flow or demand proportional feed system.

1. The chlorine contact tank shall have a minimum detention time of thirty (30) minutes based on the average flow, or fifteen (15) minutes based on the peak hourly flow, whichever requires the larger tank size.

2. A WWTP shall also have a dechlorination system with a flow or demand proportional feed system if necessary to meet the effluent limits;

(c) A chlorination system with a manually controlled feed system and a flow equalization basin designed to eliminate the diurnal flow variations.

1. The flow equalization basin shall meet the requirements of Section 17 of this administrative regulation.

2. The chlorine contact tank shall have a minimum detention time of thirty (30) minutes based on the average design flow or fifteen (15) minutes based on peak hourly flow.

3. A WWTP shall also have a dechlorination system if necessary to meet the effluent limits.[-;or]

(d) A peracetic acid system for a WWTP with a capacity that is greater than 10,000 gpd in flow.

1. If a pilot test is to be conducted, the WWTP shall submit written notice of the intent to begin pilot testing.

2. Pilot testing shall not exceed twelve (12) months.

3. For final approval of a peracetic acid system, the WWTP shall submit:

a. A W-1 application;

b. A detailed plan showing:

i. The treatment train that shall include peracetic acid;

ii. The basin that will serve as a chamber for feeding peracetic acid; and

iii. Secondary containment of peracetic acid storage.

c. The type of pump used to deliver peracetic acid;

d. The type of material used in the feed line; and

e. The contact time calculations.

4. If basin construction is required, construction plans and specifications shall be signed, stamped, and dated by a Professional Engineer.

(e) Other disinfection processes may be approved if they provide equivalent treatment.

(2) Tablet type chlorination equipment shall not be used in an intermediate or large WWTP.

Section 12. Requirements for Flow Measuring Devices. This section shall apply to a new large WWTP. (1)(a) Each flow measuring device shall be capable of measuring the anticipated flow, including variations, with an accuracy of \pm ten (10) percent.

(b) The flow measuring device shall measure all flow received at the WWTP.

(c) An indicating, recording, and totalizing flow measuring device shall be installed at each large WWTP.

(2)(a) If the influent and effluent flow are expected to be significantly different, flow measuring devices shall be provided for both the influent and the effluent flow.

(b) Multiple flow measuring devices shall be provided for a WWTP[the following]:

1.[A- WWTP] That stores and hydrographically controls the release of effluent;

2.[A- WWTP] With flow equalization facilities that are designed

to store more than the volume required to dampen the diurnal flow variations;

3.[A- WWTP] With a lagoon that has a detention time of greater than twenty-four (24) hours;

4.[A- WWTP] With the capability to bypass a treatment process; and

5.[A- WWTP] With more than one (1) discharge point.

(3) Sharp crested weirs shall be used for measuring effluent flow only and shall have the following characteristics:

(a) The weir shall be installed perpendicular to the axis of flow, and there shall not be leakage at the weir edges or bottom;

(b) The weir plate shall be level and adjustable;

(c) The sides of a rectangular contracted weir shall be vertical;

(d) The angles of a V-notch weir shall be cut precisely;

(e) The thickness of the weir crest shall be less than one-tenth (0.1) of an inch;

(f) The distance from the weir crest to the bottom of the approach channel shall be more than one (1) foot or two (2) times the maximum weir head, whichever is greater;

(g) For a weir other than a suppressed, rectangular weir, the distance from the sides of the weir to the sides of the approach channel shall be more than one (1) foot or two (2) times the maximum weir head, whichever is greater;

(h) Air shall circulate freely under, and on both sides of, the nappe;

(i) The measurement of head on the weir shall be made at least four (4) times the maximum weir head upstream from the weir crest;

(j)1. The cross-sectional area of the approach channel shall be at least eight (8) times the area of the nappe.

2. The approach channel shall be straight and uniform upstream from the weir for a distance of fifteen (15) times the maximum weir head;

(k) The minimum acceptable weir head shall be two-tenths (0.2) foot;

(l) The maximum downstream pool level shall be at least two-tenths (0.2) foot below the crest elevation;

(m) The weir length for a rectangular, suppressed, or cipolletti weir shall be at least three (3) times the maximum weir head; and

(n) A reference staff gauge shall be provided.

(4) Parshall flumes may be used to measure influent or effluent flows and shall have the following characteristics:

(a) The approach channel upstream of the flume shall be straight and have a width uniform for the length required by the following:

1. If the flume throat width is less than one-half (1/2) the width of the approach channel, the straight upstream channel length shall be twenty (20) times the throat width;

2. If the flume throat width is equal to or larger than one-half (1/2) the width of the approach channel, the straight upstream length shall be greater than ten (10) times the approach channel width; and

3. If the cross-sectional area of the inlet to the approach channel is smaller than the cross-sectional area of the approach channel, additional straight upstream channel length may be required to dissipate the velocity if necessary to maintain laminar flow;

(b) The throat section walls shall be vertical;

(c) The head measuring point shall be at two-thirds (2/3) the length of the converging sidewall;

(d) The flow shall be evenly distributed across the channel, shall be free of turbulence or waves, and shall not be located after transition sections;

(e) The longitudinal and lateral axes of the converging crest floor shall be level;

(f) Free flow conditions shall be maintained; and

(g) A reference staff gauge shall be provided for H_a and H_b to determine if submergence occurs.

(5) Other types of flow measuring devices shall be approved if the device reasonably and accurately measures the flow.

Section 13. Reliability Categories. (1) A WWTP design shall:

(a) Provide sufficient treatment units to allow for cleaning and

repair without causing a violation of effluent limitations or a bypass from the sewer system or WWTP; and

(b) Provide storage or treatment capability sufficient to contain or treat the:

1. ~~[Contain or treat the]~~ Volume of the largest tank if that tank is out of service; and

2. ~~[Contain or treat the]~~ Flow received during the time needed to drain, complete cleaning, and accomplish an anticipated repair without causing a permit violation or bypass of a treatment process.

(2) The cabinet shall determine the reliability grade of a WWTP based on the water quality use designation of the receiving stream, pursuant to 401 KAR 10:031.

(a) A Grade A WWTP shall have:

1. Treatment units and alternate power sufficient for the continuous use of all treatment processes and disinfection, with the exception of alternate power for the aeration equipment used in an activated sludge process; and

2. Full alternate power capacity for a discharge to a stream segment within five (5) miles of a public water supply intake.

(b) A Grade B WWTP shall have:

1. a. Treatment units sufficient for the continuous use of the preliminary, primary, and secondary treatment processes and disinfection; and

b. If an intermediate or large facility, alternate power sufficient for the continuous use of the preliminary, primary, secondary treatment, and disinfection processes, with the exception of alternate power for the aeration equipment used in an activated sludge process; or

2. If a small facility, a design that enables the small facility to connect to an emergency generator.

(c) A Grade C WWTP shall have:

1. a. Treatment units sufficient for the continuous use of the preliminary treatment, primary treatment, and disinfection processes; and

b. If an intermediate or large facility, alternate power sufficient for the continuous use of the preliminary treatment, primary treatment, and disinfection processes; or

2. If a small facility, a design that enables the small facility to connect to an emergency generator.

(d) If alternate power is required pursuant to this subsection:

1. Alternative power shall be provided from the connection to at least two (2) independent power sources or an emergency generator; or

2. The cabinet may approve alternative measures for an intermediate or small facility if:

a. The applicant can demonstrate that those measures provide protection comparable to alternative power; and

b. The receiving stream is not an OSRW, within five (5) miles of a public water supply intake, or within five (5) miles of a wellhead protection area.

~~(3) The following WWTPs shall meet the requirements for a Grade A WWTP~~ requirements shall be met by a WWTP approved to discharge:

~~(a) [A WWTP approved to discharge]~~ To a water body designated as an Outstanding State Resource Water pursuant to 401 KAR 10:031.

~~(b) [A WWTP approved to discharge]~~ Into a sinkhole or disappearing stream; and

~~(c) [A WWTP approved to discharge]~~ Within five (5) miles of a public water supply intake or discharge directly into a wellhead protection area.

(4) A WWTP shall meet the requirements for a Grade B WWTP if it discharges within five (5) miles upstream of the head of an embayment if the lake is at normal elevation.

(5) Except as provided in subsection (6) of this section, a WWTP shall, at minimum, meet the requirements for a Grade C WWTP.

(6) The cabinet shall not assign a grade to a WWTP:

(a) ~~[A WWTP]~~ Treating less than or equal to 1,000 gallons per day; or

(b) ~~[A WWTP]~~ Serving an individual family residence.

Section 14. Requirements for Trash Traps. A trash trap shall not be used on a WWTP with a design capacity of larger than 100,000 gpd. A trash trap shall have an outlet baffle, be accessible to cleaning equipment, have air-tight access openings for cleaning, allow for cleaning in front of baffles, and have a volume required by this section. (1) For a small WWTP, the trash trap volume shall be fifteen (15) percent of the average daily design flow; and

(2) For an intermediate or large WWTP with a design capacity of less than or equal to 100,000 gpd ~~[or less]~~, the trash trap volume shall be as indicated in the ~~[following]~~ table established in this subsection for the appropriate WWTP capacity. For capacities not included, the volume shall be interpolated.

WWTP Capacity (GPD)	Trash Trap Volume (Gallons)
10,000	1,500
20,000	2,400
30,000	2,900
40,000	3,200
50,000	3,430
60,000	3,600
70,000	3,740
80,000	3,840
90,000	3,920
100,000	4,000

Section 15. Requirements for Slow Sand Filters. (1) Wastewater loading shall not exceed five (5) GPD per square foot of filter surface area.

(2) Filter areas larger than 900 square feet shall have multiple beds.

(3) The discharge piping on the filter bed shall be located so that the maximum lateral travel over the sand is less than twenty (20) feet.

(4) Each discharge point shall serve a maximum of 300 square feet of filter surface.

(5) Each discharge point shall have a splash block with a minimum surface area of nine (9) square feet and a square or circular shape.

(6) Distribution piping shall be designed to drain properly.

(7) An underdrain shall be spaced on ten (10) foot centers or less.

(8) Gravel shall be placed around the underdrain and to a depth of six (6) inches over the top of the underdrain.

(9) The filter bed shall have at least thirty (30) inches of sand with an effective size between three-tenths (0.3) and five-tenths (0.5) millimeter.

(10) The dosing chamber shall have a volume sufficient to provide a depth of two (2) inches over the entire filter bed.

Section 16. Requirements for Rapid Sand or Mixed Media Filters. (1) Rapid sand or mixed media filter loadings shall not exceed one (1) gallon per minute per square foot of filter surface area.

(2) If flow equalization is provided, the allowable loading may be increased to two (2) gallons per minute per square foot.

(3) A backwash system shall be provided.

Section 17. Requirements for Flow Equalization Basins. (1) A flow equalization basin shall have:

(a) A variable flow weir box set to deliver flow at a treatable rate;

(b) A minimum of 1.25 cfm of diffused air per 1,000 gallons of flow equalization volume;

(c) An emergency overflow to an appropriate point in the treatment scheme; and

(d) Sufficient volume to dampen the diurnal flow variations.

~~(2) [If site specific information or similar flow pattern is not available, the flow equalization basin volume shall be based on the following formula:~~

$$V = \frac{1}{24} \times Q$$

Where:

V is the required volume for the flow equalization basin;

t is the number of hours flow is generated; and
Q is the volume of flow anticipated to be received at the WWTP during a twenty-four (24) hour period.

(3) A flow equalization basin with earth embankments shall be constructed with a slope not steeper than 1:3 (one to three) unless a steeper slope is supported by geotechnical and slope stability studies.

(4) For a flow equalization basin constructed in material other than earth, the applicant shall indicate how the basin will be properly sealed.

(4) The flow equalization basin volume calculation and justification shall be provided to the cabinet.

Section 18. Requirements for Wastewater Treatment Lagoons.

(1) BOD loading shall be less than:

(a) Thirty-five (35) pounds per day per acre of lagoon surface for a nonaerated primary lagoon system;

(b) Fifty (50) pounds per day per acre of lagoon surface for a nonaerated polishing lagoon; and

(c) 150 pounds per day per acre of lagoon surface for an aerated lagoon.

(2)(a) The lagoon design submittal shall provide details on the aeration system proposed including:

1. The type, location, and capacity of the aeration units;
2. The operating depth;
3. The area of the lagoon at the operating depth;
4. Permeability and thickness of the lagoon liner;
5. Anticipated ultimate wastewater flow; and
6. Influent wastewater characteristics.

(b) A new lagoon system shall be designed to treat a raw wastewater BOD of at least 240 mg/l.

(c) Except as established in Subsection (5) of this section, the lagoon design shall be evaluated by the method established in Ten States' Standards and the predicted BOD remaining shall be less than the required effluent concentration.

(3) A lagoon shall be at least 200 feet from any present residence or adjacent property line.

(4) A nonaerated primary lagoon shall have a minimum detention time of ninety (90) days.

(5) The Ten States' Standards requirement for vegetation to be established prior to filling the lagoon shall not apply.

(6) An applicant proposing a lagoon with an embankment slope steeper than one to three (1:3) shall provide geotechnical and slope stability studies to support the design.

(7) The applicant shall indicate how a basin constructed in material other than earth will be properly sealed.

Section 19. Additional Requirements for WWTPs That Serve Schools. In addition to the requirements of Sections 10 through 18 of this administrative regulation, the following requirements established in this section shall apply to a WWTP that serves a school.:

(1) If a flow equalization basin is provided it shall meet the requirements of Section 17 of this administrative regulation.:

(2) The aeration tank shall have at least ten (10) gallons of capacity per day per student for elementary and middle schools, or at least twenty (20) gallons of capacity per day per student for an elementary or middle school, and a high school.:

(3) The secondary clarifier shall be sized to provide a maximum surface loading, at the average design flow, of 300 GPD per square foot of clarifier surface area. If a flow equalization basin is not provided, the secondary clarifier shall be sized to provide a maximum surface loading of 100 GPD per square foot at average daily design flow.

Section 20. Additional Requirements for WWTPs That Serve Multifamily Residential Developments. In addition to the requirements of Sections 10 through 18 of this administrative regulation, the following requirements shall apply to a WWTP that serves a multifamily residential development. A multifamily residential development including subdivisions, condominiums, apartments, and mobile home parks shall comply with at least provide one (1) or more of the requirements established in

Subsections (1) through (3) of this section. the following measures for additional reliability: (1) Blowers and motors shall be installed sufficient to handle the organic load if the largest unit is not available for service.:

(2) An alternate source of power.:

(3) Additional treatment units or processes.

Section 21. Additional Requirements for WWTPs That Propose Effluent Disposal by Spray Irrigation. In addition to the requirements of Sections 10 through 18 of this administrative regulation, the requirements in this section shall apply to a WWTP that proposes effluent disposal by spray irrigation. (1) One (1) acre of spray field shall be provided for each 1,000 GPD of treated wastewater. An applicant proposing higher application rates shall provide detailed design based on site-specified information.

(2) The following plans and specifications shall be signed, sealed, and dated by a professional engineer licensed in Kentucky:

(a) Plans for a WWTP with a design capacity of more than 1,000 gallons per day that propose an application rate greater than 1,000 gallons per acre per day; and

(b) Plans that propose a final slope equal to or greater than ten (10) percent.

(3) A spray field that has a slope greater than twenty-five (25) percent on any portion of the spray field shall not be permitted.

(4) The soil of a spray irrigation field shall have an average saturated hydraulic conductivity of not less than six-tenths (0.6) inch per hour, as established by:

(a) The saturated hydraulic conductivity value provided by an NRCS soil survey; or

(b) A saturated soil test of the spray field.

(5) The spray field shall have less than a six (6) percent slope unless:

(a) The average saturated hydraulic conductivity for the spray field is more than six (6) inches per hour; and

(b) The average soil depth of the spray field is at least twenty-four (24) inches.

(6) The spray irrigation field shall have sufficient vegetative growth to promote absorption, evaporation, and transpiration.

(a) Vegetative growth shall be perennial.

(b) Vegetative growth shall cover not less than ninety-five (95) percent of the spray field area.

(7) A twenty (20) foot buffer zone shall be provided between the outer boundary of the spray field and the property boundary or the applicant shall provide screening to inhibit the transport of aerosols and windborne spray across property boundaries.

(8) A spray irrigation field for an individual residence shall have a temporal or physical barrier that inhibits human contact with the airborne spray.

(9) Effluent from the spray irrigation field shall be contained on the owner's property.

(10) Setbacks.

(a) A construction permit shall not be issued if a portion of the spray field is closer than 200 feet from an existing dwelling.

(b) A portion of a spray field shall not be closer than the minimum setback requirements for a leach bed as established in 902 KAR 10:085, Section 8.

(c) If a setback provision of 902 KAR 10:085, Section 8, is less stringent than the setback requirements of this subsection, the more stringent setback shall apply.

(11) Effluent derived from a wastewater that contained human waste shall not be applied to an area in active production of food for human consumption.

(12) A spray irrigation field for an individual residence shall also have the following additional requirements:

(a) At least three (3) sprinkler heads;

(b) A spray area larger than 0.19 acre; and

(c) A spray area larger than 0.38 acres if the slope is equal to or greater than six (6) percent.

Section 22. Requirements for WWTPs that Serve an Individual Residence. (1) A wastewater plant intended to serve an individual residence and eligible for a general KPDES permit pursuant to 401 KAR 5:055 shall have, at minimum, the following treatment

processes:

- (a) Extended aeration;
- (b) Filtration; and
- (c) Disinfection.

(2) The WWTP shall be capable of meeting the final effluent limitations of the general permit.

(3) The WWTP shall be capable of meeting secondary treatment requirements of 401 KAR 5:045 prior to filtration.

(4) The cabinet may allow an alternative or additional treatment process to extended aeration if an alternative process is necessary to meet the requirements of a general permit issued pursuant to 401 KAR 5:055.

(5) A minimum lot size of one (1) acre shall be provided for WWTPs~~located within a residential subdivision~~. The cabinet may grant a variance to the one (1) acre limitation established in this subsection if the WWTP owner demonstrates that the WWTP will not adversely affect water quality.

(6) A WWTP serving an individual residence and proposing effluent disposal by spray irrigation shall also comply with Section 21 of this administrative regulation.

(7) Setback restrictions for a treatment system serving an individual residence shall not be less than the setback restrictions established by 902 KAR 10:085, Section 8, Table 7.

(8) An applicant may submit to the cabinet only one (1) of the two (2)~~three (3)~~ copies of the plans and specifications required pursuant to Section 6 of this administrative regulation.

Section 23. Additional Requirements for extended aeration WWTPs that Serve Car Washes or Laundries. An extended aeration WWTP that serves a commercial or fleet car wash, commercial laundry, or laundry serving commercial or institutional establishment, shall have an average daily flow from other biochemically degradable sources that is at least four (4) times greater than the anticipated flow of the car wash, commercial laundry, or laundry serving a commercial or institutional establishment.

Section 24. The Construction Permit. (1)(a) A permit to construct a facility shall be effective upon issuance unless otherwise conditioned.

(b) If construction is not commenced within the twenty-four (24) months following a permit's issuance, a new permit shall be obtained before construction may begin.

(2)(a) The permittee shall submit the certification from an engineer that the facility was constructed in conformity with the plans and specifications approved by the cabinet in accordance with this administrative regulation within thirty (30) days from the completion of construction.

(b) The permittee shall certify the completion of construction for a project not designed by an engineer.

(c) If construction has not been completed within five (5) years of the permit issuance date the permit shall expire and a new permit shall be required.

(3) Permit conditions.

(a) Permits may contain special conditions that~~in the best professional judgment of the cabinet~~ are necessary to comply with KRS Chapter 224 and 401 KAR Chapters 4 through 11. The conditions shall be in writing and treated as a part of the permit.

(b) The following conditions shall apply to all construction permits:

1. There shall not be deviations from the plans and specifications submitted with the application or the conditions specified in this subsection, unless authorized in writing by the cabinet; and

2. The permittee shall ensure that the effluent is of satisfactory quality to prevent violations of the standards in 401 KAR Chapter 5 and 401 KAR Chapter 10.

(c) The following conditions shall also apply to a construction permit issued to a WWTP that discharges to waters of the Commonwealth:

1. If a sewer system served by a regional facility becomes available, the WWTP shall be abandoned and the influent flow shall be diverted to the regional facility; and

2. Issuance of this permit shall not relieve the permittee from the responsibility of obtaining other permits or licenses required by this cabinet and other state, federal, or local agencies.

(4) The construction permit for agricultural waste handling system may be used as an interim operational permit until the operational permit is issued or denied.

(5) The issuance of a permit by the cabinet shall not convey any property rights of any kind or any exclusive privilege.

Section 25. Kentucky No Discharge Operational Permits (KNDOPs). A Kentucky No Discharge Operational Permit (KNDOP) shall only be issued to a facility that does not discharge and does not intend to discharge to waters of the Commonwealth, including agricultural waste handling systems and facilities that dispose of effluent by spray irrigation. (1) Nutrient Management Plans. An animal feeding operation shall have a nutrient management plan that contains the information required by Subsection (2) of this section and that is consistent with the Agriculture Water Quality Act, KRS 224.71-100 through 224.71-145 and the NRCS Conservation Practice Standard Nutrient Management Code 590 for Kentucky, NRCS, Kentucky (January 2013).

(2) The nutrient management plan shall~~to the extent applicable, also address the following elements~~:

(a) Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

(b) Ensure proper management of animal mortalities established in KRS 257.160 to ensure that they shall not be disposed of in liquid manure, stormwater~~storm-water~~, or process wastewater storage or treatment system;

(c) Ensure that clean water shall be diverted from the production area;

(d) Prevent direct contact of confined animals with waters of the Commonwealth;

(e) Ensure that chemicals and other contaminants handled on-site shall not be disposed of in manure, litter, process wastewater, or stormwater~~storm-water~~ storage or treatment system, unless specifically designed to treat chemicals and other contaminants;

(f) Identify site-specific conservation practices to be implemented to control runoff of pollutants to waters of the Commonwealth;

(g) Identify protocols for testing of manure, litter, process wastewater, and soil;

(h) Establish protocols to land apply manure, litter, or process wastewater in accordance with site-specific nutrient management practices that ensure agricultural utilization of the nutrients in the manure, litter, or process wastewater; and

(i) Large animal feeding operations shall identify records that shall be maintained to document the implementation and management of the minimum elements described in paragraphs (a) through (h) of this subsection.

(3) Additional Measures for Large Animal Feeding Operations.

(a) Visual inspections. There shall be routine visual inspections of the production area. The following shall be visually inspected:

1. Weekly inspections of all stormwater~~storm-water~~ diversion devices, runoff diversion structures, and devices channeling contaminated stormwater~~storm-water~~ to the wastewater and manure storage and containment structure;

2. Daily inspections of drinking water or cooling water lines; and

3. Weekly inspections of the manure, litter, and process wastewater impoundments. The inspection shall note the level in liquid impoundments as indicated by the depth marker in paragraph (b) of this subsection.

(b) Depth marker. An open surface liquid impoundment shall have a depth marker that clearly indicates the storage capacity.

(c) Corrective actions. A deficiency found as a result of an inspection shall be corrected.

(d) Mortality handling. A mortality shall not be disposed of in liquid manure or process wastewater system and shall be handled in a way that prevents the discharge of pollutants to surface water.

(4) Record Keeping Requirements for Large Animal Feeding Operation~~the~~ Production Areas~~Area~~. Each AFO shall maintain

on-site, for a period of five (5) years from the date they are created, a complete copy of the information required by subsection (2)(i) of this section, and the records specified in paragraphs (a) through (f) of this subsection. The AFO shall make these records available to the cabinet for review upon request.

(a) Records documenting the inspections required pursuant to subsection (3)(a) of this section;

(b) Weekly records of the depth of the manure and process wastewater in the liquid impoundment as indicated by the depth marker pursuant to subsection (3)(b) of this section;

(c) Records documenting an action taken to correct deficiencies required pursuant to subsection (3)(c) of this section. Deficiencies not corrected within thirty (30) days shall be accompanied by an explanation of the factors preventing immediate correction;

(d) Records of mortalities management and practices used by the AFO to meet the requirements of subsection (3)(d) of this section;

(e) Records documenting the current design of manure or litter storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity; and

(f) Records of the date, time, and estimated volume of any overflow.

(5) Recordkeeping requirement for the land application areas.

(a) Each AFO shall maintain on-site a copy of its site-specific nutrient management plan.

(b) Each AFO shall maintain on-site for a period of five (5) years from the date it was created a complete copy of the information required by the permit application Short Form B, the information required by subsection (2)(i) of this section, and the records specified in paragraphs (a) through (j) of this subsection.

(c) The AFO shall make ~~these records~~ available to the cabinet for review upon request.[-]

1. Expected crop yields;

2. The date manure, litter, or process waste water is applied to each field;

3. Weather conditions at time of application and for twenty-four (24) hours prior to and following application;

4. Test methods used to sample and analyze manure, litter, process waste water, and soil;

5. Results from manure, litter, process waste water, and soil sampling;

6. Explanation of the basis for determining manure application rates, ~~as provided in the NRCS Conservation Standard Practice Code-590 for Kentucky~~;

7. Calculations showing the total nitrogen and phosphorus to be applied to each field, including sources other than manure, litter, or process wastewater;

8. Total amount of nitrogen and phosphorus applied to each field, including documentation of calculations for the total amount applied;

9. The method used to apply the manure, litter, or process wastewater; and

10. Each date of manure application equipment inspection.

(6) If an animal feeding operation does not discharge, does not intend to discharge, and obtains a Kentucky No-Discharge Operational Permit pursuant to this section, the cabinet shall not consider the animal feeding operation a CAFO.

(7) KNDOP permit conditions.

(a) A permit may contain special conditions that ~~in the best professional judgment of the cabinet~~ are necessary to comply with KRS Chapter 224 and 401 KAR Chapters 4 through 11.

(b) The conditions shall be in writing and shall be treated as part of the permit.

(c) ~~The following conditions shall apply to all KNDOPs.~~

4.[-] There shall not be a point source discharge of wastewater from the facility.

~~(d)[2.-] The permit authorizes operation only of the WWTP described in the permit in the manner and under the conditions established[described] in the permit application and supporting documents as approved by the cabinet in the permit.~~

~~(e)[3.-a.] The permit shall not be construed as authorizing:~~

1. An operation that is otherwise in contravention of a statute, administrative regulation, ordinance, or order of a governmental unit.

~~2.[b.- The permit shall not be construed to authorize] The creation or maintenance of a nuisance.~~

~~(f)[4.-a.] The permit shall be subject to revocation or modification by the cabinet as established in KRS[Subchapter] 224.10-100.~~

~~(g)[b.-] Commencement of a routine point source discharge shall result in a permit revocation.~~

~~(h)[5.-] A permit shall be issued in accordance with the provisions of KRS Chapter 224 and 401 KAR Chapters 4 through 11. Issuance of the permit shall not relieve the permittee from the responsibility of obtaining any other permits or licenses required by the cabinet and other state, federal, and local agencies.~~

~~(i)[6.-] If applicable, the waste materials removed from the settling basin shall be disposed of according to the requirements of the Division of Waste Management in 401 KAR Chapters 30 through 49.~~

~~(j)[7.-] Land application that results in runoff to a stream shall be prohibited.~~

Section 26. Kentucky Intersystem Operational Permits (KISOPs). A KISOP shall be issued to publicly or privately owned sewer systems that discharge to a WWTP or a sewer system that is owned by another person. (1) A KISOP shall not apply to sewer systems with less than 5,000 linear feet of sewer line.

(2) A KISOP shall not apply to a sewer system that discharges to a POTW if the system is subject to a local permit pursuant to the pretreatment program established in 401 KAR 5:055[5-057].

(3) A KISOP shall be issued to the applicant and the permittee shall remain the responsible party until a Transfer of Permit Request form[change in ownership certification] is submitted and the transfer of the permit[ownership] is acknowledged by the cabinet.

(4) Permits may contain special conditions that ~~in the best professional judgment of the cabinet~~ are necessary to comply with KRS Chapter 224 and 401 KAR Chapters 4 through 11. The conditions shall be in writing and shall be treated as a part of the permit.

Section 27. Operational Permits. An operational permit required in Sections 25 and 26 of this administrative regulation shall be valid for five (5) years from the date of issuance and shall be renewed to maintain continuous operation. (1) The operational permit shall specify the type of monitoring or analysis required for a facility, and the frequency that the monitoring or analysis shall be performed and reported to the cabinet.

(2) The facility, including backup or auxiliary components, shall be operated and maintained to ensure compliance with permit requirements and this administrative regulation.

Section 28. Transfer of Operating Permits. (1) An operating permit shall be issued to the applicant, and the permittee shall remain the responsible party for compliance with the permit until:

(a) A Transfer of Permit Request form[change in ownership certification] is submitted by the new owner and the transfer of the permit[ownership] is acknowledged by the cabinet; or

(b) The current permittee has submitted a Transfer of Permit Request form[change in ownership certification] and the transfer of the permit has been acknowledged by the cabinet.

(2) A Transfer of Permit Request form[change in ownership certification] submitted by the current permittee without the signature of the new permittee[owner] shall include a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them.

(3) A transfer of permit request[change in ownership certification] shall serve as an application for a minor modification of the operating permit.

(4) Transfer of operating permits issued pursuant to Sections 25 and 26 of this administrative regulation shall be as established in C.F.R. 122.61.

Section 29. Alternative Requirements. (1) The cabinet may approve alternative requirements to the provisions of Sections 7 to 23 of this administrative regulation ~~if the cabinet determines~~^{based on the cabinet's best professional judgment} that the alternative measure provides sufficient treatment, or transport.

(2) The applicant shall demonstrate that an alternative requested by the applicant provides sufficient treatment or transport.

Section 30. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Recommended Standards for Wastewater Facilities, 2014 Edition, A Report of the Wastewater Committee of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, 2014" [Recommended Standards for Wastewater Facilities, 2004, Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers]. This document is also known as the "Ten States' Standards";

(b) "Water Policy Memorandum No. 84-02, Five Mile Limit Policy, signed by T. Michael Taimi, August 28, 1984", Facilities Construction Branch;

(c) "Construction Permit Application for Wastewater Treatment Plant, DEP No. 7071-W1 (3/2018) [DEP 7071-W (2/2009)]";

(d) "Construction Permit Application for Clean Water Collection System, DEP No. 7071-S1 (3/2018)" [Sewer Line Extension, DEP 7071-S (9/96)], Facilities Construction Branch;

(e) "Change in Ownership Certification for Sewer Line Extensions, DEP 7071-CO (9/96)", Facilities Construction Branch;

(f) "Transfer of Permit Request" ["Change in Ownership Certification], DEP 7032-CO (3/2018) [(2/2009)]";

(g) "No Discharge Certification, DEP 7032-NDC (3/2018) [(2/2009)]";

(h) "Kentucky No Discharge Operational Permit for Closed Loop and Spray Irrigation Systems Application, DEP 7033-ND (3/2018) [(2/2009)]";

(i) "Kentucky No Discharge Operational Permit Application for Agricultural Wastes Handling Systems, Short Form B, DEP 7033-B-ND (3/2018) [(2/2009)]";

(j) "Site Survey Request, Kentucky No Discharge Operational Permit for Agricultural Wastes Handling System, DEP 7032-Ag-Site (9/96)";

(k) "Kentucky Intersystem Operational Permit Application, DEP 7103 (3/2018) [(2/2009)]"; and

(l) "NRCS Conservation Practice Standard Nutrient Management Code 590 for Kentucky, NRCS, Kentucky, (January 2013) [(5/24/04)]".

(m) "Combined Sewer Overflow (CSO) Control Policy", U.S. EPA, 59 Federal Register 18688, April 1994.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the division's Web site at <http://water.ky.gov>.

(3)(a) "Recommended Standards for Wastewater Facilities, 2014 Edition, A Report of the Wastewater Committee of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, 2014" may also be obtained at <http://10statesstandards.com/wastewaterstandards.pdf>.

(b) "Combined Sewer Overflow (CSO) Control Policy, U.S. EPA, 59 Federal Register 18688, April 1994" may also be obtained at <https://www.epa.gov/sites/production/files/2015-10/documents/owm0111.pdf>.

(c) "NRCS Conservation Practice Standard Nutrient Management Code 590 for Kentucky, NRCS, Kentucky, (January 2013)" may also be obtained at [https://efotg.sc.egov.usda.gov/references/Delete/2013-11-9/Nutrient Management Std \(590\).pdf](https://efotg.sc.egov.usda.gov/references/Delete/2013-11-9/Nutrient%20Management%20Std%20(590).pdf).

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 3, 2018

FILED WITH LRC: August 7, 2018 at 10 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy

Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the issuance of permits for the construction, modification, and operation of facilities authorized under KRS Chapter 224, and a schedule of fees to recover the costs of issuance for certain classes of permits.

(b) The necessity of this administrative regulation: This administrative regulation provides specific requirements for construction and modification of wastewater treatment facilities. This administrative regulation is necessary to implement the goal of KRS 224 to control water pollution in the Commonwealth and to address environmental goals of KRS 224 that are not covered under federal law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100 which authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into waters of the Commonwealth, and for the installation, alteration, expansion, or operation of any sewage system. KRS 224.16-050 allows the cabinet to issue federal permits pursuant to the Federal Water Pollution Control Act and to certify that applicants for a federal permit for the construction or operation of facilities which may result in a discharge into waters of the Commonwealth will comply with the applicable provisions of the Federal Water Pollution Control Act. KRS 224.16-060 establishes the cabinet as the water pollution agency for the Commonwealth for all purposes of the Water Pollution Control Act. KRS 224.70-100 establishes the purposes of KRS Chapter 224 is to protect, prevent, and abate water pollution within the Commonwealth. KRS 224.70-110 prohibits discharges into any waters of the Commonwealth that may cause or contribute to water pollution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific requirements for several categories of construction permits and no-discharge operating permits. Additionally, this administrative regulation incorporates by reference application forms and standards documents relevant to the permitting process.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes an incorrect KRS citation from the "Necessity, Function, and Conformity" section of the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify statutory authority.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100 which authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into waters of the Commonwealth, and for the installation, alteration, expansion, or operation of any sewage system. KRS 224.16-050 allows the cabinet to issue federal permits pursuant to the Federal Water Pollution Control Act and to certify that applicants for a federal permit for the construction or operation of facilities which may result in a discharge into waters of the Commonwealth will comply with the applicable provisions of the Federal Water Pollution Control Act. KRS 224.16-060 establishes the cabinet as the water pollution agency for the Commonwealth for all purposes of the Water Pollution Control Act. KRS 224.70-100 establishes the purposes of KRS Chapter 224 is to protect, prevent, and abate water pollution within the Commonwealth. KRS 224.70-110 prohibits discharges into any waters of the Commonwealth that may cause or contribute to water pollution.

(d) How the amendment will assist in the effective

administration of the statutes: The amendment clarifies statutory authority.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to approximately 3,500 existing permitted entities including individuals, businesses, and organizations that have or apply for permits issued solely under state authority (construction, Kentucky Intersystem Operational Permits, and Kentucky No Discharge Operational Permits). After analysis of the current types of permits, the amendment is expected to impact the following number of entities:

a. Individuals: Approximately 1,200 through construction permits and KNDOPs for residences are affected by this regulation, but no new impact is expected.

b. Businesses: Approximately 1,050 through construction permits linked to KPDES permits and KNDOPs related to Animal Feeding Operations are affected by this regulation, but no new impact is expected.

c. Organizations: Approximately one hundred (100) civic, non-profit, professional, or religious organizations through construction permits linked to KPDES sanitary wastewater discharges and KNDOPs related to sanitary wastewater treatment are affected by this regulation, but no new impact is expected.

d. State or Local Government: Approximately 1,200 through construction permits for KPDES sanitary wastewater discharges, municipal wastewater, KISOPs related to inter-system transfers, and KNDOPs related to sanitary wastewater treatment are affected by this regulation, but no new impact is expected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not need to take any additional actions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not result in an increase in costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation will clearly reflect statutory authority.

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

(a) Initially: This amendment will not result in additional costs.

(b) On a continuing basis: This amendment will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Permit fees, state general funds, and federal EPA funds. This amendment will not require a change in funding sources.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes permit fees for constructing new or modified wastewater treatment plants but the cabinet is not proposing amendments to these permit fees.

(9) TIERING: Is tiering applied? Yes, permit requirements and fees are tiered based upon the nature and size of the wastewater discharge.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects wastewater treatment systems that discharge to waters of the Commonwealth or that operate sewage systems. This administrative regulation affects all units of state or local government that have a KPDES discharge permit or a KNDOP

permit for wastewater.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224.10-110, 224.16-050, 224.16-060, 224.70-100, 224.70-110

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

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

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

(c) How much will it cost to administer this program for the first year? The amendments to this administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? The amendments to this administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: The amendments to this administrative regulation will not result in increased revenue or expenditures.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation relating to the construction requirements for wastewater treatment facilities.

2. State compliance standards. KRS 224.10-100(5), 224.10-110, 224.16-050, 224.16-060, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate relating to construction requirements for wastewater treatment facilities.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No. there is no federal mandate relating to construction requirements for wastewater treatment facilities.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate relating to construction requirements for wastewater treatment facilities.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amended After Comments)

401 KAR 5:015. Releases[Spills and bypasses] to be reported to the division.

RELATES TO: KRS Chapter 224

STATUTORY AUTHORITY: KRS 224.1-400, 224.10-100[224.10-100(17)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.1-400 requires any person who possesses or controls pollutants or contaminants to immediately report certain releases of pollutants or contaminants into the environment to the cabinet. KRS 224.10-100 requires the cabinet to provide for the prevention, abatement, and control of water pollution. This administrative regulation requires that releases of pollutants or contaminants which could result in or contribute to pollution of the waters of the Commonwealth from any source other than a KPDES-permitted facility[spills and bypasses]

VOLUME 45, NUMBER 3 – SEPTEMBER 1, 2018

from sewage systems as defined in KRS 224.01-010(25)] be reported to the division. This administrative regulation establishes reporting timeframes and mechanisms that[Such reports] enable the division to determine what action is necessary[it need initiate] to protect public safety and mitigate or reduce the effect of the release[such spill or bypass].

Section 1. Any person having knowledge in advance of the necessity to release a pollutant or contaminant, **as defined by KRS 224.1-400**, which could result in or contribute to pollution of the waters of the Commonwealth[bypass a sewage system] shall notify the Division of Water before the release[such bypass] is commenced. Notification shall be given as far in advance as possible.

Section 2. Emergency Reports. ~~[(4)]~~ If[Whenever] by reason of

emergency or accident a release of pollutants or contaminants, as defined by KRS 224.1-400, is threatened or occurs[spill or discharge occurs from a sewage system or from a container or pipeline used to transport or store substances] which could[would] result in or contribute to the pollution of the waters of the Commonwealth and which may present an imminent or substantial danger to public health or welfare, the person possessing or controlling the pollutant or contaminant shall, as soon as the person has knowledge of any release of a pollutant or contaminant from a site to the environment, [the person in charge of such activity shall] immediately notify the division by calling the cabinet's[Division of Water by calling the Division of Water in Frankfort at (502) 564-3410 or the appropriate regional field office of the Division of Water as established in Table 1 of this administrative regulation][the most rapid means available].

Table 1 – Division of Water Regional Field Office Contact Numbers		
Regional Office	Phone Number	Counties Served
Bowling Green	(270) 746-7475	Allen, Barren, Butler, Edmonson, Grayson, Hart, Logan, Ohio, Simpson, and Warren
Columbia	(270) 384-4734	Adair, Boyle, Casey, Clinton, Cumberland, Green, LaRue, Lincoln, Marion, Metcalfe, Monroe, Nelson, Pulaski, Russell, Taylor, Washington, and Wayne
Florence	(859) 525-4923	Boone, Bracken, Campbell, Carroll, Gallatin, Grant, Henry, Kenton, Owen, Pendleton, and Trimble
Frankfort	(502) 564-3358	Anderson, Bourbon, Clark, Estill, Fayette, Franklin, Garrard, Harrison, Jessamine, Madison, Mercer, Nicholas, Powell, Scott, and Woodford
Hazard	(606) 435-6022	Breathitt, Floyd, Johnson, Knott, Lee, Letcher, Magoffin, Martin, Perry, Pike, and Wolfe
London	(606) 330-2080	Bell, Clay, Harlan, Jackson, Knox, Laurel, Leslie, McCreary, Owsley, Rockcastle, and Whitley
Louisville	(502) 429-7122	Breckinridge, Bullitt, Hardin, Jefferson, Meade, Oldham, Shelby, and Spencer
Madisonville	(270) 824-7529	Caldwell, Christian, Crittenden, Daviess, Hancock, Henderson, Hopkins, McLean, Muhlenberg, Todd, Union, and Webster
Morehead	(606) 783-8655	Bath, Boyd, Carter, Elliott, Fleming, Greenup, Lawrence, Lewis, Mason, Menifee, Montgomery, Morgan, Robertson, and Rowan
Paducah	(270) 898-8468	Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Livingston, Lyon, Marshall, McCracken, and Trigg

(2) If a report required by this section is made during other than normal business hours, it shall be made through the twenty-four (24) hour environmental emergency telephone number at (800) 928-2380.

Section 3. (1) Any person notifying the division pursuant to Sections 1 or[and] 2 of this administrative regulation shall report:

- The point of release:[discharge;]
- The nature of the material released:[discharged;]
- The quantity of the material released or the estimated quantity if not known:[discharged]
- The date, time, and duration of the release; and
- An assessment of probable environmental impact.

(2) If notification is not initially made in writing, it shall be confirmed by written notification within ten (10) days if requested by the division director or the division director's appointed representative. For each release or threatened release, the report shall identify the:

- Precise location;
- Name, address, and phone number of the person or persons who:
 - Possesses or controls the contaminant or pollutant;
 - Has actual knowledge of the facts; and
 - Can be contacted for additional information;
- Specific pollutant or contaminant or hazardous substance;
- Concentration and quantity of the pollutant or contaminant or hazardous substance;
- Circumstances and cause;
- Efforts taken to mitigate or control;
- To the extent known, potential harmful effects;
- Transportation characteristics of the medium or matrix into which the contaminant or pollutant was released or threatened to

be released;

(i) Present or proposed remedial action by the person at the site; and

(j) Additional information that may facilitate remediation of the site.

Section 4.[Notification required under Section 1 of this administrative regulation may be made by any mode of communication. Notification required by Section 2 of this administrative regulation shall be made by the most rapid means of communication available. If notification is not initially made in writing, it shall be confirmed by written notification within ten (10) days if requested by the division director or his appointed representative.

Section 5.] Persons failing to report as required by[in] Sections 1 through 3[-2, 3 and 4] of this administrative regulation are subject to the penalties provided by KRS 224.99-010.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 3, 2018

FILED WITH LRC: August 7, 2018 at 10 a.m.

CONTACT PERSON: Carole J. Catafo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catafo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes reporting timeframes and

mechanisms for releases or threatened releases of contaminants or pollutants that may affect public health and safety from a source other than a KPDES-permitted facility.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for proper reporting of releases or threatened releases of contaminants or pollutants to protect public health and safety.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.1-400 requires any person possessing or controlling pollutants or contaminants to report a release of pollutants or contaminants to the cabinet. KRS 224.10-100 requires the cabinet to provide for the prevention, abatement, and control of water pollution. This administrative regulation requires that releases or threatened releases of pollutants or contaminants from a source other than a KPDES-permitted facility which could result in or contribute to pollution of the water be reported to the division. This administrative regulation establishes reporting timeframes and mechanisms that enable the division to determine what action is necessary to protect public safety and mitigate or reduce the effect of the release.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes reporting timeframes, responsibilities, and specific information for reporting releases or threatened releases of pollutants or contaminants that may be a potential threat to health or the environment from any source other than a KPDES-permitted facility.

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

(a) How the amendment will change this existing administrative regulation: The amendments clarify that "pollutant or contaminant" for the purposes of this administrative regulation is defined by KRS 224.1-400, and provide a single emergency telephone number to which releases or threatened releases of pollutants or contaminants from sources other than a KPDES-permitted facility must be reported.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to clarify the definition of "pollutant or contaminant" for the purpose of this administrative regulation, and to provide a single emergency telephone number for reporting releases or threatened releases of pollutants or contaminants from sources other than a KPDES-permitted facility to eliminate any confusion regarding how to report.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.1-400 requires any person possessing or controlling pollutants or contaminants to report a release of pollutants or contaminants to the cabinet. KRS 224.10-100 requires the cabinet to provide for the prevention, abatement, and control of water pollution. This administrative regulation requires that releases or threatened releases of pollutants or contaminants from a source other than a KPDES-permitted facility which could result in or contribute to pollution of the water be reported to the division. This administrative regulation establishes reporting timeframes and mechanisms that enable the division to determine what action is necessary to protect public safety and mitigate or reduce the effect of the release.

(d) How the amendment will assist in the effective administration of the statutes: The amendments clarify the definition of "pollutant or contaminant" for the purpose of this administrative regulation, and provide a single emergency telephone number for reporting releases or threatened releases of pollutants or contaminants from sources other than a KPDES-permitted facility to eliminate any confusion regarding how to report.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to a release or threatened release of pollutants or contaminants from any source other than a KPDES-permitted facility. This administrative regulation affects any individual, business, organization, or state and local government that possesses or controls a pollutant or contaminant that is spilled or released into waters of the Commonwealth and may endanger health or the

environment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not need to take any additional actions to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will not result in additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will have a clear definition of "pollutants or contaminants" and a single telephone number for reporting releases or threatened releases of contaminants or pollutants from a source other than a KPDES-permitted facility.

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

(a) Initially: This administrative regulation will not result in additional costs.

(b) On a continuing basis: This administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing general funds and potentially EPA funds under the federal Safe Drinking Water Act and Clean Water Act.

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

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

(9) TIERING: Is tiering applied? No. This administrative regulation establishes a reporting mechanism and requirements for releases or threatened releases of pollutants or contaminants from any source other than a KPDES-permitted facility.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects all units of state or local government that may release a contaminant or pollutant from a source other than a KPDES-permitted facility.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.1-400, 224.10-100

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This administrative regulation updates the reporting mechanism for releases or threatened releases of contaminants or pollutants from a source other than a KPDES-permitted facility. It will not generate additional revenue or result in additional costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no equivalent federal mandate.
2. State compliance standards. KRS 224.1-400, 224.10-100
3. Minimum or uniform standards contained in the federal mandate. There is no equivalent federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no equivalent federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no equivalent federal mandate.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amended After Comments)

401 KAR 5:037. Groundwater protection plans.

RELATES TO: KRS 151.110, [451.232,]Chapter 224[, SB 241]
STATUTORY AUTHORITY: KRS[224.01-040,] 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 and 70-100 require the cabinet to provide for the prevention, abatement, and control of all water pollution. KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations to achieve the objectives of KRS Chapter 224. This administrative regulation establishes the requirement to prepare and to implement groundwater protection plans to ensure protection for all current and future uses of groundwater and to prevent groundwater pollution.[KRS 224.70-110 generally prohibits any form of water pollution in contravention of administrative regulations promulgated by the cabinet. This administrative regulation identifies certain activities for which groundwater protection plans shall be prepared and implemented to prevent groundwater pollution and ensure protection for current and future uses of groundwater. This administrative regulation also identifies certain activities for which groundwater protection plans are not required.][KRS Chapter 224 requires the cabinet to adopt administrative regulations to protect waters of the Commonwealth and to prevent pollution of waters of the Commonwealth. This administrative regulation establishes the requirement to prepare and to implement groundwater protection plans to ensure protection for all current and future uses of groundwater and to prevent groundwater pollution.]

Section 1. Definitions. [The following definitions describe terms used in this administrative regulation.][Terms not defined below shall have the meanings given to them by KRS 224.1-010 and 401 KAR 5:002][224.01-010 or if not so defined, the meanings attributed by common use][:

(1) "Abandoned well" means a well not currently in use and not intended for future use.

(2) "Agriculture operation" is defined by KRS 224.71-100[means any farm operation on a tract of land, including all income-producing improvements and farm dwellings, together with other farm buildings and structures incident to the operation and

~~maintenance of farms, situated on ten (10) contiguous acres or more of land used for the production of livestock, livestock products, poultry, poultry products, milk, milk products, or silviculture products, or for the growing of crops such as, but not limited to, tobacco, corn, soybeans, small grains, fruit and vegetables; or devoted to and meeting the requirements and qualifications for payment to agriculture programs under an agreement with the state or federal government][.~~

(3) "Best management practices" is defined by 401 KAR 5:002[means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. Best management practices also include treatment requirements, operating procedures, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage][.

(4) "Borehole"["Bore hole"] [means a hole drilled into the subsurface][soil][for exploratory or sampling purposes.

(5) "Bulk quantities" means undivided quantities of any substance equal to or greater than fifty-five (55) U. S. gallons liquid measure or 100 pounds net dry weight transported or held in an individual container.

(6) "Commercial" means services at stores, offices, restaurants, warehouses, and other service and nonmanufacturing activities, excluding households and industries.

(7) "Container" means any portable enclosure in which a material is stored, transported, treated, disposed, or otherwise handled.

(8) "Core hole" means a hole drilled for the purpose of obtaining a rock sample.

(9) "Corrective action" means an activity or measure taken to remedy groundwater pollution.

(10) "Floor drain" means an opening in the floor used to collect spills, water, or other liquids.

(11) "Generic groundwater protection plan" means a groundwater protection plan that can be applied to activities conducted at different locations because the activities are substantially identical and because the potentials of the activities to pollute groundwater are substantially the same.

(12) "Groundwater" is defined by 401 KAR 5:002[means the subsurface water occurring in the zone of saturation beneath the water table and perched water zones below the B soil horizon including water circulating through fractures, bedding planes, or solution conduits][.

(13) "Groundwater pollution" means water pollution as defined in KRS 224.1-010[224.01-040][of groundwaters of the Commonwealth.

(14) "Groundwater protection plan" means a document that establishes a series of practices designed to prevent groundwater pollution.

(15) "Hydrogeologic sensitivity" means an assessment of the potential ease and speed of vertical infiltration or recharge of a liquid through the soil and the unsaturated zones combined with assessments of the maximum potential flow rate and dispersion potential after entry into the principal or uppermost saturated zone.

(16) "Industrial" means manufacturing or industrial processes, including[, but not limited to, the following manufacturing processes][:

- (a) Electric power generation;
- (b) Fertilizer or agricultural chemicals;
- (c) Food and related products or by products;
- (d) Inorganic chemicals;
- (e) Iron and steel manufacturing;
- (f) Leather and leather products;
- (g) Nonferrous metals manufacturing or foundries;
- (h) Organic chemicals;
- (i) Plastics and resins manufacturing;
- (j) Pulp and paper manufacturing[industry];
- (k) Rubber and miscellaneous plastic products;
- (l) Stone, glass, clay, and concrete products;
- (m) Textile manufacturing;

~~(n) Transportation equipment; and~~

~~(o) Water treatment.~~

~~(17) "Karst" is defined by 401 KAR 5:002~~[means the type of geologic terrain underlain by carbonate rocks where significant solution of the rock has occurred due to flowing groundwater].

~~(18) "Land treatment" or "land disposal" is defined by 401 KAR 5:002~~[means the application or incorporation of a pollutant onto or into the soil].

~~(19) "Loading and unloading areas" means areas used for loading and unloading, and related handling of raw materials, intermediate substances, products, wastes, or recyclable materials. Loading and unloading areas include, but are not limited to, areas used to load and unload drums, trucks, and railcars.~~

~~(20) "On-site sewage disposal system", "on-site sewage system", and "on-site system" mean~~[means][a complete system installed on a parcel of land, under the control or ownership of any person, which accepts sewage for treatment and ultimate disposal under the surface of the ground including]. The common terms "on-site sewage system" and "on-site system" also have the same meaning. This definition includes, but is not limited to, the following]:

~~(a) A conventional system consisting of sewage pretreatment unit, distribution box, and lateral piping within rock-filled trenches or beds;~~

~~(b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system, or wasteload to overcome the site limitations;~~

~~(c) An alternative system consisting of a sewage pretreatment unit, necessary site modifications, wasteload modifications, and a subsurface soil absorption system using other methods and technologies than a conventional or modified system to overcome site limitations;~~

~~(d) Cluster systems that~~[which][accept effluent from more than one (1) structure's or facility's sewage pretreatment unit and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption systems or conventional, modified, or alternative design; and

~~(e) A holding tank that~~[which][provides limited pretreatment and storage for off-site disposal in situations in which][where][site limitations preclude immediate installation of a subsurface soil absorption system or connection to a municipal sewer.

~~(21) "Pesticide" means a substance or mixture of substances intended to:~~

~~(a)[Any substance or mixture of substances intended to] Prevent, destroy, control, repel, attract, or mitigate any pest;~~

~~(b)[Any substance or mixture of substances intended to] Be used as a plant regulator, defoliant, or desiccant; or~~

~~(c)[Any substance or mixture of substances intended to] Be used as a spray adjuvant.~~

~~(22) "Privately owned"~~[Privately owned] ~~"treatment works" is defined by 40 C.F.R. 122.2~~[means any device or system which is used to treat wastes from any facility whose operator is not the operator of the treatment works and which is not a publicly-owned treatment works].

~~(23) "Sinkhole" is defined by 401 KAR 5:002~~[means a naturally occurring topographic depression in a karst area. Its drainage is subterranean and serves as a recharge source for groundwater and it is formed by the collapse of a conduit or the solution of bedrock].

~~(24) "Sinking stream" means a surface stream in a karst region that disappears underground usually through gradual seepage of flow along the channel bottom.~~

~~(25) "Storing" means the containing of materials, products, substances, wastes, or other pollutants on a temporary basis in~~[such] a manner ~~that does not~~[as not to] constitute disposal.

~~(26) "Surface impoundment" means a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials, including those~~[although it may

~~be] lined with manmade materials, which is designed to hold an accumulation of liquids or solids.~~

~~(27) "Water well" or "well" means any excavation or opening in the surface of the earth that is drilled, cored, bored, washed, driven, jetted, or otherwise constructed when the actual or intended use in whole or in part of an excavation is the removal of water for any purpose, including~~[but not limited to] ~~culinary and household purposes, animal consumption, food manufacture, use of geothermal resources for domestic heating purposes and industrial, irrigation, and dewatering purposes, but not including wells to be used for watering stock or for general farm use if the wells do not provide water for human consumption.~~

~~(28) "Wellhead protection area" is defined by 401 KAR 5:002~~[means the surface and subsurface area surrounding a water well, well field, or spring, supplying a public water system, through which pollutants are reasonably likely to move toward and reach the water well, well field or spring or an area defined as a wellhead protection area in a county water supply plan].

~~(29) "Zone of saturation" means the zone in which all the subsurface voids in the rock or soil are filled with water.~~

~~Section 2.~~[Scope and Applicability.] (1)[Scope. The goal of this administrative regulation is the prevention of groundwater pollution. This administrative regulation identifies certain activities for which groundwater protection plans shall be prepared and implemented. This administrative regulation also identifies certain activities for which groundwater protection plans are not required.

(2) Applicability. Except for activities established[as provided] in subsections 2 and (3) [and (4)] of this section a[any] person responsible for conducting any of the[following] activities established in this section shall prepare and implement a groundwater protection plan[in accordance with the requirements of this administrative regulation]:

(a) Storing or related handling of bulk quantities of pesticides or fertilizers for commercial purposes;

(b) Storing or related handling of bulk quantities of pesticides or fertilizers for the purpose of distribution to a retail sales outlet;

(c) Applying of pesticides or fertilizers for commercial purposes;

(d) Applying of fertilizers or pesticides for public right-of-way maintenance or institutional lawn care;

(e) Land treatment or land disposal of a pollutant;

(f) Storing, treating, disposing, or related handling of hazardous waste, solid waste, or special waste in landfills, incinerators, surface impoundments, tanks, drums or other containers, or in piles;

(g) Commercial or industrial storing or related handling in bulk quantities of raw materials, intermediate substances or products, finished products, substances held for recycling, or other pollutants held in tanks, drums or other containers, or in piles;

(h) Transmission in pipelines of raw materials, intermediate substances or products, finished products, or other pollutants;

(i) Installation or operation of on-site sewage disposal systems;

(j) Storing or related handling of road oils, dust suppressants, or deicing agents at a central location;

(k) Application or related handling of road oils, dust suppressants or deicing materials;

(l) Mining and associated activities;

(m) Installation, construction, operation, or abandonment of wells, bore holes, or core holes;

(n) Collection or disposal of pollutants in an industrial or commercial facility through the use of floor drains[which are] not connected to on-site sewage disposal systems, closed-loop collection or recovery systems, or a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System;

(o) Impoundment or containment of pollutants in surface impoundments, lagoons, pits, or ditches; or

(p) Commercial or industrial transfer, including loading and unloading, in bulk quantities of raw materials, intermediate substances or products, finished products, substances held for recycling, or other pollutants.

~~(2)~~~~(3)~~ General exclusion. ~~A~~~~[Any]~~ person who conducts an activity identified in Subsection ~~(1)~~~~(2)~~ of this section shall not be required to prepare or to implement a groundwater protection plan for that activity if that person can demonstrate by substantial evidence based on the factors set forth in this subsection, the activity has no reasonable potential of altering the physical, thermal, chemical, biological, or radioactive properties of the groundwater in a manner, condition, or quantity that will be detrimental to the public health or welfare, to animal or aquatic life, to the use of groundwater as present or future sources of public water supply or to the use of groundwater for recreational, commercial, industrial, agricultural, or other legitimate purposes. The demonstration shall at a minimum consider~~[the following factors]~~:

- (a) Hydrogeologic sensitivity at or near the location of the activity;
- (b) Quantity of the pollutants, including the cumulative potential to pollute from small discharges, spills, or releases ~~that~~~~[which]~~ individually would not have the potential to pollute;
- (c) Physical, chemical, and biological characteristics of the pollutants such as solubility, mobility, toxicity, concentration, and persistence;
- (d) Use of the pollutants at the locations of the activities; and
- (e) Present and potential uses of the groundwater.

~~(3)~~~~(4)~~ Specific exclusions. The provisions of this administrative regulation shall not apply ~~to~~~~[to the following activities]~~:

- (a) Normal use or consumption of products sized and packaged for personal use by individuals;
- (b) Retail marketing of products sized and packaged for personal use or consumption by individuals;
- (c) Activities conducted entirely inside enclosed buildings if:
 - 1. The building has a floor sufficient to prevent the release of pollutants to groundwater; and
 - 2. There are no floor drains, or all floor drains within the building are connected to an on-site sewage disposal system, closed-loop collection or recovery system or a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System;
- (d) Storing, related handling, or transmission in pipelines of pollutants that are gases at standard temperature and pressure;
- (e) Storing municipal solid waste in a container located on property where the municipal solid waste is generated and ~~that~~~~[which]~~ is used solely for the purpose of collection and temporary storage of that municipal solid waste prior to off-site disposal;
- (f) Installing and operating sewer lines or water lines approved by the cabinet ~~pursuant to 401 KAR 5:005 or 8:100~~;
- (g) Storing water in ponds, lakes or reservoirs;
- (h) Impounding stormwater, silt, or sediment in surface impoundments;
- (i) Application of chloride-based deicing materials used on roads or parking lots;
- (j) Emergency response activities conducted in accordance with local, state, and federal law;
- (k) Fire fighting activities;
- (l) Conveyance or related handling by motor vehicle, rolling stock, vessel, or aircraft;
- (m) Agricultural activities at agriculture operations; or
- (n) Application by commercial applicators of fertilizers or pesticides on lands used for agriculture operations.

~~(4)~~~~(5)~~ Relationship to other programs. Nothing in this administrative regulation shall abrogate the duty of a person to comply with the statutes and other administrative regulations administered by the cabinet, with the statutes and administrative regulations administered by other state and federal agencies, or with statutes and ordinances administered by a local government.

Section ~~2~~~~(3)~~. Preparation of Groundwater Protection Plans. (1) General requirements ~~for site-specific and generic groundwater protection plans~~. ~~[A groundwater protection plan establishes a series of practices to be followed by the person required to prepare and to implement it.]~~ The practices established by a groundwater

protection plan shall be designed and implemented in a manner that will prevent groundwater pollution. ~~A~~~~[This section describes the contents of site-specific and generic groundwater protection plans. Any]~~ person conducting an activity identified in Section ~~1~~~~(1)~~~~(2)~~~~(4)~~~~(2)~~ of this administrative regulation shall determine if an exclusion of Section ~~1~~~~(2)~~ or ~~3~~~~(2)~~~~(2)~~ or ~~3~~~~(3)~~~~(2)~~ or ~~4~~~~(4)~~ of this administrative regulation applies to that activity.

(2) Deadlines for preparation and implementation. Except for activities excluded by Section ~~1~~~~(2)~~ or ~~3~~~~(2)~~~~(2)~~ or ~~3~~~~(3)~~~~(2)~~ or ~~4~~~~(4)~~ of this administrative regulation, ~~a~~~~[any]~~ person required to prepare and to implement a groundwater protection plan pursuant to Section ~~1~~~~(2)~~ of this administrative regulation, shall prepare and implement a site-specific or generic groundwater protection plan ~~within one (1) year of the effective date of this administrative regulation, or~~ upon commencement of the regulated activity~~[-, whichever is later]~~.

(3) Elements of generic and site-specific groundwater protection plans. Both generic and site-specific groundwater protection plans shall contain~~[the following]~~:

(a) General information regarding the facility and its operation, including the:

- 1. Name of the facility~~[-the]~~
- 2. Address of the facility~~[-]~~ and
- 3.~~[the]~~ Name of the person or persons responsible for implementing the plan;

(b) Identification of all activities identified in Section ~~1~~~~(1)~~~~(2)~~~~(4)~~~~(2)~~ of this administrative regulation and not excluded by Section ~~1~~~~(2)~~ or ~~3~~~~(2)~~~~(2)~~ or ~~3~~~~(3)~~~~(2)~~ or ~~4~~~~(4)~~ of this administrative regulation;

(c) Identification of all practices chosen for the plan to protect groundwater from pollution;

(d) An implementation schedule for the practices selected for the plan;

(e) A description of and implementation schedule for employee training necessary to ensure implementation of the plan;

(f) An inspection schedule requiring regular inspections as needed to ensure that all practices established are in place and properly functioning;

(g) A certification by the person responsible for implementing the plan or ~~an~~~~[a duly]~~ authorized representative as defined by 401 KAR 5:002 that the plan complies with the requirements of this administrative regulation, and that the person responsible for implementing the plan has reviewed the terms of the plan and ~~shall~~~~[will]~~ implement its provisions.

(4) Selection of practices for groundwater protection. ~~A~~~~[Any]~~ person required to prepare a groundwater protection plan pursuant to this section shall evaluate technological means for protection of groundwater from pollution that may result from activities addressed by the plan and shall select practices for the plan ~~that~~~~[which]~~ protect groundwater from pollution. The groundwater protection practices chosen for a groundwater protection plan may include~~[but are not limited to]~~:

- (a) Equipment design;
- (b) Operational procedures;
- (c) Preventive maintenance techniques;
- (d) Construction techniques;
- (e) Personnel training;
- (f) Spill response capabilities;
- (g) Alternative materials or processes;
- (h) Implementation of new technology;
- (i) Modification of facility or equipment;
- (j) Spill prevention control and countermeasure plans;
- (k) Best management practices;
- (l) Hazardous waste contingency plans;
- (m) Other plans prepared pursuant to other programs ~~that~~~~[which]~~ protect groundwater from pollution;
- (n) Runoff or infiltration control systems;
- (o) Siting considerations; and
- (p) Any other practice which will protect groundwater from pollution.

(5) Specific practices. In selecting practices to protect groundwater for the activities identified in Section ~~1~~~~(1)~~~~(2)~~~~(4)~~~~(2)~~ of this administrative regulation and not excluded by Section ~~1~~~~(2)~~ or

~~(3)(2)(2) or (3)(2)(3) or (4)~~ of this administrative regulation ~~a[any]~~ person preparing a groundwater protection plan shall consider the nature of the pollutant and the hydrogeologic characteristics at or near the location of the activity and shall comply with the provisions of this subsection in selecting those practices:

(a) Loading and unloading areas. Loading and unloading areas shall have spill prevention and control procedures and operation procedures designed to prevent groundwater pollution. Spill containment and cleanup equipment shall be readily accessible.

(b) On-site sewage disposal systems. ~~A[No]~~ person shall ~~not~~ install a new or replace an existing on-site sewage disposal system if a publicly or privately owned~~publicly or privately owned~~ treatment works capable of treating the pollutants to be discharged is available.

(c) Floor drains.

1. ~~A[Any]~~ person using existing floor drains shall evaluate those floor drains to determine if they discharge to an on-site sewage disposal system, to a closed-loop collection or recovery system, or to a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System.

2. If drains are identified which do not discharge to an on-site sewage disposal system, a closed-loop collection or recovery system, or a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System, that person shall terminate the discharge or connect it to an on-site sewage disposal system, a closed-loop collection or recovery system, or a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System.

3. ~~A[No]~~ person shall ~~not~~ install a floor drain unless it is connected to an on-site sewage disposal system, closed-loop collection or recovery system, or a waste treatment system permitted under the Kentucky Pollutant Discharge Elimination System.

(d) Tanks and sumps.

1. ~~A[Any]~~ person using a tank or sump shall prepare and implement good housekeeping practices, operating procedures, operator training, and spill response procedures.

2. ~~A[In addition, any]~~ person using a tank or sump shall consider leak control devices, secondary containment, integrity testing, mechanical inspections, and overflow protection devices.

3. Containment additional to Subparagraphs 1 and 2 of this subsection shall not be~~Additional containment is not~~ required for sumps and tanks that are used solely to provide secondary containment.

(e) New surface impoundments, lagoons, pits or ditches.

1. ~~A[Any]~~ person who constructs a new surface impoundment, lagoon, pit or ditch which will contain a pollutant shall evaluate the site's hydrogeology and shall design and operate it to minimize discharges to soil.~~[However,]~~ Soils may be used to construct liners if the soil liner will protect groundwater from pollution~~[under appropriate conditions]~~.

2. All necessary and appropriate measures shall be taken to prevent groundwater pollution. The person shall consider the use of liners, secondary containment, leak detection devices, and other appropriate and effective control systems that will protect groundwater from pollution.

3. Containment additional to Subparagraphs 1 and 2 of this subsection shall not be~~Additional containment is not~~ required for new surface impoundments, lagoons, pits, and ditches that are used solely to provide secondary containment.

(6) Exceptions to specific requirements.

(a) The provisions of subsection (5) of this section shall not apply to activities that are governed by other federal, state or regulatory programs that meet the requirements of subsection (7) of this section while the person conducting the activities remains in compliance with the other program.

(b) Variances from the provisions of subsection (5) of this section may be granted by the cabinet if the applicant for a variance demonstrates that a variance will not result in pollution of groundwater~~[upon a showing of good cause]~~, but a[no event shall any] person required to prepare a groundwater protection plan pursuant to this section shall not take any actions contrary to the provisions of subsection (5) of this section without prior written

approval of the cabinet.

(7) Incorporation of requirements of other regulatory programs.

(a) Groundwater protection activities required by other federal, state, or local regulatory programs may be incorporated into a site-specific or generic groundwater protection plan by reference if the other regulatory program contains~~the following~~:

1. Management and design standards;
2. Mandatory monitoring for groundwater pollution or methods of detecting discharges, spills, or releases to groundwater; and
3. Specific corrective action criteria.

(b) 1. The plan shall identify each activity covered by the other regulatory program. The person responsible for implementing the plan shall certify compliance with the other regulatory program.

2. The provisions of the other program shall be the groundwater protection plan for purposes of this administrative regulation for the activities covered by the other regulatory program.

3. If activities identified in Section ~~1(1)(2)(4)~~~~(2)(2)~~ of this administrative regulation and not excluded in Section ~~1(2) or (3)(2)(2) or (3)(2)(3) or (4)~~ of this administrative regulation are conducted ~~that~~~~[which]~~ are not covered by the other regulatory program, the plan shall contain separate practices designed to protect groundwater from pollution for each activity not covered by the other regulatory program.

(8) Generic groundwater protection plans. A generic groundwater protection plan ~~shall be prepared in accordance with subsections (1) through (7) of this section and~~ may govern all or part of a person's activities. A generic groundwater protection plan shall not be sufficient by itself if it does not address all activities conducted by the person that are identified in Section ~~1(1)(2)(4)~~~~(2)(2)~~ of this administrative regulation and not excluded by Section ~~1(2) or (3)(2)(2) or (3)(2)(3) or (4)~~ of this administrative regulation.~~[A generic groundwater protection plan shall be prepared in accordance with subsections (1) through (7) of this section.]~~

(a)1. A person responsible for preparing and implementing a groundwater protection plan required by this administrative regulation may apply one (1) provision of the plan to all substantially identical activities if factors identified in Section ~~1(2)(2)(2)~~~~(2)(3)~~ of this administrative regulation do not cause substantial differences in the potential to pollute among locations.

2. If substantial differences do exist, the plan shall provide separate site-specific or region-specific preventive measures, as necessary, for the activities.

(b) A person responsible for preparing a groundwater protection plan governed by this section may use a generic groundwater protection plan prepared by another person or group, including a trade organization, if:

1. The activities identified in the generic groundwater protection plan are substantially identical;
2. The factors identified in Section ~~1(2)(2)(2)~~~~(2)(3)~~ of this administrative regulation do not cause substantial differences in the potentials to pollute among locations; and
3. The groundwater protection plan has been reviewed and approved by the cabinet as established in this administrative regulation.

(c) A generic groundwater protection plan may consist of requirements imposed by other regulatory programs designed to protect groundwater or programs offering technical assistance for groundwater protection if the cabinet has approved the requirements of the other program as a generic groundwater protection plan. ~~A[Any]~~ person using a generic groundwater protection plan from another program pursuant to this paragraph as a part of, or all of, ~~the~~~~[his]~~ plan shall certify in ~~the~~~~[his]~~ plan that ~~the plan~~~~[he]~~ is subject to the program and in compliance with its provisions. Any activities ~~that~~~~[which]~~ are not addressed by the program shall be addressed separately in the groundwater protection plan.

(d) 1. ~~A[Any]~~ person conducting an activity listed in this subsection who does not prepare a groundwater protection plan for that activity or does not use another approved generic groundwater protection plan for that activity shall implement the provisions of the generic groundwater protection plan prepared by the cabinet.

2. The cabinet, in cooperation with other appropriate state agencies, shall prepare generic groundwater protection plans for:

- a.[4.] Use of existing residential septic systems; and
- b.[2.] Construction, operation, closure, and capping of water wells.

(e) 1. A generic groundwater protection plan that has been approved by the cabinet as established in this administrative regulation may be incorporated by reference in a facility's groundwater protection plan.[-; however,]

2. Each person responsible for implementing the generic plan at a site shall maintain a copy of the plan at an appropriate, accessible location.

3. A[Any] person using a generic groundwater protection plan shall identify the activities governed by the plan and attach the identification to the copy of the generic plan.

(f) 1. A[Any] person preparing a new or revised generic groundwater protection plan[to be approved by the cabinet shall submit that plan to the cabinet for approval.

2. Upon submission of the plan to the cabinet, the[When that person submits that plan to the cabinet that] person shall also place a notice in a statewide newspaper and a trade publication likely to be read by those affected by the groundwater protection plan. That notice shall:

- a. Provide for a thirty (30) day comment period.[-and shall]
- b. Identify activities that are addressed by the proposed generic groundwater protection plan; and[. The notice shall]
- c. Describe the procedure for review by the public of the plan and the procedures and time frames for providing comments.

3. The cabinet shall also notify by mail or email anyone who has requested in writing to be placed on a mailing list for purposes of this administrative regulation.

Section 3[4]. Implementation of Groundwater Protection Plans.

(1) Record retention requirements.

(a) A[Any] site-specific groundwater protection plan required by Sections 1 through 3[2 through 4] of this administrative regulation, and[any] documentation evidencing compliance with the provisions of the plan, shall be retained by the person responsible for implementing the plan, at the location of the activity if the location is normally attended at least eight (8) hours per day, or at the nearest office of that person's activity if the facility is not so attended.

(b) A[Any] generic groundwater protection plan and[any] documentation evidencing compliance with the provisions of the plan[-] shall be retained by the person responsible for implementing the plan[-] in as many locations as necessary to ensure compliance.[Individual homeowners are not required to maintain a copy of the generic groundwater protection plan for residential septic systems at their residences.]

(c)[Unless the cabinet approves another retention period for a person,] All records evidencing compliance shall be maintained and available for review by the cabinet for a period of not less than six (6) years after their preparation.

(2) Amendment of groundwater protection plans. Prior to conducting any new or modified activity, a[any] person conducting that activity shall amend the groundwater protection plan[-as necessary,] to address the new or modified activity.

(3) Review and recertification of groundwater protection plans. Each groundwater protection plan shall be reviewed in its entirety every three (3) years, by the persons responsible for the plan, updated if necessary, and recertified. To the extent possible, the review shall include a reevaluation of the design and operation procedures for the pollution prevention practices previously selected for the plan to ensure that they are effective.

(4) Submission of groundwater plans to cabinet.

(a) Upon written request of the cabinet, a[any] person required to prepare a groundwater protection plan pursuant to this administrative regulation shall submit a copy of the plan to the cabinet within thirty (30) days of the date of the request.

(b) Upon written request of the cabinet, a[any] person who has made a determination pursuant to Section 1[2][2(2)][2(3)] of this administrative regulation that a groundwater protection plan is not required for a specific activity shall submit a written demonstration

to the cabinet within thirty (30) days of the date of the request.

(5) Submission of additional information to the cabinet. Upon review of a groundwater protection plan that[which] has been submitted to the cabinet, the cabinet may require a[any] person responsible for preparation or implementation of a plan to submit any of the[following] information in this subsection to determine if the plan is protective of groundwater[that the cabinet deems necessary]:

(a) For a site-specific groundwater protection plan, and for a generic groundwater protection plan in effect at a specific location, the location of all buildings, structures, roads, utilities, drainage pathways, and boundaries by using a narrative description or by using a map, diagram, or drawing;

(b) For a generic groundwater protection plan that applies to more than one (1) location, identification of the geographic region to which the generic groundwater protection plan applies, and an explanation of[as to] why that region was selected and why one (1) plan is appropriate for all activities addressed by the plan for all sites within the region;

(c) For a generic groundwater protection plan that applies to more than one (1) location, to the extent possible, a description of the nature and number of activities, and their associated facilities, that are expected to be governed by the generic groundwater protection plan;

(d) A Summary of reasonably available hydrogeologic information including[as follows]:

- 1. Identification of location of sinkholes, sinking streams, springs, streams, lakes, ponds, and ditches;
- 2. Description of soil survey information;
- 3. Identification and location of currently usable wells, abandoned wells, and wellhead protection areas;
- 4. Identification of subsidence areas; and
- 5. Description of any other relevant hydrogeologic data known to the person preparing or implementing the groundwater protection plan; and

(e) Any other information, including site-specific groundwater or geologic information, which is known and readily available to the person responsible for preparing or implementing the plan but not to the cabinet to determine if the plan is protective of groundwater[-that the cabinet deems necessary].

(6) Revisions to plans after cabinet review.

(a) If the cabinet reviews a groundwater protection plan and determines that it does not meet the requirements of this administrative regulation, the cabinet shall notify the person responsible for preparing or implementing the plan of the deficiency in the plan. That person shall revise the plan to correct the deficiencies identified by the cabinet and submit the revised plan to the cabinet for further review.

(b)[Unless an extension of time is granted by the cabinet or the notice of deficiency is withdrawn by the cabinet,] The person submitting the revised plan shall have thirty (30) days from issuance of the notice of the deficiencies to submit the revised plan.

(c) The cabinet shall review the revised plan and notify the person submitting the revised plan of its final determination within ten (10) days of receiving the revised plan.

(7) Public inspection of groundwater protection plans.

(a) A[Any] person who desires to review a groundwater protection plan shall send a written request to the person required to prepare and to implement the groundwater protection plan.

(b) A[Any] person who receives a written request to review the groundwater protection plan shall within ten (10) working days:

1. Send a written response to the person requesting to inspect the groundwater protection plan stating that the groundwater protection plan may be reviewed at:

- a. The Division of Water in Frankfort;
- b. A regional office of the Division of Water;
- c. The facility;[or]
- d. A local public library; or

2. Send a written response to the person requesting to inspect the groundwater protection plan[-] stating the reason that a groundwater protection plan was not required to be prepared.

(c) A[Any] person who designates a review location for a

groundwater protection plan shall send a copy of the groundwater protection plan to the location designated for review within ten (10) working days of receiving a written request to review the plan.

(8) Requirements upon transfer of property. Upon any subsequent transfer of a facility for which a groundwater protection plan has been prepared, the seller shall provide the purchaser with a copy of the most recent groundwater protection plan prepared for the facility pursuant to this administrative regulation.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 3, 2018

FILED WITH LRC: August 7, 2018 at 10 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies activities for which groundwater protection plans are required to ensure protection for all current and future uses of groundwater, and to prevent groundwater pollution.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect groundwater resources which is especially important considering Kentucky's karstic topography.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 and 70-100 require the cabinet to provide for the prevention, abatement, and control of all water pollution. KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations to achieve the objectives of KRS Chapter 224. KRS 224.70-110 generally prohibits any form of water pollution in contravention of administrative regulations promulgated by the cabinet. This administrative regulation identifies certain activities for which groundwater protection plans shall be prepared and implemented to prevent groundwater pollution and ensure protection for current and future uses of groundwater. This administrative regulation also identifies certain activities for which groundwater protection plans are not required.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation identifies the activities that require a groundwater protection plan and establishes specific information that groundwater protection plans must include.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation remove the definitions section so that all definitions are consolidated into 401 KAR 5:002 Definitions for 401 KAR Chapter 5, renumber Section references accordingly, and remove a reference to KRS 224.70-110 from the "Necessity, Function, and Conformity" section and restore the previous language.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to consolidate definitions into one single regulation, and clarify statutory authority.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 and 224.70-100 require the cabinet to provide for the prevention, abatement, and control of water pollution. KRS 224.70-100 prohibits the discharge of any pollutants into, or substances that contribute to the pollution of, any waters of the Commonwealth. This administrative regulation identifies certain activities for which groundwater protection plans shall be prepared and implemented to prevent groundwater pollution and ensure protection for current and future uses of groundwater. This administrative regulation also identifies certain activities for which groundwater protection plans are not required.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation remove the definitions section so that all definitions are consolidated into 401 KAR 5:002 Definitions for 401 KAR Chapter 5, renumber Section references accordingly, and remove a reference to KRS 224.70-110 from the "Necessity, Function, and Conformity" section and restore the previous language to clarify statutory authority.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all citizens, businesses, organizations, and state, federal, and local governments that engage in activities specified in Section 2 of the regulation and are required to develop and implement groundwater protection plans. The cabinet is unable to provide an accurate number of these entities because the regulation does not require groundwater protection plans to be submitted to the cabinet except upon request.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments to this administrative regulation will not require additional actions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments to this administrative regulation will not result in additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will benefit from clear, defined terms that are consistent with state and federal regulations.

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

(a) Initially: This administrative regulation will not result in additional costs.

(b) On a continuing basis: This administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds. The amendments to this administrative regulation will not require a change in funding sources.

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

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

(9) TIERING: Is tiering applied? This administrative regulation is tiered to the extent that it distinguishes between activities that require groundwater protection plans and those that do not.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts transportation, utilities, public and private schools and universities, and state, federal, and local parks and other entities if they conduct activities specified in Section 2 of this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-110, 224.70-100, 224.70-110

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not generate any revenue.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This administrative regulation will not generate any revenue or result in additional costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation that requires groundwater protection plans.

2. State compliance standards. KRS 224.10-100, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. There is no federal statute or regulation that requires groundwater protection plans.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal statute or regulation that requires groundwater protection plans.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal statute or regulation that requires groundwater protection plans.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amended After Comments)

401 KAR 5:320. Wastewater Laboratory Certification Program.

RELATES TO: KRS 224.1-010[224.04-040], 224.10-100, 224.10-670, 224.70-100, 224.70-110, 40 C.F.R. 136, 33 U.S.C. 1342

STATUTORY AUTHORITY: KRS 224.10-670

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-670 authorizes the cabinet to promulgate administrative regulations establishing standards for the operation of laboratories, fees for certification and competency evaluation of those laboratories, issuance of certificates of competency, and a certification program for laboratories that submit environmental data as it relates to analyses and laboratory tests for activities subject to 33 U.S.C. 1342. This administrative regulation establishes the wastewater laboratory certification program, standards for the certification of wastewater laboratories, and fees for certification and evaluation of wastewater laboratories.

Section 1. ~~Definitions. (1) "Analysis category" means one (1) of the following analyte groups for which an analysis can be performed by a wastewater laboratory:~~

~~(a) Inorganic general chemistry;~~

~~(b) Inorganic metals;~~

~~(c) Organic chemistry volatiles;~~

~~(d) Organic chemistry semi-volatiles;~~

~~(e) Organic chemistry pesticides, herbicides, or PCBs;~~

~~(f) Organic chemistry dioxins;~~

~~(g) Microbiology;~~

~~(h) Whole effluent toxicity; and~~

~~(i) Field analysis.~~

~~(2) "Certified" means that the cabinet has determined that the wastewater laboratory meets the regulatory performance criteria and the standard of quality established in this administrative regulation and has issued a certification.~~

~~(3) "Equivalency of certification" means certification of a wastewater laboratory by an entity, other than the cabinet, whose requirements for certification are determined by the cabinet to meet the requirements of this administrative regulation.~~

~~(4) "Field analysis" means a measuring of~~[(the following)]:

~~(a) Dissolved oxygen;~~

~~(b) Residual chlorine;~~

~~(c) pH;~~

~~(d) Temperature;~~

~~(e) Conductivity; and~~

~~(f) Turbidity.~~

~~(5) "Field-only wastewater laboratory" means a wastewater laboratory that performs a measurement for only the parameters identified as field analysis, regardless of whether the measurement takes place outdoors, in an on-site room used as a laboratory, or in an off-site laboratory.~~

~~(6) "General wastewater laboratory" means a wastewater laboratory that performs an analysis for at least one (1) analysis category other than field analysis, regardless of whether the general wastewater laboratory also performs a field analysis measurement.~~

~~(7) "Interim certification" means a certification approved by the cabinet if it determines through documentation review that the wastewater laboratory meets the requirements of Section 10 of this administrative regulation. Interim certification is applicable to a method-analyte pairing until the cabinet has completed an on-site audit for that method-analyte pairing.~~

~~(8) "Primary analyst or technician" means an analyst or technician who performs a specific method-analyte pairing analysis more often than any other analyst or technician at that wastewater laboratory.~~

~~(9) "Wastewater laboratory" means a laboratory that performs an analysis, measurement, or laboratory test for an activity subject to 33 U.S.C. 1342.~~

~~Section 2. Effective Date for this Administrative Regulation. The effective date for this administrative regulation shall be:~~

~~(1) January 1, 2014, for a general wastewater laboratory; and~~

~~(2) January 1, 2015, for a field-only wastewater laboratory.~~

~~Section 3. Requirement for Acceptance of Environmental Data. [(1) In accordance with KRS 224.10-670(2) [and the schedule established in subsection (2) of this section], environmental data from analyses and laboratory tests submitted to the cabinet for activities subject to 33 U.S.C. 1342 shall be performed:~~

~~(1) [(a)] By a certified wastewater laboratory; and~~

~~(2) [(b)] In compliance with:~~

~~[(a)] [4.] An analytical method in 40 C.F.R. Part 136 or as established in the applicable permit;~~

~~[(b)] [2.] This administrative regulation; and~~

~~[(c)] [3.] The provisions of the Commonwealth of Kentucky Wastewater Laboratory Certification Manual. [(2) The requirements established in subsection (1) of this section shall begin on:~~

~~(a) January 1, 2015, for a general wastewater laboratory; and~~

~~(b) January 1, 2016, for a field-only wastewater laboratory.]~~

Section 2[3][4]. Certification Requirements. The requirements established in this section shall apply to a wastewater laboratory seeking certification. (1) Application for certification shall be made on the Kentucky Wastewater Laboratory Certification Program[.]. Application for Kentucky Laboratory Certification, DEP No. DOW0503[KWLCP-Form-App], and shall include all information

required by that form, and shall be submitted with the applicable fee as established in Section ~~6[7]~~[8] of this administrative regulation as follows:

(a) If in paper form, to: Kentucky Division of Water; Attn: Laboratory Certification; 300 Sower Boulevard; Frankfort, Kentucky 40601; or

(b) If in electronic form, via the cabinet's Web site: www.water.ky.gov.

(2) The wastewater laboratory shall apply for certification for each analysis category and for each method-analyte pairing for which the wastewater laboratory intends to perform an analysis.

Section ~~3[4]~~[5]. Term of Certification Periods for a General Wastewater Laboratory. (1) The initial certification period for a general wastewater laboratory shall be from January 1, 2014, until December 31, 2015, and subsequent certification periods shall be consecutive two (2) year periods, beginning January 1, 2016.

(2) If, beginning January 1, 2016, a general wastewater laboratory applies for initial certification of the wastewater laboratory or for certification for a new method-analyte pairing, the initial certification period shall be the two (2) year period as established in subsection (1) of this section, based upon the date of application receipt by the cabinet.

Section ~~4[5]~~[6]. Term of Certification Periods for a Field-Only Wastewater Laboratory. (1) The initial certification period for a field-only wastewater laboratory shall be from January 1, 2015, until December 31, 2016, and subsequent certification periods shall be consecutive two (2) year periods, beginning January 1, 2017.

(2) If, beginning January 1, 2017, a field-only wastewater laboratory applies for initial certification of the wastewater laboratory or for certification for a new method-analyte pairing, the initial certification period shall be the two (2) year period as established in subsection (1) of this section, based upon the date of application receipt by the cabinet.

Section ~~5[6]~~[7]. Due Date for Certification Renewal Applications. (1) If ~~a[an application, the]~~ Kentucky Wastewater Laboratory Certification Program[;] Application for Kentucky Laboratory Certification[; ~~KWLCP Form App.~~] for certification renewal is received by the cabinet by November 15 of the odd-numbered year of the current certification period for a general wastewater laboratory, or November 15 of the even-numbered year of the current certification period for a field-only wastewater laboratory, the application shall be considered timely submitted, and the wastewater laboratory's certification shall continue in effect until the cabinet acts upon the application, unless the certification is otherwise revoked.

(2) If ~~a[an application, the]~~ Kentucky Wastewater Laboratory Certification Program[;] Application for Kentucky Laboratory Certification[; ~~KWLCP Form App.~~] for certification renewal is received by the cabinet after November 15 but on or before December 15 of the odd-numbered year of the current certification period for a general wastewater laboratory, or after November 15 but on or before December 15 of the even-numbered year of the current certification period for a field-only wastewater laboratory, the application shall not be considered timely submitted, and shall be subject to the surcharge established in Section ~~6[4]~~[7(4)] [8(4)] of this administrative regulation. The wastewater laboratory's certification shall continue in effect until the cabinet acts upon the application, unless the certification is otherwise revoked.

(3) If ~~a[an application, the]~~ Kentucky Wastewater Laboratory Certification Program[;] Application for Kentucky Laboratory Certification[; ~~KWLCP Form App.~~] for certification renewal is received by the cabinet after December 15 of the odd-numbered year of the current certification period for a general wastewater laboratory, or after December 15 of the even-numbered year of the current certification period for a field-only wastewater laboratory, the application shall not be considered timely submitted, and shall be subject to the surcharge established in Section ~~6[5]~~[7(5)] [8(5)] of this administrative regulation. The wastewater laboratory's certification shall expire after December 31 of that odd-numbered

year for a general wastewater laboratory, or after December 31 of that even-numbered year for a field-only wastewater laboratory, and shall not be valid until the cabinet acts upon the renewal application.

Section ~~6[7]~~[8]. Annual Certification Fees. (1) The annual certification fees for wastewater laboratory certification shall be established in Table 1 of subsection (2) of this section and shall include:

(a) A nonrefundable administrative fee; and

(b) A fee for each applicable analysis category.

(2) If a follow-up audit is performed to verify the correction of a deficiency identified by an audit pursuant to Section ~~8[10]~~ of this administrative regulation, an additional audit fee, established in Table 1, shall be assessed.

Table 1: Wastewater Laboratory Certification Fee

Fee Category	Annual Fee
Administrative Fee	\$1,000
Analysis Category Fee	
Inorganic general chemistry	\$500
Inorganic metals	\$500
Organic chemistry volatiles	\$500
Organic chemistry semi-volatiles	\$500
Organic chemistry pesticides, herbicides, PCBs	\$500
Organic chemistry dioxins	\$750
Microbiology	\$500
Whole effluent toxicity	\$1,000
Field analysis only	\$250
Follow-up Audit Fee	\$500

(3) The applicable certification fee shall be due by November 15 of each year. In odd-numbered years of the certification period for a general wastewater laboratory, or in even-numbered years of the certification period for a field-only wastewater laboratory, the applicable certification fee shall be submitted concurrent with the renewal certification[~~application, the~~]—Kentucky Wastewater Laboratory Certification Program[;] Application for Kentucky Laboratory Certification[; ~~KWLCP Form App.~~].

(4) If a fee is received by the cabinet after November 15 but on or before December 15, the wastewater laboratory shall incur a surcharge of fifteen (15) percent of the applicable certification fee (administrative fee plus analysis category fee).

(b) Payment of this surcharge shall be due thirty (30) days after notice is provided by the cabinet.

(5) If a fee is received by the cabinet after December 15, the wastewater laboratory shall incur a surcharge of twenty-five (25) percent of the applicable certification fee.

(a) The wastewater laboratory's certification shall expire after December 31 of that year and shall not be valid until the applicable certification fee and the surcharge are received by the cabinet.

(b) Payment of this fee and surcharge shall not reinstate certification for failure to timely submit an application for certification renewal pursuant to the expiration established in Section ~~5[3]~~[7(3)] of this administrative regulation.

(6) A wastewater laboratory seeking or obtaining equivalency of certification shall receive a twenty (20) percent reduction of the certification fee.

(7) An in-state laboratory that is also certified for drinking water analysis, as established in 401 KAR 8:040, shall receive a twenty (20) percent reduction of the certification fee.

(8) A wastewater laboratory that provides only field analysis shall be exempt from the annual administrative fee established in Table 1 of subsection (2) of this section.

(9) A wastewater laboratory operated by a facility that has been issued a Kentucky Pollutant Discharge Elimination System permit and that is providing only field analysis for only its own facility shall be exempt from all fees established in this administrative regulation.

(10) A wastewater laboratory operated by a municipality that provides analysis for only its own facility shall receive a reduction[~~the following reduction~~] to the administrative fee established in Table 1 of subsection (2) of this section, based on its

maximum permitted flow value as established in this subsection.[:]

(a) Less than or equal to 0.10 million gallons per day (MGD), a 100 percent reduction (no administrative fee).[:]

(b) Less than or equal to 0.50 MGD but greater than 0.10 MGD, a seventy-five (75) percent reduction.[:]

(c) Less than or equal to one and zero tenths (1.0) MGD but greater than zero and five tenths (0.5) MGD, a fifty (50) percent reduction.[:]

(d) Less than or equal to two and zero tenths (2.0) MGD but greater than one and zero tenths (1.0) MGD, a twenty-five (25) percent reduction.[:; and]

(e) Greater than two and zero tenths (2.0) MGD, a ten (10) percent reduction.

(11) If more than one (1) reduction pursuant to subsections (6) through (10) of this section applies, only the greatest reduction shall be taken.

Section 7[8][9]. Interim Certification. (1) If a wastewater laboratory demonstrates that it meets the[following] requirements established in subparagraphs (a) through (d) of this subsection[are met] for a method-analyte pairing, the cabinet shall approve interim certification for that method-analyte pairing.[:]

(a) All information required by the Kentucky Wastewater Laboratory Certification Program[:; Application for Kentucky Laboratory Certification[:; KWLCP Form App]] shall be submitted to the cabinet.[:]

(b) The appropriate fee shall be submitted to the cabinet.[:]

(c) A method, including instrumentation, established in 40 C.F.R. Part 136 or the applicable permit shall be used.[:; and]

(d) A proficiency test study sample shall be analyzed by the primary analyst or technician within the last year and the results shall be within the acceptance limits specified by a proficiency test study provider approved by the American Association for Laboratory Accreditation.

(2) A wastewater laboratory with interim certification may analyze samples for that method-analyte pairing for compliance purposes.

Section 8[9][10]. Audits. (1) A certified wastewater laboratory shall allow a cabinet auditor to conduct, and shall participate in, an on-site audit during normal business hours.

(2) Wastewater laboratory certification records and supporting documentation shall be retained for five (5) years or until the next on-site audit, whichever is longer.

(3) If the cabinet identifies a deficiency, the certified laboratory shall correct or otherwise address the deficiency within thirty (30) days of receipt of notice of the deficiency.

(4)(a) If an on-site audit of a wastewater laboratory located outside of Kentucky is conducted by the cabinet, the wastewater laboratory shall bear the reasonable cost of the audit.

(b) Payment shall be due thirty (30) days after notice of this cost is provided by the cabinet.

Section 9[10][11]. Full Certification Requirements. (1) If, after an on-site audit and review of submitted information, all requirements established by[of] this administrative regulation for a method-analyte pairing have been met, the cabinet shall approve full certification for that method-analyte pairing.

(2) To maintain full certification for the method-analyte pairing, the wastewater laboratory shall:

(a) Maintain compliance with the requirements established by[of] this administrative regulation, based upon the cabinet's review of requested documentation, on-site audit inspection, or both;

(b) Analyze a proficiency test study sample at least annually by the primary analyst or technician and the results shall be within the acceptance limits specified by a proficiency test study provider approved by the American Association for Laboratory Accreditation. If the wastewater laboratory fails a proficiency test study, the wastewater laboratory shall, within ninety (90) days after receiving notice of the failed proficiency test study, analyze a second proficiency test study with the results within the acceptance limits specified by an approved proficiency test study provider;

(c) Notify the cabinet within thirty (30) calendar days of a change in the personnel, equipment, analytical method, or laboratory location identified in its[application:] Kentucky Wastewater Laboratory Certification Program[:; Application for Kentucky Laboratory Certification[:; KWLCP Form App]];

(d) Submit documentation or data required by this administrative regulation; and

(e) Submit to the cabinet all fees by the deadlines established in this administrative regulation.

Section 10[11][12]. Provisional Certification. (1) The cabinet shall, when becoming aware of a failure of a wastewater laboratory to comply with one (1) or more of the requirements established in Section 9(2)[10(2)][11(2)] of this administrative regulation, provide written notice to the wastewater laboratory of the deficiency and of the cabinet's intent to change the certification status to provisional certification.

(2) If the deficiency relates to a specific method-analyte pairing, the cabinet may change the status of the wastewater laboratory's certification to provisional certification. If the status is changed to provisional certification, this changed status shall be for only the analyte that failed to meet the requirements of Section 9(2)[10(2)][11(2)] of this administrative regulation, unless the cabinet had certified a group of related analytes based on a limited number of analytes in the group.

(3) The wastewater laboratory shall submit to the cabinet a written corrective action plan to address this deficiency within thirty (30) days of receipt of the notice of intent from the cabinet, specifying the immediate and long-term corrective actions that shall be taken.

(4) The wastewater laboratory shall correct this deficiency as soon as reasonably possible. If the deficiency is not corrected within thirty (30) days of receipt of the notice of intent, the cabinet shall change the certification status to provisional certification, and shall provide written notice to the wastewater laboratory of this action.

(5) A wastewater laboratory with provisional certification may continue to analyze a sample for compliance purposes, but shall notify its client of the wastewater laboratory's provisional certification status prior to conducting an analysis for that client and shall provide that information in writing to the client.

(6) A wastewater laboratory with provisional certification shall correct the deficiency as soon as is reasonably possible, but within three (3) months of written notification from the cabinet of the change to provisional certification status.

(7) The cabinet shall restore the wastewater laboratory's provisional certification status to full certification upon making a determination that the deficiency resulting in the provisional certification status has been corrected and shall provide written notice to the wastewater laboratory of this action.

Section 11[12][13]. Certification Revocation. (1) The cabinet may immediately revoke a wastewater laboratory's certification for any of the following reasons:

(a) Failing[Failure] to use an analytical method established in 40 C.F.R. Part 136 or in the applicable permit;

(b) Reporting proficiency test study data from another laboratory as its own data;

(c) Engaging in falsification of data or another deceptive practice;

(d) Endangering public health or the environment through an operation associated with the wastewater laboratory;

(e) Refusing[Refusal] to allow or participate in an on-site audit conducted by the cabinet; or

(f) Persistent failure to report accurate compliance data to the cabinet.

(2) If the cabinet revokes a wastewater laboratory's certification pursuant to subsection (1) of this section, the cabinet shall immediately notify the wastewater laboratory of this action and provide written notice to the wastewater laboratory of this action.

(3) If a wastewater laboratory has not corrected the deficiency resulting in the provisional certification status within three (3) months of written notification from the cabinet of the change to

provisional certification, the cabinet shall provide written notice to the wastewater laboratory of the cabinet's intent to revoke the wastewater laboratory's certification for any method-analyte pairing involved in the deficiency.

(4) The wastewater laboratory may request, in writing, a redetermination of the cabinet's intent to revoke certification pursuant to subsection (3) of this section.

(a) If a redetermination is requested, the request shall be made within thirty (30) days of receipt of the notice of intent to revoke.

(b)1. This request shall be submitted to the cabinet and shall explain the basis for the redetermination request and, if appropriate, include a written corrective action plan to address the deficiency identified in the cabinet's notice of intent to revoke.

2. The request shall be signed by a responsible official of the wastewater laboratory.

(5) The cabinet, having received a request for redetermination pursuant to subsection (4) of this section, shall make a final determination whether or not to continue provisional certification, approve certification, or revoke certification, and shall provide written notice to the wastewater laboratory of this action.

(6) If, within thirty (30) days of receipt of the notice of intent to revoke pursuant to subsection (3) of this section, the wastewater laboratory does not request a redetermination, the cabinet shall revoke the wastewater laboratory's certification and provide written notification to the wastewater laboratory of this action.

Section ~~12~~~~13~~~~14~~[44]. Cabinet to Develop Templates. (1) The cabinet shall develop templates to assist wastewater laboratories in preparing a quality assurance plan (QAP) and standard operating procedures (SOPs) applicable for field analysis measurements.

(2) The templates developed by the cabinet shall address all applicable requirements for a QAP and common device SOPs, but will require the inclusion of site-specific information to be provided by the wastewater laboratory.

(3) The cabinet shall provide public notice and at least a thirty (30) day opportunity for public review and comment on the proposed templates before finalizing these templates.

(4) These templates may be used by a field-only wastewater laboratory or for the field analysis portion by a general wastewater laboratory. A wastewater laboratory is not required to use these templates, and may independently develop its own QAP and SOPs.

(5) The cabinet shall make the final templates available on its Web site.

Section ~~13~~~~14~~~~15~~[45]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Commonwealth of Kentucky Wastewater Laboratory Certification Manual", ~~August 2018~~~~June 2013~~; and

(b) "Kentucky Wastewater Laboratory Certification Program[.] Application for Kentucky Laboratory Certification", ~~DEP No. DOW0503 (March 2018)~~~~KWLCP Form App, March 2013~~;

(c) "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms", Fourth Edition, U.S.EPA-821-R-02-013, October 2002; and

(d) "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms", Fifth Edition U.S. EPA-821-R-02-012, October 2002.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained through the Division of Water's Web site at <http://water.ky.gov>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 3, 2018

FILED WITH LRC: August 7, 2018 at 10 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards, fees, evaluation, and certification of wastewater laboratories.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the wastewater laboratory certification program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-670 authorizes the cabinet to establish a wastewater laboratory certification program and requires all environmental samples collected pursuant to 33 U.S.C. 1342 to be submitted to laboratories certified by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statute by providing the specifics of the wastewater laboratory certification program established pursuant to KRS 224.10-670.

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

(a) How the amendment will change this existing administrative regulation: The amendments correct the date of the Wastewater Laboratory Certification Manual and remove the Definitions section. All of the definitions have been added to 401 KAR 5:002 Definitions for 401 KAR Chapter 5. "Sulfite" has been added to the definition of "field analysis". Amendments to the Wastewater Laboratory Certification Manual are listed in the "Detailed Summary of Changes to Materials Incorporated by Reference".

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to consolidate definitions for 401 KAR Chapter 5 and clarify the Wastewater Laboratory Certification Manual.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-670 authorizes the cabinet to establish a wastewater laboratory certification program and requires all environmental samples collected pursuant to 33 U.S.C. 1342 to be submitted to laboratories certified by the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in effective administration of the statutes by consolidating definitions for 401 KAR Chapter 5 and clarifying the Wastewater Laboratory Certification Manual.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to approximately 79 commercial laboratories, 71 field service laboratories, 320 industrial laboratories, and 179 municipal laboratories.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments will not require additional action to comply with the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment will not result in additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Definitions for 401 KAR Chapter 5 will be consolidated into one regulation, and the Wastewater Laboratory Certification Manual will be clarified for regulated entities.

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

(a) Initially: The amendment will not result in additional costs.

(b) On a continuing basis: The amendment will not result in additional costs.

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

Program fees authorized by KRS 224.10-670.

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

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

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. Municipal wastewater laboratories that provide service only for their own facilities have a sliding scale reduction from 100% (no fee) to 10% based on the maximum permitted flow value. Wastewater laboratories pay an analysis category fee for only the analysis categories for which they seek certification.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation applies to approximately 79 commercial laboratories, 71 field service laboratories, 320 industrial laboratories, and 179 municipal laboratories.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-670, 40 C.F.R. 136.

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: The amendment to this administrative regulation will not result in additional revenue or costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 136 provides the substantive requirements for wastewater laboratories, but there is no requirement for the states to implement a wastewater laboratory certification program.

2. State compliance standards. KRS 224.10-670.

3. Minimum or uniform standards contained in the federal mandate. Wastewater laboratory analysis, for the purpose of demonstrating compliance with activities subject to 33 U.S.C. 1342, must meet the analytical methods and instrumentation required by 40 C.F.R. 136.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or

different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional, or different responsibilities or requirements.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Board of Education Department of Education (Amended After Comments)

704 KAR 3:306. Kentucky Academic Standards for Historical and Cultural Influences of the Bible Elective Social Studies Course.

RELATES TO: KRS 156.070, 156.160, 156.162, 158.197, 158.6451, 160.290

STATUTORY AUTHORITY: 156.070, 156.160, 156.162

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451 and 158.6453. KRS 156.162(4) requires the Kentucky Board of Education to include course standards in the program of studies for Kentucky schools. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. KRS 156.162 requires the Kentucky Board of Education to promulgate an administrative regulation for course standards for an elective social studies course on the Hebrew Scriptures, Old Testament of the Bible; the New Testament of the Bible; or a combination of the Hebrew Scriptures and the New Testament of the Bible. This administrative regulation incorporates by reference the Kentucky Academic Standards for Historical and Cultural Influences of the Bible Elective Social Studies Course.

Section 1. Schools offering an elective social studies course on the Hebrew Scriptures, Old Testament of the Bible; the New Testament of the Bible; or a combination of the Hebrew Scriptures and the New Testament of the Bible shall meet the minimum content requirements established in the Kentucky Academic Standards for Historical and Cultural Influences of the Bible Elective Social Studies Course.

Section 2. Incorporation by Reference. (1) The "Kentucky Academic Standards for Historical and Cultural Influences of the Bible Elective Social Studies Course," August 2018~~June 2018~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 5th floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, Ph.D., Commissioner of Education
HAL HEINER, Chairperson

APPROVED BY AGENCY: August 8, 2018

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

CONTACT PERSON: Todd Allen, Interim General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 156.162 required the Kentucky Department of Education (KDE) to develop course standards for an elective social studies course on the Hebrew Scriptures, Old Testament of the Bible; the New Testament; or a combination of the Hebrew Scriptures and the New Testament of the Bible. This regulation fulfills the requirements of KRS 156.162.

(b) The necessity of this administrative regulation: KRS 156.162 required the Kentucky Department of Education (KDE) to develop course standards for an elective social studies course on the Hebrew Scriptures, Old Testament of the Bible; the New Testament; or a combination of the Hebrew Scriptures and the New Testament of the Bible. This regulation fulfills the requirements of KRS 156.162.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to KRS 156.162 by creating the course standards for an elective social studies course on the Hebrew Scriptures, Old Testament of the Bible; the New Testament; or a combination of the Hebrew Scriptures and the New Testament of the Bible as required by the statute. Also, the administrative regulation conforms to 158.197 by providing course standards if a School-Based Decision Making (SBDM) council wants to offer this elective class for grades nine through twelve.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation conforms to KRS 156.162 by creating the course standards for an elective social studies course on the Hebrew Scriptures, Old Testament of the Bible; the New Testament; or a combination of the Hebrew Scriptures and the New Testament of the Bible as required by the statute. Also, the administrative regulation conforms to 158.197 by providing course standards if a School-Based Decision Making (SBDM) council wants to offer this elective class for grades nine through twelve.

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

(a) How the amendment will change this existing administrative regulation: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statute: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this regulation include: all public schools, school districts, school councils, and the KDE as it will be responding to questions related to this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. No public schools, school districts, or school councils are required to offer this course. Therefore, no action is required on their part unless they offer the elective course. If they do choose to offer the course, they will be required to follow the standards outlined in the document incorporated by reference in 704 KAR 3:306. Any course offering will be expected to follow all applicable laws and federal and state guidelines in maintaining religious neutrality and accommodating the diverse religious views, traditions and perspectives of students in the school and any course offering shall not endorse, favor, promote, disfavor or show hostility toward any particular religion,

non-religious faith or religious perspective.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. No public schools, school districts, or school councils are required to offer this course. Therefore, no action is required on their part unless they offer the elective course. The Department does not typically create standards for elective courses, however, since the development of those standards was required by statute, the Department spent approximately \$1,200 as of the date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. No public schools, school districts, or school councils are required to offer this course. However, if the course is offered, public schools must comply with 704 KAR 3:306. The regulation provides public schools with the standards to be taught in the event the course is offered.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. No public schools, school districts or school councils are required to offer this course.

(a) Initially: The standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. No public schools, school districts, or school councils are required to offer this course. Therefore, no action is required on their part unless they offer the elective course. The Department does not typically create standards for elective courses, however, since the development of those standards was required by statute, the Department spent approximately \$1,200 as of the date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation process. Additional staff time will be needed as the regulation moves through the legislative and implementation process.

(b) On a continuing basis: The standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. No public schools, school districts, or school councils are required to offer this course. Additional KDE staff time will be needed as the regulation moves through the legislative and implementation process.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Local district and school funds would be used to implement this elective course if those entities choose to implement. State funds have been used to develop the standards.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. No public schools, school districts, or school councils are required to offer this course.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and local education agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.162 required the Kentucky Department of Education (KDE) to develop course standards for an elective social studies course on the Hebrew Scriptures, Old Testament of the Bible; the New Testament; or a combination of the Hebrew Scriptures and the New Testament of the Bible. This regulation fulfills the requirements of KRS 156.162.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. No public schools, school districts, or school councils are required to offer this course. Therefore, no action is required on their part unless they offer the elective course. The Department does not typically create standards for elective courses, however, since the development of those standards was required by statute, the Department spent approximately \$1,200.00 as of the date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation process.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue.

(c) How much will it cost to administer this program for the first year? The standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. No public schools, school districts, or school councils are required to offer this course. Therefore, no action is required on their part unless they offer the elective course. The Department does not typically create standards for elective courses, however, since the development of those standards was required by statute, the Department spent approximately \$1,200 as of the date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation process.

(d) How much will it cost to administer this program for subsequent years? The standards outlined in 704 KAR 3:306 are standards for Historical and Cultural Influences of the Bible Elective Social Studies Course. No public schools, school districts, or school councils are required to offer this course. Additional KDE staff time will be needed as the regulation moves through the legislative and implementation process.

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

Revenues (+/-): N/A
Expenditures (+/-): NA
Other Explanation: N/A

**PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(Amended After Comments)**

820 KAR 1:032. Pulltabs[Pulltab construction].

RELATES TO: KRS 238.505[(5), (27), (28)], 238.545[(1), (2)]
STATUTORY AUTHORITY: KRS 238.515[(2), (4), (9)], 238.545 [(4), (2)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515 [(2) and (9) require] requires the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming. KRS 238.545[(2)] requires the department to establish standards for pulltab construction, distribution, electronic pulltabs, and rules of play. This administrative regulation

establishes those standards.

Section 1. Pulltab Definitions. These definitions shall apply to all administrative regulations relating to pulltabs and/or electronic pulltabs.

(1) "Bonus round" means a single, new screen, apart from ordinary gameplay, that incrementally reveals the results of a single electronic pulltab ticket either by simulating the opening of additional tickets or simulating a prize board from which a player may pick symbols or icons.

(2) "Cumulative pulltab game" means a pulltab game consisting of multiple pulltab deals or game sets that is designed by the manufacturer so that a portion of each deal's predetermined payout is designated to a prize pool board.

(3) "Deal" means each separate game or series of pulltabs which has the same serial number and which may be composed of multiple packages.

(4) "Electronic pulltab system" means:

(a) A central computer system, which may be an optional site system;

(b) Electronic pulltab devices;

(c) Point of sale stations;

(d) Secondary components; and

(e) Proprietary software that contains reporting and control functions whereby the central computer system communicates with the electronic pulltab devices for the purpose of distributing a finite number of electronic pulltabs, a certain number of which, if randomly selected, entitle a player to prize awards at various levels.

(5) "Event game" means a type of pulltab game, with or without a seal card, that is designed by the manufacturer so that certain prizes are determined by:

(a) The draw of a bingo ball; or

(b) A method of randomly selecting numbers or symbols that correspond to the numbers or symbols printed on a paper or electronic pulltab.

(6) "Fixed-base electronic pulltab device" means a single personal computing device that [which] has been loaded with proprietary software by a licensed manufacturer to enable it to function as an electronic pulltab device.

(7) "Flare" means the paper included with a deal of paper pulltabs, or the electronic representation of a paper flare included with a game set of electronic pulltabs, that identifies the game, the rules of the game, the payout structure, and other information required by these regulations.

(8) "Form number" means a manufacturer's alphanumeric number that identifies a pulltab payout structure.

(9) "Game set" means the entire deal of finite electronic pulltabs that contains predefined and randomized game results assigned under a unique serial number.

(10) "Game subset" means a division of a game set into equal sizes following randomization, with each game subset also identified by a unique serial number.

(11) "Hand-held electronic pulltab device" means a single tablet or hand-held computer, other than a mobile phone or similar hand-held device that is either manufactured or customized by the manufacturer to operate as an electronic pulltab device.

(12) "Jackpot prize in a progressive pulltab game" or "progressive jackpot prize" means a prize in addition to the instant or seal card prizes which is carried over from deal to deal, or game set to game set, until it is won.

(13) "Jar ticket" means a type of pulltab game ticket that is folded, glued, or stapled.

(14) "Last sale" means a pulltab game designed by the manufacturer in which a prize is awarded to the person who bought the last pulltab or electronic pulltab in a deal or game set.

(15) "Multipackaged pulltab deal" means a pulltab game consisting of a single deal or game set of not more than 25,000 tickets that is packed or electronically grouped in subsets and in which each subset contributes to a prize pool with or without a prize board.

(16) ["Pulltab" means a charity game ticket as defined by KRS 238.505(5).

(17) "Progressive pulltab game" or "carryover pulltab game" means a pulltab game consisting of one (1) or more deals or game sets designed by the manufacturer so that a portion of the deal's predetermined prize payout is designated to a progressive jackpot and the jackpot value may accumulate from one (1) deal to the next deal until won.

(17) "Pulltab" means a charity game ticket as defined by KRS 238.505(5).

Section 2. Conformity of Paper Pulltabs. (1) A licensed distributor of charitable gaming supplies and equipment shall distribute in Kentucky only those paper pulltabs conforming to the requirements of this administrative regulation.

(2) A licensed charitable organization shall sell to the public only those paper pulltabs conforming to the requirements of this administrative regulation.

Section 3[2]. Paper Pulltab Construction Standards. (1) Pulltabs shall be constructed so that the concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of the pulltab using a high intensity lamp of up to and including 500 watts, with or without utilizing a focusing lens.

(2) The deal shall be designed, printed, glued, cut, and assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.

(3) Each pulltab in a deal shall bear the same serial number. If a seal card is used with a pulltab deal, the seal card shall bear the same serial number as each pulltab. Only one (1) serial number shall be used in a deal. A serial number used in a deal of pulltabs shall not be repeated by the same manufacturer on that same manufacturer's form number within a three (3) year period.

(4) If the pulltab utilizes a window, the numbers or symbols on the pulltab shall be fully visible in the window and shall be placed so that no part of a symbol or number remains covered when the tab is removed. Displacement of the symbol to the left or right in a window may be used for increased game security. Additional security devices or methods, including a laminate underneath a window, may be used by a manufacturer.

(5) It shall not be possible to distinguish winning pulltabs from losing pulltabs through variations in printing graphics or colors, including those involving different printing plates.

(6) All winning pulltabs shall have at least one (1) winner protection feature. In addition, all winning pulltabs that entitle a player to an instant prize of greater than twenty (20) dollars shall include an additional form of winner protection. Numeral jar tickets with colored winning numerals shall not be required to have secondary winner protection.

(7) All pulltabs shall be glued on the window edges and between each window. The glue shall be of sufficient strength and type to prevent the separation or delamination of the pulltab. For banded tickets, the glue shall be of sufficient strength and quality to prevent the separation of the band from the ticket.

(8) The window slits on each break open ticket shall be perforated on at least three cut sides. The ties shall be of a sufficient thickness or strength to prevent unauthorized peering under the windows and so that unauthorized peering under the windows can be detected. It shall not be possible to isolate winning or potential winning tickets from variations to the size or the appearance of a cut edge of the pulltab comprising a particular game.

(9) Except as provided in Sections 3(10) and 3(11) of this administrative regulation~~[subsection (10) or (11) of this section]~~, the minimum information that shall be printed on an unopened pulltab with an overall area of two and five-tenths (2.5) square inches or more shall be:

- (a) The name of the manufacturer, or its distinctive logo;
- (b) The name of the game;
- (c) The manufacturer's form number;
- (d) The price per individual pulltab;
- (e) The unique minimum five (5) digit game serial number, printed on the game information side of the pulltab; and

(f) The number of winners and respective winning numbers or symbols, and specific prize amounts.

(10) A pulltab with an overall area of at least one and six tenths (1.6) square inches unopened but less than two and five tenths (2.5) square inches unopened shall:

(a) Have printed on it, at a minimum, the information listed in subsection (9)(a), (b), (c), (d), and (e) of this section; and

(b) Not be required to have the information listed in subsection (9)(f) of this section.

(11) A pulltab with an overall area of less than one and six-tenths (1.6) square inches unopened shall:

(a) Have printed on it, at a minimum, the information listed in subsection (9)(a) and (e) of this section; and

(b) Not be required to have the information listed in subsection (9)(b), (c), (d), or (f) of this section.

Section 4[3]. Randomization of Paper Pulltabs. Winning paper pulltabs shall be distributed and mixed among all other pulltabs in a deal to eliminate any pattern between deals, or portions of deals. The pulltab deal shall be assembled so that the winning pulltabs cannot be distinguished. Winning tickets shall be randomly distributed throughout the deal. Banded tickets packaged in bags, rather than boxes, shall be subject to these requirements.

Section 5[4]. Packaging and Distribution of Paper Pulltabs.

(1)(a) Each paper pulltab deal's package, box, or other container shall be sealed or taped at every entry point at the manufacturer's factory with a tamper resistant seal or tape.

(b) The seal or tape shall be visible under the shrink-wrap or from outside the container and shall be constructed to guarantee that, if the container is opened or otherwise tampered with, evidence of the opening or tampering will be easily detected.

(c) The seal or tape shall include a warning to the purchaser that the deal may have been tampered with if the package, box, or other container is received by the purchaser with the seal or tape broken.

(d) If the deal is packaged in a plastic bag, the entry point shall be completely sealed by the application of heat or adhesive. The warning may be imprinted in the plastic.

(2) A deal's serial number shall be clearly and legibly placed on:

(a) The outside of the deal's package, box, or other container; or

(b) The inside of the deal's package, box, or other container if it is clearly visible from the outside of the package, box, or other container.

(3) Manufacturers shall print on or affix to the outside of the package or container of pulltabs or include inside the package or container, in bold print of sufficient size to be easily read, a message that states substantially the following: "tickets must be removed from this packaging container and thoroughly mixed prior to sale to the public."

(4) Manufacturers shall include with every deal of pulltabs a bar code label that contains at a minimum the name of the manufacturer or its distinctive logo, the game form number, and the game serial number. The bar code label shall be visible from the outside of the package, box, or other container.

Section 6[5]. Flares and Seal Cards for Paper Pulltabs. (1) Every deal of pulltabs shall contain a flare or a seal card. The manufacturer shall print directly on the paper flare or seal card the following information:

- (a) The name of the game;
- (b) The manufacturer's name or logo;
- (c) The manufacturer's form number;
- (d) The game serial number;
- (e) The ticket count;
- (f) The prize structure, including a description of the number of winning pulltabs by denomination, with their respective winning symbols or number combinations, and amounts dedicated to the prize pool in a seal card game with a cumulative prize, or a carryover or progressive prize; and
- (g) The cost per play.

(2) Every deal of pulltabs shall contain instructions on how to play the game.

Section 7[6]. Cumulative Games, and Carryover or Progressive Games. (1) The rules for cumulative games, [and] carryover, or progressive games[,] shall apply to both paper and electronic pulltabs.

(2) The amount dedicated to a cumulative prize pool[,] or a carryover or progressive jackpot[,] shall be predetermined by the manufacturer and built into the payout structure for the game.

(a) For paper pulltabs, the dedicated amount shall be printed by the manufacturer on either the flare or seal card for each game or on each ticket in each game.

(b) For electronic pulltab games, the dedicated amount shall be included by the manufacturer on the flare or seal card for each game.

(3) All games contributing to the cumulative prize pool[,] or the carryover or progressive jackpot[,] shall be of the same form number.

(4) The paper or electronic flare or seal card for the carryover or progressive jackpot shall contain an area in which the current amount of the carryover or progressive jackpot can be posted.

(5) If a carryover or progressive pulltab game uses a progressive jackpot prize card that is separate from the jackpot seal, the jackpot card shall contain prize space for the organization to record the serial numbers of all games contributing to the jackpot prize.

(6) If a carryover or progressive pulltab game uses a jackpot prize card that is separate from the jackpot seal card, each deal of the game shall possess both a seal card and a jackpot prize card that has the serial number of the deal affixed to it by the manufacturer.

(7) In a carryover or progressive pulltab game, the organization shall either start a new jackpot card with each deal or use the original jackpot card until won. The organization shall maintain each jackpot card used[pursuant to 820 KAR 1:036, Section 2(15)].

(8) A progressive pulltab game shall not be designed by the manufacturer to give any player initial odds greater than a fifty (50) percent chance to win the progressive jackpot.

(9) If a paper pulltab game contributes to a progressive raffle jackpot, a licensed charitable organization shall not sell a similar version of that paper pulltab game unless it also contributes to a progressive raffle jackpot. All paper pulltab game tickets which contribute to a progressive raffle jackpot shall be sold for cash and shall not be used as a merchandise prize for any bingo, pulltab, or door prizes.

Section 8[7]. Event Games. (1) The rules for event games shall apply to both paper and electronic pulltabs.

(2) An event game shall not contain a "last sale" feature.

(3) The number of winners and the prize amounts shall be built into the payout structure for the game by the manufacturer.

(4) An event ticket prize shall not exceed the individual ticket prize limit for a pulltab game.

(5) The prize for an event pulltab game shall not be considered a bingo prize.

Section 9[8]. Multipackaged Pulltab Deals. (1) The rules for multipackaged pulltab deals shall apply to both paper and electronic pulltabs. Every package shall be played for the deal to show the stated profit.

(2) Each package may contain individual winners if desired. If each package contains a winner, the game shall contain a method of verifying from which package the winner was sold.

Section 10[9]. Tracking by Manufacturer. Every manufacturer of paper pulltabs shall maintain records sufficient to track each deal of paper pulltabs, by serial number and form number, from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.

Section 11[40]. Tracking by Distributor. (1) Every distributor of paper and electronic pulltabs shall maintain records sufficient to

track each deal of paper and electronic pulltabs, by serial number and form number, from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.

(2) For sales in the Commonwealth of Kentucky[,] or to residents of Kentucky, the records required under this section shall be sufficient if the distributor records the name of the purchaser and makes and retains a copy of the Kentucky charitable gaming license or exemption number of the purchaser at the next point of sale.~~[(3) For sales outside the Commonwealth of Kentucky to nonresidents of Kentucky, the records required under this section shall be sufficient if the distributor makes and retains a copy of a state charitable gaming license or a valid state identification card of the purchaser which contains the name, address, date of birth, and state identification number of the purchaser at the next point of sale.]~~

Section 12[44]. Requirements of Distributor Invoice. (1) Distributors selling paper pulltabs to charitable organizations or other distributors shall provide the charitable organization or other distributor with an invoice that contains, at a minimum, the following information:

- (a) The purchaser's name, address, and license number;
- (b) The address to which the shipment was delivered;
- (c) The date of sale or credit;
- (d) The conditions of the sale or credit;
- (e) The quantity of pulltabs sold including the number of [the] deals, the name of each deal, the tickets per deal, and the serial number and form number of the deal;
- (f) The total invoice amount;
- (g) The name of the person who ordered the supplies;
- (h) The name of the person making the delivery;
- (i) The date of delivery or date the item was picked up for sale or credit;
- (j) The place or manner of delivery; and
- (k) The name and signature of the person taking delivery, if any.

(2) A distributor may deliver paper pulltabs to an agreed secure location or to an identified person. An invoice not challenged within seven (7) days of delivery shall be deemed accurate. Any challenge to an invoice shall be made in writing to the distributor and a copy shall be sent to the department.

Section 13[42]. Defects. (1) If a defect in packaging or construction of a paper pulltab is discovered by an organization, the defect shall be reported to the distributor within fifteen (15) days. The distributor shall correct the defect or replace the defective items within a reasonable time, or, if the product cannot be replaced or the defect corrected, the distributor shall provide a refund to the organization.

(2) If the department, in consultation with the manufacturer, determines that a defect actually exists, and the defect affects game security or otherwise threatens public confidence in the game, the department shall, with respect to paper pulltabs for use in Kentucky, require the manufacturer to:

- (a) Recall the pulltabs affected that have not been sold at retail to licensed organizations; or
- (b) Issue a total recall of all affected deals.
- (3) In choosing and directing a particular recall in accordance with subsection (2) of this section, the department shall be guided in each circumstance by any combination of the following factors:
 - (a) The nature of the defect;
 - (b) Whether the defect affected game security;
 - (c) Whether the defect affected game playability;
 - (d) Whether the defect was limited to a specific number of deals of a particular form number;
 - (e) Whether the defect was easily detectable by a charitable organization;
 - (f) Whether the defect was easily detectable by members of the general public;
 - (g) Whether the defect threatens public confidence in the game; or
 - (h) Whether the defect is capable of being used to adversely

affect the fair play of the game.

(4) In consultation with the manufacturer, the department shall determine a specific date for the recall to be completed and whether the manufacturer is required to reimburse the organization or distributor.

Section 14. Pulltab Dispenser Construction and Use. (1) An pulltab dispenser shall not be sold, leased, or otherwise furnished to any person in the state unless it has been approved by the department.

(2) Before approval by the department, a dispenser that is identical to the dispenser intended to be sold, leased, or otherwise furnished shall be certified by an independent testing laboratory that the dispenser satisfies the manufacturing requirements established in Section 15 of this administrative regulation.

(3) If granted, approval shall extend only to the specific dispenser model approved, and any modification shall first be approved by the department.

Section 15. Requirements of Pulltab Dispensers. Each pulltab dispenser shall meet the following requirements:

(1) Contain a three (3) prong ground and surge protector, and shall be capable of withstanding static electricity;

(2) Accommodate pulltabs of different sizes;

(3) Be constructed so that customers can see how many pulltabs remain within the dispenser, or have resettable counters visible to the customer indicating the number of pulltabs left in each column of the dispenser;

(4) Have an outlet or tray to catch dispensed pulltabs;

(5) Accurately dispense the correct number of pulltabs;

(6) Contain one (1) or more player buttons on the front of the dispenser to dispense pulltabs if pressed;

(7) Contain an illuminated electronic display to display the value of money deposited;

(8) Be capable, if a malfunction occurs or the electrical power is interrupted after the money has been validated, of accurately redisplaying the value of the money after the malfunction or power is restored;

(9) Not dispense any credits, or validate, read, or redeem a winning pulltab;

(10) If using bill acceptors or similar devices that do not return change, clearly disclose that fact to the customer;

(11) Not have a video screen or produce audio sounds except for security alarms;

(12) Not resemble a slot machine or other gambling device;

(13) Contain the manufacturer's name, dispenser's serial number and model number, and date of manufacture, all of which shall be permanently affixed to the side of the dispenser;

(14) Have an on/off switch in an inconspicuous location on the exterior of the dispenser;

(15) Not record test sales of pulltabs or money acceptances on the dispenser's accounting meters;

(16) Contain a nonresettable accounting meter for total money validated and for the total of pulltabs dispensed and shall be capable of retaining this information for six (6) months after power has been disconnected;

(17) Contain an EPROM microchip, microprocessor, or other verifiable electronic program storage media which holds the dispenser's programming code and which is identical in all respects to the manufacturer's programming code[EPROM microchip] approved by the department;

(18) Contain a RAM or an EPROM microchip equipped with a RAM microchip, which shall be installed with a tamper-proof seal inside the dispenser, or a microprocessor or flash memory microchip, or other verifiable electronic program storage media, which shall maintain the same information as required in subsection (17) of this section for six (6) months after power has been disconnected.[The microchip shall be installed with a tamper-proof seal inside the dispenser];

(19) Automatically discontinue operation if any nonresettable accounting meter, RAM microchip,or an] EPROM microchip, microprocessor, or other verifiable electronic program storage media is disconnected; and

(20) Contain at least one (1) electronic money validator which shall:

(a) Only validate United States money;

(b) Not validate money in denominations in excess of twenty (20) dollars;

(c) Transmit the value of validated money to the pulltab dispenser;

(d) Be equipped with mechanisms to ensure that pulltabs will not be dispensed unless the money is validated and retained;

(e) Be capable of preventing acceptance of known counterfeit money;

(f) Return any invalid money to the player;

(g) Have at least one (1) removable stacker box capable of stacking bills or a removable drop box contained in a separate locked compartment; and

(h) Automatically discontinue accepting or validating money if a malfunction occurs or if electrical power to the dispenser or currency validator is interrupted.

Section 16. Pulltab Dispensing Limitations. (1) A charitable organization shall not use a dispenser until the charitable organization that previously used the dispenser has removed its pulltabs and money from the dispenser.

(2) Each charitable organization operating the dispenser shall place upon the dispenser an identification label which displays the organization's name and license number.

(3) The keys to open the locked doors to the dispenser's ticket dispensing area and cash box shall be solely in the possession and control of the designated chairperson of the charitable organization conducting the charitable gaming session.

(4) The entire deal of pulltabs shall be sold from the dispenser and shall not be sold on the floor.

(5) All pulltabs in any one column shall have the same serial number.

(6) A licensee shall not display, use, or otherwise furnish a dispenser which has in any manner been tampered with or which otherwise may deceive the public or affect a person's chances of winning.

(7) A pulltab deal shall not be placed in the dispenser until the entire deal of pulltabs previously in the dispenser has been played out or permanently removed.

(8) After placement in the dispenser, a pulltab shall not be removed from the dispenser, except for those pulltabs:

(a) Actually played by consumers;

(b) Removed by department representatives or law enforcement agencies;

(c) Temporarily removed during necessary repair, and maintenance; or

(d) Removed at the end of the charitable gaming session.

(9) At least one (1) chairperson who is listed on the application for licensure shall be present at all times a pulltab dispenser is in use and shall be responsible for the administration and conduct of the pulltab dispenser.

(10) An organization utilizing a pulltab dispenser at its office location or owned premises shall only utilize the dispenser during business hours.

Section 17. Pulltab Dispenser Inspection. The department or its authorized representatives may examine and inspect any automated pulltab dispenser. The examination and inspection shall include immediate access to the dispenser and unlimited inspection of all parts of the dispenser.

Section 18. Pulltab Dispenser Recordkeeping. (1) Each licensed charitable organization shall maintain the following information in connection with its use of an automated pulltab dispenser:

(a) Date of purchase or lease of each dispenser;

(b) Model and serial number of each dispenser;

(c) Purchase or lease price of each dispenser;

(d) Name, address, and license number of the distributor from whom the dispenser was purchased, leased or otherwise furnished; and

(e) A record of all maintenance and repairs relating to the dispenser.

(2) Manufacturers and distributors shall maintain the following information in connection with each sale or lease of a dispenser:

(a) Date of sale or lease;

(b) Quantity sold or leased;

(c) Cost per dispenser;

(d) Model and serial number of each dispenser; and

(e) Name, address, and license number of the purchaser or lessee.

(3) All records, reports, and receipts relating to dispenser sales, maintenance and repairs required to be maintained shall be retained for a period of three (3) years for examination by the department.

Section 19. Pulltab Dispenser Defects. (1)(a) If the department detects or discovers any defect or malfunction with the dispenser that is not temporary in nature or affects the integrity or security of the pulltab game, the department shall direct the manufacturer, distributor or organization to cease the sale, lease, or use of the dispenser, as applicable, and shall require the manufacturer to correct the defect, malfunction, or problem or recall the dispenser immediately upon notification by the department to the manufacturer.

(b) If the manufacturer, distributor, or organization detects or discovers any defect or malfunction with the dispenser which is not temporary in nature, the entity shall immediately remove the dispenser from use and notify the department of that action.

Section 20. Pulltab Rules of Play. (1) All individuals involved in the sale of pulltabs shall be trained in the proper conduct of the game and control of funds.

(2) The chairperson shall be in full charge of the charitable gaming session, supervise and direct all volunteers, and be responsible for assuring the proper receipt and recording of gaming funds.

(3) More than one charitable organization shall not conduct gaming at the same time and location as another charitable organization, except for licensed charity fundraising events.

(4) Each organization's gaming supplies shall be maintained in a location separate from another organization's gaming supplies. This location shall also be locked and access shall be controlled.

(5) Except for a charity fundraising event, a volunteer at any other charitable gaming session at which pulltabs are sold shall not purchase or play pulltabs at that charitable gaming session. At a charity fundraising event, a volunteer may purchase or play pulltabs on a day the volunteer does not work, and from a deal the volunteer does not sell.

(6) If the charitable organization has house rules concerning its charitable gaming session, the house rules shall:

(a) Be posted in at least two (2) conspicuous locations at the charitable gaming session and announced prior to the commencement of the charitable gaming session; or be listed on the program;

(b) Not conflict with KRS Chapter 238 or 820 KAR Chapter 1;

(c) Be followed; and

(d) Include the organization's name and license number.

Section 21. Playing. (1) The flare or seal card for paper pulltabs, including a progressive jackpot card relating to a carryover or progressive prize, or a prize board relating to a game with a cumulative prize, shall be posted by the licensed charitable organization in the vicinity of the deal and in full and complete view of the players while the deal is in play. Electronic pulltab games shall include an electronic flare or seal card, including a progressive jackpot card relating to carryover or progressive prizes, that is available for view on the electronic pulltab device by players at all times while the game set is in play.

(2) Paper pulltabs shall not be sold to the public from the original packing box or container. Paper pulltabs shall be removed from the original box or container and mixed by shuffling together prior to sale.

(3) If a deal of paper pulltabs is packed in more than one (1)

box or container, an individual container shall not designate a winner or contain a disproportionate number of winning or losing tickets. Each package, box, or container shall be placed out for play at the same time unless the deal is designed by the manufacturer to be played in subsets. Those subsets may be placed out for play in succession.

(4) Paper pulltabs which have been marked, defaced, altered, tampered with, received in packaging that is not tamper-resistant, or otherwise constructed in a manner which tends to deceive the public or affect the chances of winning or losing, shall not be placed into play. The organization shall notify the Department of Charitable Gaming of the existence of these tickets in writing within fifteen (15) days.

(5) Before placing a deal into play, the charitable organization shall verify that the serial number on the paper pulltabs within each deal matches the serial number on the flare or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal. If the charitable organization determines that serial numbers on tickets within a deal or game set do not match the serial number on the flare or seal card accompanying the deal or game set, the organization shall not place the deal or game set into play and shall notify that distributor. If the distributor does not correct the problem within thirty (30) days, the organization shall notify the department in writing.

(6) Any licensed charitable organization which sells pulltabs from its office location or from a pulltab dispenser shall comply with 820 KAR Chapter 1 regarding the play, proper recordkeeping, and reporting of those sales. The sales shall be reported on the financial report.

(7)(a) If a deal or game set is not played to completion and there remain unsold winning pulltabs, the licensed charitable organization conducting the gaming shall sell the remaining pulltabs on the next appointed date for charitable gaming activities.

(b) If no future date is anticipated, the licensed charitable organization shall consider the deal or game set closed or completed, declare the winners, and post winning numbers for fifteen (15) days with information directing the method of claiming a prize at its office location. All unsold pulltabs shall be retained as required in Section 21(15) of this administrative regulation.

(c) If no winning pulltabs remain in the paper deal, the licensed charitable organization may consider the deal closed or completed, declare the winners, and shall retain unsold pulltabs as required in Section 21(15) of this administrative regulation.

(d) A licensed charitable organization shall not complete play of a deal, game set, or a seal card it did not initiate.

(8) A pulltab shall not be sold to the public at a price different than that **generated[printed]** by the manufacturer of the pulltab upon the flare or seal card which accompanies the deal or game set.

(9) Only authorized representatives of the charitable organization conducting the event at which pulltabs are sold shall verify the serial numbers and winner protections for all winning pulltabs redeemed.

(10) In playing paper pulltabs that utilize a seal card, a charitable organization shall not award a prize to the holder of a winning pulltab unless the serial number on the ticket presented for redemption matches the serial number on the seal card. In a progressive pulltab game, the serial number on the tickets shall be checked in accordance with Section 6 of this administrative regulation.

(11) A charitable organization shall award prizes to winners of pulltabs only in accordance with the prize structure indicated on the flare or seal card accompanying the deal or game set of tickets as designed by the manufacturer. If multiple prize structures are indicated on the flare or seal card, the charitable organization shall announce to the patrons and circle on the paper flare or seal card the prize structure to be awarded before placing the deal or game set into play.

(12) A holder of a winning pulltab shall have fifteen (15) days to redeem the winning ticket. If the prize is not claimed within fifteen (15) days, the prize shall be considered unclaimed and be retained as property of the organization.

(13) Once redeemed, the holder of a winning pulltab shall be

paid no later than five (5) days from the date of redemption.

(14) All winning paper pulltabs shall have the winning symbol or number defaced or punched by an authorized representative of the charitable organization immediately after redemption.

(15)(a) The charitable organization shall retain, in paper or electronic form, for a period of twelve (12) months, to allow auditing by the staff of the department;

1. All winning pulltabs with a prize value of fifty (50) dollars and above;

2. The flare from all winning pulltabs with a prize value of fifty (50) dollars and above;

3. All seal cards with a prize value of fifty (50) dollars and above;

4. All prize boards in cumulative games with a prize value of fifty (50) dollars and above; and

5. All unsold pulltabs.

(b) These records may be maintained at the gaming location.

(16) The fair market value of bingo paper, a card-minding device, pulltab, or electronic pulltab device given away as a merchandise prize shall be the price that a patron would have paid for the same bingo paper, card-minding device, pulltab, or electronic pulltab device at that charitable gaming session.

(17)(a) If bingo paper is awarded as a merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. The date on which it was awarded;

3. The date on which it was redeemed;

4. The amount of bingo paper given in exchange for the voucher; and

5. The serial number of the bingo paper.

(c) Once the voucher is completed, it shall be redeemed for the bingo paper.

(d) The organization shall retain the voucher with its charitable gaming session records.

(18)(a) If a card-minding device or electronic pulltab device is awarded as a merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. The date on which it was awarded;

3. The date on which it was redeemed; and

4. The number of card-minding devices and the number of faces loaded on each device, or the number of electronic pulltab devices and credits loaded on each device, if any, given in exchange for the voucher.

(c) Once the voucher is completed, it shall be redeemed for the card-minding device or electronic pulltab device. No more than one (1) card-minding device or one (1) electronic pulltab device may be redeemed per player per charitable gaming session.

(d) The organization shall retain the voucher with its charitable gaming session records.

(e) There shall be a specific button on the point of sale programmed for each type of voucher involving a card-minding device and electronic pulltab device.

(19) If a paper pulltab or electronic pulltab device is awarded as a promotional item or a door prize, the amount and description of the pulltab or electronic pulltab device and credits loaded on each device, if any, shall be listed on the charitable gaming session program with "free" or "promotional" listed as the price. The point of sale shall have a specifically described discount button for this promotion.

(20) If a paper pulltab or electronic pulltab device is awarded as a bingo prize, the person in charge of bingo payouts shall purchase the pulltabs or electronic pulltab device and any credits loaded to the device from the pulltab manager by transfer of cash from bingo payout to pulltab sales, and it shall be recorded as a sale on the charitable gaming session records.

(21) Vouchers shall be redeemed on the same day as awarded.

(22) Jar tickets shall be played and prizes awarded as stated on the flare received with each deal.

(23) "Last Sale" pulltabs shall only be sold by an organization at its office location and not during a bingo session.

Section 22. Seal Card Games. (1) The organization shall post the paper seal card for the deal in play at the location of the seal game while the deal is in play. An electronic seal for an electronic game set shall be viewable, upon player request, on the video screen of the electronic pulltab device while the game set is in play.

(2) If a deal or game set with a seal card is not completed during a charitable gaming session, the organization shall require the patrons with holders to sign or enter their name electronically on the seal card and provide a means of contacting them when the winner is declared.

(3)(a) The seal for the deal or game set shall be broken, torn open, or otherwise revealed in plain view of all persons present when:

1. All tickets from a deal or game set have been sold;

2. All the winning tickets from a deal or game set have been sold;

3. All the lines on the sign-up card have been filled;

4. The deal or game set has been closed because no future date is anticipated; or

5. Instructed to by the game as designed by the manufacturer.

(b) Each winning combination, the name of the game, and the serial number of the deal or game set shall be announced and posted at the location of the game.

(c) The date the seal tab was opened shall be recorded on the seal card.

Section 23. Seal Card Games with Carry Over or Progressive Prizes. (1) The prize pool for a progressive pulltab game shall be established only through the play of deals or game sets of the same game which bear a manufacturer's form number identical to the form number of any previously-played deals or game sets contributing to the prize pool.

(2) Before placing a paper deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal match the serial number on the flare or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal. The serial number on the tickets shall not be required to match the serial number on the progressive pulltab jackpot card if the deal is the second or subsequent deal played in the progressive game and one (1) progressive jackpot card is used for more than one (1) deal.

(3) After a progressive pulltab game has been started, it shall remain in play continuously until the progressive jackpot prize is awarded. If the game is begun at a bingo session, it shall be offered at each succeeding bingo session of the licensee. If the game is begun at the office location, it shall be offered on each succeeding day its office is open. If an organization stops conducting charitable gaming or wishes to stop playing a progressive pulltab game, the organization shall, with prior approval from the department, transfer the current jackpot to another progressive game or determine a method to award the progressive jackpot to the players. With prior approval from the department, an organization may alter the suggested rules of the manufacturer to determine a winner.

(4) The seal card for each deal or game set in a progressive game shall show, in addition to all other information required for flares and seal cards, the amount dedicated to the progressive jackpot prize pool.

(5) Every seal card for each deal or game set that has been played or is being played in the course of a progressive pulltab game, together with any progressive jackpot card, shall be displayed at all times while the game is in play, until the progressive jackpot prize is won.

(6) The serial numbers for each deal or game set contributing to a carryover or progressive jackpot prize shall be recorded in the charitable gaming session records.

(7) A progressive or carryover pulltab game shall be played in

accord with the manufacturer's specifications for the determination of a winner, unless the department permits otherwise pursuant to subsection (3) of this section.

(8) If a progressive or carryover pulltab game bearing the same manufacturer's form number is no longer available, the organization shall contact the department for instructions on how to proceed.

(9)(a) If a progressive prize remains unpaid, a licensed charitable organization shall display, in full and complete view of the players and at all times either:

1. The jackpot card being played and each seal card contributing to the jackpot prize pool; or

2. A legible poster identifying by name, serial number, and form number each deal or game set of pulltabs contributing an amount to the jackpot prize pool.

(b) The poster or seal cards shall remain displayed during bingo sessions or other charitable gaming activities conducted by the organization until the expiration of fifteen (15) calendar days after the organization awards the prize. For progressive pulltab games played on an electronic pulltab device, a poster shall be displayed to fulfill this requirement.

(c) If a progressive jackpot prize is not awarded, the organization shall continue to display the poster or seal cards during bingo sessions or other charitable gaming activities it conducts for at least fifteen (15) calendar days after the date the organization considers the game closed and retains the prize as its property.

(d) If a progressive prize remains unpaid, a licensed charitable organization shall display, in full and complete view of the players and at all times, the current value of the jackpot.

(10) An organization shall not award the jackpot prize in a progressive pulltab game unless the serial number and form number on the winning ticket match the serial number and form number on a seal card from a deal or game set of tickets which contributed to the jackpot prize.

(11) For jackpot prizes of \$250 or over, the organization shall attach a copy of the valid state identification card which contains the name, address, date of birth, and state identification number of the winner to the jackpot prize card.

(12) The jackpot prize in a progressive game may accrue in excess of \$2,400. An individual jackpot prize shall not be paid in excess of \$2,400. The amount of the current jackpot, the amount contributed, the payouts made, and the jackpot carried forward to the next charitable gaming session at each charitable gaming session shall be recorded in the charitable gaming session record.

(13) Any advertisement regarding the progressive jackpot may state the total amount in the jackpot prize pool as long as it also includes the statement that the individual payout shall not exceed \$2,400.

(14) A licensed charitable organization shall report to the department concerning its play of seal card games with a progressive prize on the financial report.

(15) The jackpot prize pool in a progressive game shall be considered an adjusted gross receipt that shall be deposited within two (2) business days of the charitable gaming session.

Section 24. Seal Card Games with Cumulative Prizes. (1) The prize pool for a cumulative pulltab game shall be established only through the play of deals or game sets of the same game which bear a manufacturer's form number identical to the form number of any previously played deals or game sets contributing to the prize pool, unless the department permits otherwise pursuant to subsection (3) of this section.

(2) Before placing a paper deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal match the serial number on the flare, prize board, or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal.

(3) After a cumulative pulltab game has been started, it shall remain in play continuously until the cumulative prize pool has been awarded. If that game is begun at a bingo session, it shall be offered at each succeeding bingo session of the licensee. If the game is begun at the office location, it shall be offered on each

succeeding day their office is open. If an organization stops conducting charitable gaming or wishes to stop playing a cumulative pulltab game, the organization shall, with prior approval from the department, transfer the current jackpot to another cumulative game or determine a method to award the cumulative jackpot to the players. With prior approval from the department, an organization may alter the suggested rules of the manufacturer to determine a winner.

(4) Prizes shall be offered and awarded only in accord with the manufacturer's predesignated prize structure for the game, unless the department permits otherwise pursuant to Section 24(3) of this administrative regulation.

(5) The seal card for each deal or game set in a cumulative pulltab game shall show, in addition to all other information required for flares and seal cards, the amount dedicated to the cumulative prize pool.

(6) Every seal card for each deal or game set that has been played or is being played in the course of a cumulative pulltab game, together with any prize board, shall be displayed at all times while the game is in play, until the cumulative prize pool is awarded.

(7) The serial numbers for each deal or game set contributing to a cumulative prize pool shall be recorded in the charitable gaming session records.

(8) An organization shall not award the cumulative prize pool unless the serial number and form number on the winning ticket matches the serial number and form number on a seal card from a deal or game set of tickets which contributed to the cumulative prize board.

(9) A cumulative prize board shall not contain prizes totaling in excess of \$2,400.

(10) A licensed charitable organization shall report to the department concerning its play of seal card games of cumulative games on the financial report.

Section 25. Electronic Pulltab System Construction Standards.

(1) An electronic pulltab system's central computer system shall be dedicated to electronic accounting, reporting, and the presentation, randomization, and transmission of electronic pulltabs to electronic pulltab devices. It shall also be capable of generating the data necessary to provide reports required by regulation or otherwise specified by the department.

(2) A player shall purchase or otherwise obtain access to an electronic pulltab device, and load money to a player account for purchase of electronic pulltabs during the current charitable gaming session, only from a point of sale station. The point of sale station may be stationary, mobile, or self-service.

(3) All equipment used to facilitate the distribution, play, or redemption of electronic pulltabs shall be physically located within the boundaries of the Commonwealth of Kentucky. Electronic pulltab devices, site system if used, point of sale stations, and all secondary components shall be located on the premises where the charitable gaming session is being held.

(4) A manufacturer, distributor, or charitable organization shall not add to an electronic pulltab system any software or program unless the software or program has been certified by an independent testing facility. If the department detects or discovers an electronic pulltab system at a playing location that is using a program or software that has not been certified by an independent testing facility, the electronic pulltab system shall be determined to have an unauthorized modification and use of the system shall cease immediately.

(5) Any element of the central computer system that holds or maintains game data, other than an electronic pulltab device or point of sale station, shall be kept in a locked and secure enclosure with limited access to designated personnel. The system shall provide a secure physical and electronic means for securing the games and game data against alteration, tampering, or unauthorized access.

(6) The central computer system shall include a central server located in the Commonwealth of Kentucky that is accessible to the department so the department has the ability to remotely verify the operation, compliance, and internal accounting systems of the

electronic pulltab system at any time. The department shall have real time and complete read-only access to all data for all systems and devices.

(a) The manufacturer shall provide to the department all current protocols, passwords, and any other required information needed to access the electronic pulltab system prior to the operation of the system within Kentucky, and at all times while the system remains operational within Kentucky.

(b) The department shall be notified of any changes in the protocols, passwords, and any other required information needed to access the system at least three (3) days prior to the change.

(c) Any reports maintained or generated by the electronic pulltab system shall be capable of being downloaded or otherwise accessed via the internet by the department.

(7) A site system, if used, shall:

(a) Be located at the gaming premises;

(b) Be operated by the charitable organization;

(c) Interface with, connect with, control, or define the operational parameters of the electronic pulltab devices;

(d) Report and transmit the game results as prescribed by the department;

(e) Provide security and access levels sufficient so that the internal control objectives are met as prescribed by the department; and

(f) Contain a point of sale station.

(8) The site system, if used, may include the following components:

(a) Required printers;

(b) Proprietary executable software;

(c) Report generation software; and

(d) An accounting system or database.

(9) The electronic pulltab system shall provide password protection for each organization.

(10) An electronic pulltab system shall provide a means for terminating a game set if information about electronic pulltabs in an open game set has been accessed, or if the department determines there has been a breach of game security. Traceability of unauthorized access including time and date, users involved, and any other relevant information shall be available.

(11) An electronic pulltab system shall not permit the alteration of any accounting or significant event information. Significant events shall include power resets or failures, communication loss between an electronic pulltab device and the electronic pulltab system, any award in excess of the single win limit for an electronic pulltab, or corruption of the electronic pulltab system memory or storage. If financial data is changed, an automated audit log shall be capable of being produced to document the following:

(a) Data element altered;

(b) Data element value prior to alteration;

(c) Data element value after alteration; and

(d) Time and date of alteration.

(12) An electronic pulltab system shall provide password security or other secure means of ensuring data integrity and enforcing user permissions for all system components, including the following:

(a) All programs and data files shall only be accessible via the entry of a password that shall be known only to authorized personnel;

(b) The electronic pulltab system shall have multiple security access levels to control and restrict different privilege levels;

(c) The electronic pulltab system access accounts shall be unique when assigned to the authorized personnel;

(d) The storage of passwords and PINs shall be in an encrypted, nonreversible form; and

(e) A program or report shall be available that lists all authorized users on the electronic pulltab system including their privilege level.

(13) All components of an electronic pulltab system that allow access to users, other than end-users for game play, shall have a password sign-on comprised of a personal identification code and a personal password.

(14) Electronic pulltab system software components shall be verifiable by a secure means at the system level. An electronic

pulltab system shall have the ability to allow for an independent integrity check of the components from an outside source and is required for all control programs that may affect the integrity of the electronic pulltab system. This shall be accomplished by being authenticated by a third-party device, which may be embedded within the electronic pulltab system software or having an interface or procedure for a third-party application to authenticate the component. This integrity check shall provide a means for field verification of the electronic pulltab system components.

(15) The electronic pulltab system shall have a medium for securely storing electronic pulltab game sets which shall be mirrored in real time by a backup medium. The electronic pulltab system shall also provide a means for storing duplicates of the game sets already transmitted to the electronic pulltab devices so as to reflect, on an ongoing basis, changes in the transmitted game sets as they occur.

(a) All storage shall be through an error checking, nonvolatile physical medium, or an equivalent architectural implementation, so that if the primary storage medium fails, the functions of the electronic pulltab system and the process of auditing those functions shall continue with no critical data loss.

(b) The database shall be stored on redundant media so that a single failure of any portion of the system shall not result in the loss or corruption of data.

(c) If there is a catastrophic failure when the electronic pulltab system cannot be restarted in any other way, it shall be possible to reload the electronic pulltab system from the last viable backup point and fully recover the contents of that backup, to consist of at least the following information:

1. All significant events;

2. All accounting information; and

3. Auditing information, including all open game sets and the summary of completed game sets.

(16) Connections between all components of the electronic pulltab system shall only be through use of secure communication protocols which are designed to prevent unauthorized access or tampering, employing Data Encryption Standards (DES) or equivalent encryption with changeable seeds or algorithms.

(17) An electronic pulltab system's central computer system may be used to record the data used to verify game play and to configure and perform security checks on electronic pulltab devices, if the functions do not affect the security, integrity, or outcome of any game and meet the requirements set forth in this administrative regulation regarding program storage devices.

(18) An electronic pulltab system shall not display to the player, the licensed charitable organization, or the licensed distributor the number of electronic pulltabs that remain in a game set, or the number of winners or losers that have been drawn or still remain in the game set while the game set is still open for play. Once a game set has been closed, it shall not be able to be opened for play.

(19) The electronic pulltab system shall render unplayable the electronic pulltabs of a charitable organization once the organization logs out of the system at the end of the organization's charitable gaming session and until the organization logs back onto the system at the start of the organization's next scheduled charitable gaming session. If multiple organizations use the same electronic pulltab devices and electronic pulltab system, one (1) organization's electronic pulltab games and data shall not be accessible or played by another organization.

(20) An electronic pulltab system may include player tracking software. Player tracking records shall at all times be the property of the charitable organization and neither the manufacturer nor the distributor shall utilize or make available to any person, other than the department or as otherwise authorized by law, the information contained within the player tracking software without the express permission of the charitable organization.

(21) One (1) or more electronic internal accounting systems shall be required to perform recordkeeping, reporting, and other functions in support of an electronic pulltab system. The electronic internal accounting system shall not interfere with the outcome of any gaming function.

(22) The electronic internal accounting system shall be capable of recording and retaining for a period of not less than three (3)

years the following information:

(a) The name and license number of the organization utilizing an electronic pulltab system; and

(b) For each charitable gaming session:

1. The date and time of each log-on and log-off of an organization;

2. The total amount of all monetary transactions regarding electronic pulltabs and electronic pulltab devices at each charitable gaming session;

3. The total number of electronic pulltab devices sold or provided at each charitable gaming session;

4. The serial number of each hand-held electronic pulltab device sold or provided;

5. The terminal number for each fixed base electronic pulltab device sold or provided;

6. The name, serial number, price, and predetermined finite number of tickets within each game set available for play at each charitable gaming session;

7. The total number of electronic pulltabs played from each game set at each charitable gaming session;

8. All prize payouts for each game set per charitable gaming session; and

9. All wagers and other information necessary to fully reconstruct a game outcome.

(23) The information required by Section 25(22) of this administrative regulation shall be secure and shall not be accessible for alteration. Information pertaining to the number of electronic pulltabs that remain in an open game set, or the number of winners or losers that have been drawn or still remain in an open game set shall not be accessible to the licensed organization or the licensed distributor.

(24) The electronic pulltab system's central computer system shall maintain a printable, permanent record of all transactions involving each device and each closed electronic pulltab game played on each device.

(25) An electronic pulltab system shall have report generation software with the capability to print all information required to be maintained on the system's active or archived databases, and pursuant to the restrictions related to information available on open game sets.

(26) All data required to be available or reported by this administrative regulation shall be retained for a period of not less than three (3) years.

(27) An electronic pulltab system shall utilize randomizing procedures in the creation of game sets for electronic pulltabs or utilize externally generated randomized game sets. After randomization, game sets may be broken into game subsets of equal size which shall be assigned a unique serial number.

(28) Winning electronic pulltabs shall be distributed randomly among all other pulltabs in a game set to eliminate any pattern between game sets, or portions of game sets.

(29) Any random number generation, shuffling, or randomization of outcomes used in connection with an electronic pulltab system shall be by use of a random number generation application that has successfully passed standard tests for randomness and unpredictability.

Section 26. Electronic Pulltab Point of Sale Requirements. (1) An electronic pulltab system shall include a point of sale station that is used to facilitate the sale of an electronic pulltab device, to load money to a player account for purchase of electronic pulltabs during the current charitable gaming session, and to cash-out or redeem credits from the play of electronic pulltabs.

(a) The point of sale station may be stationary, mobile, or self-service.

(b) The point of sale station shall not be designed or manufactured to resemble an electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

(c) The point of sale station shall not have vertical or horizontal spinning reels, a pull handle, sounds or music intended to entice a player to play, flashing lights, tower light, top box, enhanced animation, artwork, or any other attribute or representation that

mimics a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

(d) The point of sale station shall not function simultaneously as an electronic pulltab device.

(2) The point of sale station shall be capable of printing a receipt, which the organization shall provide to the player, that details each transaction. The receipt shall contain, at a minimum, the following information:

(a) The date and time of the transaction;

(b) A unique non-resettable transaction number that is printed in continuous, consecutive order;

(c) The dollar amount of the transaction, including the cost, if any, of the electronic pulltab device and the amount of money loaded to a player account that will be available for the purchase of electronic pulltabs during that charitable gaming session;

(d) A unique entry code or account number that will be used to activate an electronic pulltab device and make available to the player the money loaded to the player account at the point of sale for the purchase of electronic pulltabs during that charitable gaming session;

(e) The name of the charitable organization and license number; and

(f) The point of sale identification number or name.

(3) If the receipt printer malfunctions or printed receipts are not legible, manual receipts shall be issued that contain the same information required by Section 26(2) of this administrative regulation.

(4) The point of sale station shall be capable of displaying, at minimum, the following for each charitable gaming session:

(a) The sales transaction history, including:

1. The organization name and license number;

2. Date and time of each transaction;

3. Dollar value of each transaction;

4. Quantity of electronic pulltab devices sold;

5. All transaction numbers; and

6. The point of sale identification number or name; and

(b) A pay-out history detailing all pay-outs, including:

1. The organization name and license number;

2. Date and time of each pay-out;

3. Dollar value of each pay-out; and

4. Point of sale identification number or name.

(5) A point of sale station shall not display information relating to prizes already paid out in a particular game set, the number of electronic pulltabs that remain in a game set, or the number of winners or losers that have been drawn or still remain in the game set while the game set is still open for play.

(6) A player shall only cash-out or redeem credits from a point of sale station.

Section 27. Electronic Pulltab Device Construction Standards.

(1) An electronic pulltab device shall not be capable of being used for the purpose of engaging in any game prohibited by the department.

(2) An electronic pulltab device shall be designed as a handheld or fixed base personal computing device that:

(a) Is used to play one (1) or more electronic pulltab games;

(b) Requires coded entry to activate a device for a player to purchase and play electronic pulltabs, but does not allow the use of coin, currency, or tokens to be inserted to purchase and play electronic pulltabs;

(c) Maintains and displays information pertaining to accumulation of credits that may be applied to games in play or redeemed upon termination of play;

(d) Has no vertical or horizontal spinning reels, pull handle, sounds or music solely intended to entice a player to play, flashing lights, tower light, top box, coin tray, ticket acceptor, hopper, coin acceptor, cabinet, artwork, or any other attribute or representation that mimics a video slot machine;

(e) Shall not be capable of displaying any animation while in an idle state. An electronic pulltab device may use simple display elements or screen savers to prevent monitor damage;

(f) Has no additional function as a gambling device other than as an electronic pulltab device or as an approved card-minding

device:

(g) Is not a pulltab dispenser as described in these regulations; and

(h) The device must have adjustable volume accessible to the player or the charitable organization.

(3) An electronic pulltab device shall not have hardware or software that determines the outcome of any electronic pulltab, produces its own outcome, or affects the order of electronic pulltabs as dispensed from the electronic pulltab system's central computer system. The game outcome shall be determined by the electronic pulltab system's central computer system.

(4) An electronic pulltab device may utilize a touch screen. The touch screen shall meet the following requirements:

(a) It shall be accurate once calibrated;

(b) It shall be able to be recalibrated; and

(c) It shall have no hidden or undocumented buttons or touchpoints anywhere on the touch screen.

(5) A fixed base electronic pulltab device shall not be built into a cabinet or in any way be designed or manufactured to resemble any electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

Section 28. Electronic Pulltab Software Construction Standards. (1) Any game available for play in the Commonwealth of Kentucky must be installed on the demonstration terminals at the Department of Charitable Gaming's office in Frankfort, Kentucky prior to being available for play in the Commonwealth.

(2) An electronic pulltab system shall dispense, upon player request and payment of consideration, an electronic pulltab. A player shall win if the player's electronic pulltab contains a combination of symbols or numbers that was designated in advance of the game as a winning combination. There may be multiple winning combinations in each game. All games shall be played without replacement.

(3) An electronic pulltab game or game set shall:

(a) Be a version of a paper pulltab game, with a prize structure and gameplay rules substantially similar to a paper pulltab game, that is played on an electronic pulltab device;

(b) Have a predetermined, finite number of winning and losing tickets, not to exceed 25,000 tickets per game set;

(c) Charge the same price for each ticket in a game set;

(d) Comply with KRS Chapter 238, and 820 KAR Chapter 1;

(e) Comply with prize limits set forth in KRS Chapter 238;

(f) Have a unique serial number for each game set that shall not be regenerated. Each pulltab in a game set shall bear the same serial number and only one (1) serial number shall be used in a game set. After randomization, game sets may be broken into subsets of equal size. If game subsets are used, they shall each be assigned a unique serial number and be traceable to a parent game set. If a seal card is used with a pulltab game set, the seal card shall bear the same serial number as each pulltab; and

(g) Have an electronic flare or seal card, viewable upon player request, that displays the name of the game, manufacturer's name or logo, manufacturer's form number, the game serial number, the predetermined finite number of tickets in the game set, and the prize structure, including a description of the number of winning pulltabs by denomination, and amounts, if any, dedicated to the prize pool in a seal card game with a cumulative prize, or a carryover or progressive prize; and the cost per play of an electronic pulltab within the game set.

(h) Every game set of electronic pulltabs shall contain electronic rules of play.

(4) An electronic pulltab game shall not contain vertical or horizontal spinning reels or other representations that mimic a video slot machine.

(5) Games shall not contain obscene or offensive graphics, sounds, or references.

(a) Game animation shall be limited to:

1. A single animated character related to the theme of the game that does not traverse the screen;

2. An animation, not to exceed two (2) seconds in duration, to simulate the opening of the ticket, a window on

the ticket, or a window in a player-pick bonus round that simulates a prize board; and

3. An animated graphic, not to exceed two (2) seconds in duration, indicating whether and how much money the player's ticket or a simulated free ticket in a bonus round has won or lost.[animation that simulates the opening of a paper pulltab.]

(b) Game sounds shall have a duration of no longer than **two (2) seconds[one second]** and shall be limited to:

1. Indicating that the player's ticket has won;

2. Indicating that the player's ticket has lost;

3. Indicating that the player has pressed a button; and

4. Simulating the opening of a paper pulltab ticket.

(c) Any electronic pulltab game approved by the department prior to October 1, 2018, may remain available for play.

(6) The result of an electronic pulltab ticket shall be clearly shown on the video display~~[without utilizing animation]~~. Winning tickets shall indicate to the player the symbols or combination of symbols that resulted in a winning ticket. Prizes shall be added as a credit to the player's account.

(7)[The game may, without utilizing animation, include text-based graphics to indicate that the ticket has won and that the player has won an opportunity to play in a bonus round.]

(8) The available games, flare, and rules of play shall be displayed on the electronic pulltab device's video screen upon player request.

(8)[(9)] Any number of game may be selectable for play on any given electronic pulltab device. Only one (1) of the game shall be playable at a time.

(9)[(10)] An electronic pulltab device shall have one (1) or more buttons, or an electromechanical or touch screen to facilitate the following functions:

(a) Viewing of the game "help" screens;

(b) Viewing of the game rules including the flare or seal card;

(c) Initiating game play;

(d) Cash-out or logout; and

(e) Purchasing or revealing the pulltab.

(10)[(14)] Each electronic pulltab shall be initially displayed so that the numbers, letters, or symbols on the pulltab are concealed. Each electronic pulltab game shall require the player to press a "purchase" or equivalent button to initiate the purchase of an electronic pulltab. The game shall then require the player to press a subsequent button or buttons to reveal the numbers, letters, or symbols on the pulltab. A player shall have the option of opening each individual line, row, or column of each electronic pulltab or choosing to "open all".

(11)[(12)] If the player's winning ticket leads to a bonus round that simulates the opening of additional tickets, then the following disclaimer must be displayed in a conspicuous manner in the player interface of the electronic pulltab device every time the player wins a supplemental tab, and on the HELP screen: "Tabs that appear in [Name of Game] do not represent equal or separate chances to win. The supplemental tabs are utilized to reveal the value of the initial, winning pulltab ticket incrementally. These supplemental tabs appear for entertainment value only."

(12)[(13)] An available player account balance shall be collected by the player by pressing the "cash-out" button or "logoff" button on the electronic pulltab device and taking the device, the receipt, or, if allowed, a player account card to the point of sale station.

Section 29. Independent Testing Facility Certification for Electronic Pulltabs. (1) An electronic pulltab system shall not be sold, leased, or otherwise furnished to any person for use in the conduct of charitable gaming until an identical system containing identical software has been tested and certified by an independent testing facility.

(2) The cost of testing and certification shall be the responsibility of the manufacturer.

(3) The independent testing facility shall certify in writing that the electronic pulltab system and associated hardware and

software conform, at a minimum, to the requirements and restrictions set forth in KRS Chapter 238 and these administrative regulations.

(4)(a) The department, in consultation with the independent testing facility, shall determine if the electronic pulltab system and associated hardware and software conform to the requirements and restrictions contained in KRS Chapter 238 and these administrative regulations, and shall notify the manufacturer of its decision in writing.

(b) Once the department has received the test results from the independent testing facility, the department may request a demonstration of the product within thirty (30) days.

(5) Any modifications to an electronic pulltab system or its software, except as provided in Section 31(7) of this administrative regulation, shall be tested and certified by an independent testing facility, demonstrated to the department by the manufacturer upon request, in the same manner as a new system or new software. Testing and certification shall be at the manufacturer's expense.

Section 30. Electronic Pulltab Defect and Recall. (1)(a) If a manufacturer, distributor, or charitable organization detects or discovers any defect, malfunction, or problem with an electronic pulltab system, electronic pulltab device, or electronic pulltab game that affects the security or the integrity of the electronic pulltab system, electronic pulltab device, or electronic pulltab game, the manufacturer, distributor, or charitable organization shall immediately notify the department. The charitable organization shall also immediately notify the distributor of the defect, malfunction, or problem. The distributor shall immediately notify the manufacturer of the defect, malfunction, or problem.

(b) If the department detects, discovers, or is notified of any problem with an electronic pulltab system, electronic pulltab device, or electronic pulltab game that affects the security or the integrity of the electronic pulltab system, electronic pulltab device, or electronic pulltab game, the department shall direct the manufacturer, distributor, and charitable organization to immediately cease the sale, lease, or use of the affected electronic pulltab system, electronic pulltab device, or electronic pulltab game until the problem can be assessed by the department in consultation with the manufacturer or distributor.

(c) If the department, in consultation with the manufacturer or distributor, determines that a defect actually exists, and the defect affects game security or otherwise threatens public confidence in the game, the department shall require the manufacturer to issue a total recall of all affected electronic pulltab systems, electronic pulltab devices, or electronic pulltab games or affected game sets or subsets, if necessary.

(d) In choosing and directing a particular recall in accordance with Section 30(1)(c) of this administrative regulation, the department shall be guided in each circumstance by any combination of the following factors:

1. The nature of the defect;
 2. Whether the defect affected game security;
 3. Whether the defect affected game playability;
 4. Whether the defect was limited to a specific number of deals of a particular form number;
 5. Whether the defect was easily detectable by a charitable organization;
 6. Whether the defect was easily detectable by members of the general public;
 7. Whether the defect threatens public confidence in the game;
- or
8. Whether the defect is capable of being used to adversely affect the fair play of the game.

(e) The manufacturer or distributor may correct the defect, if possible, without issuing a total recall if the affected electronic pulltab devices and electronic pulltabs are not offered for sale, lease, or use if and until the department allows. The manufacturer or distributor shall make all corrections within a reasonable time, not to exceed thirty (30) days, and the manufacturer or distributor shall demonstrate the correction to the department. If the department believes the defect has been corrected and that the defect no longer affects game security or otherwise threatens

public confidence in the game, the department may issue written notification that the affected electronic pulltab system, devices, or pulltab game may be reoffered for sale, lease, or use.

(f) If a recall of an electronic pulltab system or electronic pulltab device is necessary, the department, in consultation with the manufacturer, shall determine a specific date for the recall of any affected electronic pulltab system or electronic pulltab device to be completed and whether the manufacturer is required to reimburse the organization or distributor. The recall of any electronic pulltab game shall occur no later than twenty-four (24) hours after the manufacturer is notified of the defect.

Section 31. Electronic Pulltab Manufacturer Requirements. (1) A manufacturer shall affix to each electronic pulltab device an identification badge that shall include the following information:

- (a) Manufacturer name;
 - (b) A unique serial number;
 - (c) The electronic pulltab device model number, if applicable;
- and
- (d) The date of manufacture, if applicable.

(2) Each manufacturer selling, leasing, or otherwise furnishing electronic pulltab devices, site systems, point of sale stations, secondary components, and electronic pulltabs shall maintain a log or other record showing the following:

- (a) The name, address, and license number of the distributor to whom the electronic pulltab devices, site systems, point of sale stations, secondary components, or electronic pulltabs were sold, leased, or otherwise furnished;
- (b) The date of the transaction with the distributor;
- (c) The model, version, and serial number of each hand-held electronic pulltab device, if applicable;
- (d) The account number or terminal number of each fixed base electronic pulltab device, if applicable;
- (e) The quantity of each type of electronic pulltab device;
- (f) The model and version number of the system software;
- (g) The name, form number, and serial number of each game set of electronic pulltabs; and
- (h) The quantity of game sets sold, the cost per game set, the selling price per ticket, the cash take-in per game set, and the cash payout per game set.

(3) A manufacturer selling, leasing, or otherwise providing electronic pulltab devices, site systems, point of sale stations, or secondary components to a distributor shall provide the distributor with an invoice or other documentation that contains, at a minimum, the following information:

- (a) The manufacturer name, address, and license number;
- (b) The distributor name, address, and license number;
- (c) The address to which the shipment was delivered;
- (d) The date of sale or credit and the time period covered by the invoice;
- (e) The conditions of the sale or credit;
- (f) A description of the type and the quantity of electronic pulltab devices, site systems, point of sale stations, and secondary components provided;
- (g) The total invoice amount;
- (h) The name of the person who ordered the supplies;
- (i) The name of the person making the delivery;
- (j) The date of delivery or date the item was picked up for sale or credit;
- (k) The place or manner of delivery; and
- (l) The name and signature of the person taking delivery, if any.

(4) A manufacturer providing electronic pulltabs to a distributor for distribution to a licensed charitable organization shall provide the distributor with an invoice or other documentation that contains, at a minimum, the following information:

- (a) The manufacturer name, address, and license number;
- (b) The distributor name, address, and license number;
- (c) The organization name, address, and license number;
- (d) The date of sale or credit and the time period covered by the invoice;
- (e) The conditions of the sale or credit;
- (f) The quantity of electronic pulltabs sold including the number

of game sets, the name of each game set, the number of tickets per game set, and the serial number and form number of the game set; and

(g) The total invoice amount.

(5) The manufacturer shall maintain physical or electronic copies of the documentation required by this section for a period of not less than three (3) years.

(6) A manufacturer shall supply any available financial reports to distributors and organizations, upon request, that provide detailed pulltab sales activity for the requesting distributor or organization for a selected date range.

(7) A manufacturer may conduct routine maintenance activities and replace secondary components of an electronic pulltab system without additional testing and certification as long as this activity does not affect the operation of any proprietary software, the manner in which an electronic pulltab game is played, the integrity of any critical or controlled software, or the outcome of an electronic pulltab game. A record of all activities shall be maintained and provided to the department within ten (10) days of the maintenance or replacement.

(8) A licensed manufacturer of charitable gaming supplies and equipment shall sell, lease, distribute, or otherwise provide in the Kentucky market only those electronic pulltab systems and electronic pulltabs that conform to the requirements of these administrative regulations. A licensed charitable organization shall provide to the public only those electronic pulltab systems and electronic pulltabs that conform to the requirements of this administrative regulation.

Section 32. Electronic Pulltab Distributor Requirements. (1) Before initial use by a charitable organization, the distributor shall ascertain that the particular electronic pulltab system, electronic pulltab device, and associated software version are approved by the department for use in Kentucky.

(2) A distributor shall not display, use, or otherwise furnish an electronic pulltab device, site system, or secondary component which has in any manner been marked, defaced, or tampered with, or which is otherwise intended to deceive the public or affect a person's chances of winning.

(3) Before the complete removal of any electronic pulltab system, the distributor shall supply a copy of the data files to each charitable organization which used the electronic pulltab system and to the department.

(4) Each distributor selling, leasing, or otherwise furnishing electronic pulltab devices, site systems, point of sale stations, secondary components, or electronic pulltabs shall maintain a log or other record showing the following information, if applicable:

(a) The name of the location, physical address, telephone number, and facility license number, if applicable, where the electronic pulltab devices, site systems, point of sale stations, and secondary components are located for play;

(b) A description, including the quantity, of all electronic pulltab devices, site systems, point of sale stations, and secondary components at each playing location;

(c) The date any electronic pulltab device, site system, point of sale station, or secondary component was installed in or removed from a playing location;

(d) The model, version, and serial numbers or terminal numbers of the electronic pulltab devices, site systems, point of sale stations, and secondary components, if applicable;

(e) The name and license number of the charitable organization or distributor to whom the electronic pulltab devices, site systems, point of sale stations, or secondary components were sold, leased, or otherwise furnished;

(f) The name and license number of the manufacturer or distributor from whom the electronic pulltab devices, site systems, point of sale stations, and secondary components were purchased, leased, or otherwise obtained;

(g) Each contract, lease, or purchase agreement between a distributor and the charitable organization or other distributor to which the electronic pulltab devices, site systems, point of sale stations, or secondary components are furnished; and

(h) The total dollar amount of electronic pulltab device, site

system, point of sale station, and secondary component sales or lease transactions regarding each charitable organization to which the equipment was furnished during each calendar quarter.

(5) A distributor selling, leasing, or otherwise providing electronic pulltab devices, site systems, point of sale stations, or secondary components to a licensed charitable organization shall provide the organization with an invoice or other documentation that contains, at a minimum, the following information:

(a) The manufacturer name, address, and license number;

(b) The distributor name, address, and license number;

(c) The organization name, address, and license number;

(d) The date of sale or credit and the time period covered by the invoice;

(e) The conditions of the sale or credit;

(f) A description of the type and the quantity of electronic pulltab devices, site systems, point of sale stations, and secondary components provided;

(g) The total invoice amount;

(h) The name of the person who ordered the supplies;

(i) The name of the person making the delivery;

(j) The date of delivery or date the item was picked up for sale or credit;

(k) The place or manner of delivery; and

(l) The name and signature of the person taking delivery, if any.

(6) A distributor providing electronic pulltabs to a licensed charitable organization shall provide the organization with an invoice or other documentation that contains, at a minimum, the following information:

(a) The manufacturer name, address, and license number;

(b) The distributor name, address, and license number;

(c) The organization name, address, and license number;

(d) The date of sale or credit and the time period covered by the invoice;

(e) The conditions of the sale or credit;

(f) The quantity of electronic pulltabs sold including the number of game sets, the name of each game set, the number of tickets per game set, and the serial number and form number of the game set; and

(g) The total invoice amount.

(7) An invoice not challenged within seven (7) days of delivery shall be deemed accurate. Any challenge to an invoice shall be made in writing to the distributor and a copy shall be sent to the department.

(8) The distributor shall maintain physical or electronic copies of the documentation required by this section for a period of not less than three (3) years.

(9) A distributor shall deliver electronic pulltab devices, site systems, point of sale stations, and secondary components to an agreed secure location or to an identified person.

(10) A licensed distributor of charitable gaming supplies and equipment shall sell, lease, distribute, or otherwise provide in the Kentucky market only those electronic pulltab systems and electronic pulltabs that conform to the requirements of these administrative regulations. A licensed charitable organization shall provide to the public only those electronic pulltab systems and electronic pulltabs that conform to the requirements of this administrative regulation.

Section 33. Charitable Organization Requirements. (1) Before initial use, the organization shall ascertain that the particular electronic pulltab system, electronic pulltab device, and associated software version are approved by the department for use in Kentucky.

(2) An organization shall not display, use, or otherwise furnish an electronic pulltab device, site system, or secondary component which has in any manner been marked, defaced, or tampered with, or which is otherwise intended to deceive the public or affect a person's chances of winning.

(3) The use of electronic pulltab devices shall be limited to the following:

(a) A maximum of **35[20]** electronic pulltab devices on or in the primary office location of a licensed charitable organization;

(b) A maximum of 50[32] electronic pulltab devices during the bingo session of a licensed charitable organization;

(c) A maximum of 50[32] electronic pulltab devices in a licensed charitable gaming facility; or

(d) With prior approval of the department, at any authorized charity fundraising event conducted by a licensed charitable organization at an off-site location.

(4) All electronic pulltab games shall be sold and played at the authorized locations and shall not be linked to other authorized locations.

(5) Electronic pulltab games shall not be transferred electronically or otherwise to any other location by the licensed organization.

(6) An organization may remove from play a device that a player has not maintained in an activated mode for a specified period of time determined by the organization. The organization shall provide the notice in its house rules and shall allow the player to cash-out.

(7) Before purchasing or being provided with an electronic pulltab device, a player shall present proof that the player is at least eighteen (18) years of age. Proof shall be in the form of a picture identification card that includes the player's date of birth. If an organization uses a self-service point of sale kiosk, identification shall be presented and verified at the door.

(8) Each player shall be limited to the use of one (1) electronic pulltab device at a time.

(9) If a player's electronic pulltab device malfunctions during a game, it shall be repaired or the credits shall be transferred to another electronic pulltab device.

(10) The department shall be allowed access to examine and inspect any part of an electronic pulltab system. The department shall be granted access to all electronic pulltab devices in use by a charitable organization.

(11) The organization shall reasonably ensure that the connection to the electronic pulltab system's central computer system is operational at all times.

(12) If the organization sells electronic pulltab devices for a discounted price or gives them away as a promotion, the site system shall be programmed to account for the discounted item and priced separately from those sold at the regular price. A generic discount key shall not be allowed.

(13) The organization shall **generate[print]** an Electronic Pulltab Receipts and Payouts report at the end of each charitable gaming session and maintain it with the charitable gaming session records. The Electronic Pulltab Receipts and Payouts worksheet shall be completed in the format of Form CG-EPRP.

(14) A manufacturer's representative or distributor's representative may be present during a charitable gaming session only to consult, demonstrate, **provide technical support, or[and]** train the organization on the operation of the electronic pulltab system.

Section 34. Incorporation by Reference. (1) Form CG-EPRP, "Electronic Pulltab Receipts and Payouts (2018)", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 11 a.m.

CONTACT PERSON: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-

6625, email Doug.Hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth standards for pulltab operation, including instructions for the construction of pulltabs, requirements of electronic pulltab gaming systems, and pulltab rules of play.

(b) The necessity of this administrative regulation: This regulation is necessary to set forth standards consistent with the department's statutory mission for pulltab operation, including instructions for the construction of pulltabs, requirements of electronic pulltab gaming systems, and pulltab rules of play.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, the Charitable Gaming Advisory Commission reviewed this regulation at the Commission's second quarter meeting on May 2, 2018. No written comments were received from the Commissioners. KRS 238.515 authorizes the department to promulgate administrative regulations to carry out and implement KRS Chapter 238. This administrative regulation sets forth standards consistent with the department's statutory mission for pulltab operation, including instructions for the construction of pulltabs, requirements of electronic pulltab gaming systems, and pulltab rules of play.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide for one comprehensive regulation governing pulltab operations.

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

(a) How the amendment will change this existing administrative regulation: The amendment to 820 KAR 1:032 brings together within one (1) regulation all of the regulations pertaining to pulltab charitable gaming requirements for licensed charitable organizations, manufacturers, distributors, and charitable gaming facilities. The amendment will consolidate into one administrative regulation the content of the following existing administrative regulations: 820 KAR 1:033, Electronic pulltab system, Electronic pulltab device, and Electronic pulltab construction; 820 KAR 1:034, Pulltab dispenser construction and use; and 820 KAR 1:036, Pulltab rules of play. In addition, those pulltab definitions formerly included in 820 KAR 1:001 have been moved into 820 KAR 1:032 as a new Section 1. 820 KAR 1:033, Electronic pulltab system, Electronic pulltab device, and Electronic pulltab construction; 820 KAR 1:034, Pulltab dispenser construction and use; and 820 KAR 1:036, Pulltab rules of play, as separate regulations, have been included in the repealer filed by the Department of Charitable Gaming. The amendment will make it easier for any person or entity engaging in activities relating to pulltab charitable gaming to find all pulltab regulations are placed in one section of the Chapter. The amendments as originally filed included objective standards concerning electronic pulltab animations and sounds. After receiving comments from organizations, manufacturers, and distributors expressing concerns that these new standards were too restrictive, the electronic pulltab construction standards were modified to allow for more animations and sounds. Regulations related to pulltab dispensers were modified to allow those machines to utilize microprocessors instead of EPROM microchips, which manufacturers commented are archaic technology. Regulations that capped the number of electronic pulltab devices at various types of locations have all been increased after reviewing comments from the public.

(b) The necessity of the amendment to this administrative regulation: Pulltab regulations were previously located in multiple sections of the regulations. Locating all regulations governing pulltabs in one regulation will make compliance and enforcement simpler.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in accordance with KRS Chapter 13A which are necessary to carry out the purposes and

intent of Chapter 238. These amendments set forth the standards governing pulltab operations for charitable purposes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will make the regulations pertaining to pulltabs better organized and more user-friendly. The amendments to electronic pulltab construction standards provide clear, objective standards that will eliminate the need for the Department to review the games for compliance prior to their release to the public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming and its employees are affected by this administrative regulation. Manufacturers and distributors of paper and electronic pulltabs are also impacted by this administrative regulation. In addition, the licensees and exempt organizations will be affected by this administrative regulation. As of March 2018, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, as follows:

Over 600 charitable gaming organizations;

Over 800 exempt charitable gaming organizations;

Twenty-four (24) manufacturers of charitable gaming supplies;

Twenty-three (23) distributors of charitable gaming supplies; and

Thirty-four (34) charitable gaming facilities.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question 3 will have to conform to the requirements of this regulation, which sets forth standards for construction of pulltabs, requirements of electronic pulltab gaming systems, and pulltab rules of play.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The amendment to 820 KAR 1:032 will impose no new costs on regulated persons or entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will make 820 KAR 1:032 more user friendly by incorporating all pulltab regulations within one section of the Chapter.

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

(a) Initially: There will be no additional cost to implement this administrative regulation initially.

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

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

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because the pulltab standards set forth in this administrative regulation apply equally to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming is the agency responsible for implementing this regulation. Local fire departments and school

districts that use pulltabs for charitable gaming will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515(1) and (9).

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

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

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

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

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

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: None.

PUBLIC PROTECTION CABINET Department of Charitable Gaming (Amended After Comments)

820 KAR 1:050. Raffles~~[Raffle standards]~~.

RELATES TO: KRS 238.545[(3)], 238.550[(5)]

STATUTORY AUTHORITY: KRS 238.515[(2), (4), (9)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515[(2)] authorizes the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming and ~~[KRS 238.515(9) authorizes the department]~~ to promulgate administrative regulations necessary to implement KRS Chapter 238. This administrative regulation establishes standards ~~[for the construction and distribution of raffle materials and]~~ for the conduct of raffles.

Section 1. Raffle Ticket Construction. (1)~~[Raffles may be conducted either with paper tickets or electronic tickets.~~

(2)~~[(1)]~~ Raffle tickets shall have a detachable section or duplicate ticket and shall be consecutively numbered.

(2)~~[(3)]~~ The detachable section or duplicate of the ticket shall bear a duplicate number corresponding to the number on the ticket and shall provide space for the purchaser's name, complete address, and telephone number.

(3)~~[(4)]~~ The following information shall be on each ticket:

(a) The date and time for each drawing;

(b) The location of each drawing;

(c) The name of the charitable organization conducting the raffle;

(d) The charitable organization's license number or exemption number;

(e) The price of the ticket; and

(f) Each prize to be awarded with a fair market value over five hundred (500) dollars.

(4)~~[(5)]~~ The requirements of subsections (2) and (3)~~[and (4)]~~ of this section shall be waived if:

(a) The raffle tickets sell for five (5) dollars or less, or

(b) The raffle sales are initiated and concluded and all winners are selected at a licensed charity fundraising event or a licensed

special limited charity fundraising event.

Section 2. Raffle Prizes. (1) A charitable organization conducting a raffle in which real or personal property prizes are to be awarded shall be responsible for the transfer and delivery of the prize without lien or interest of others.

(2) All raffle prizes shall be awarded as indicated on the raffle ticket unless the event at which the raffle was to be conducted is postponed. If the raffle is postponed, all reasonable efforts shall be made to notify ticket holders of the new drawing date.

(3) If the prize to be awarded is the jackpot of a progressive raffle board, the charitable organization's charitable gaming session records shall report in the gross receipts total all startup cash, monies derived from raffle ticket sales, and any other contribution to the jackpot.

Section 3. Conduct of Raffles. (1) Any person holding a raffle ticket shall be permitted to observe the raffle drawing.

(2) A person shall not be required to be present at a raffle drawing in order to be eligible for the prize drawing.

(3) Each ticket seller shall return to the charitable organization the stubs or other detachable sections or duplicates of all tickets sold prior to the drawing. **[(4) Raffles may not be conducted with both paper and electronic tickets in the same raffle.]**

[(4)][(5)] Before drawing, the charitable organization shall place the seller's portion of each ticket sold into a receptacle from which the winning tickets are to be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.
[Section 4. Random Number Generator Requirements. (1) Random number generators shall not be sold, leased, or otherwise furnished to a charitable organization for use in the conduct of raffles until an identical sample device containing identical proprietary software has been certified by an independent testing facility that upholds the standards of integrity established by the department. The cost of testing shall be borne by the manufacturer of such equipment.

(2) The random number generator shall conform, at a minimum, to the requirements and restrictions set forth in KRS 238.505 and KRS 238.545.

(3) A random number generator used in the conduct of raffles shall produce output that is statistically random.

(4) A random number generator used in the conduct of raffles shall produce output that is unpredictable.

(5) A random number generator used in the conduct of raffles shall produce output that is nonrepeating. A random number generator shall not be initialized to reproduce the same output stream that it has produced before, nor shall any two instances of a random number generator produce the same stream as each other.

(6) A random number generator used in the conduct of raffles that provides output scaled to given ranges shall be capable of producing every possible outcome of a game according to its rules, and use an unbiased algorithm.

(7) If the department determines that a defect actually exists, and it affects game's security or otherwise threatens public confidence in the game, the department may require the manufacturer to issue a total recall of all affected random number generators.

Section 4[5]. Claiming Raffle Prizes. (1) If the winner is not present at the drawing, the charitable organization shall notify the winner within seven (7) days of the drawing that the winner shall claim the prize within thirty (30) days.

(2) If a winner does not wish to claim the prize but wishes to donate it to the charitable organization, the charitable organization shall obtain a written statement of the winner's intention within the thirty (30) day period. A charitable organization shall not accept the donation to the charitable organization of a prize won if doing so would violate KRS 238.540.

(3) If a raffle winner does not claim the prize or donate it to the charitable organization within thirty (30) days after having been contacted by certified mail, or if the raffle winner is ineligible by law to claim the prize, the charitable organization shall notify the

department and draw another ticket in the presence of department personnel.

(4) The requirements of subsections (1), (2), and (3) of this section shall be waived, and the charitable organization shall be allowed to draw tickets until a winner is present if:

(a) The raffle tickets sell for five (5) dollars or less;

(b) The raffle sales are initiated and concluded and all winners are selected at a licensed charity fundraising event; or

(c) The raffle sales are initiated and concluded and all winners are selected at a licensed special limited charity fundraising event. ~~[Raffle Ticket Construction. (1) Raffle tickets shall have a detachable section or duplicate ticket and shall be consecutively numbered.~~

(2) The detachable section or duplicate of the ticket shall bear a duplicate number corresponding to the number on the ticket and shall provide space for the purchaser's name, complete address, and telephone number.

(3) The following information shall be printed on each ticket:

(a) The date and time for each drawing;

(b) The location of each drawing;

(c) The name of the charitable organization conducting the raffle;

(d) The charitable organization's license number or exemption number, if any;

(e) The price of the ticket; and

(f) Each prize to be awarded with a fair market value over \$500.

(4) The requirements of subsections (2) and (3) of this section shall be waived if:

(a) The raffle tickets sell for one (1) dollar or less;

(b) The raffle sales are initiated and concluded and all winners are selected at a special charity fundraising event; or

(c) The raffle sales are initiated and concluded and all winners are selected at licensed special limited charity games.

Section 2. Raffle Prizes. (1) A charitable organization conducting a raffle in which real or personal property prizes are to be awarded shall be responsible for the transfer and delivery of the prize without lien or interest of others.

(2) All raffle prizes shall be awarded as indicated on the raffle ticket unless the event at which the raffle was to be conducted is postponed. If the raffle is postponed, all reasonable efforts shall be made to notify ticket holders of the new drawing date.

Section 3. Conduct of Raffles. (1) Any person holding a raffle ticket shall be permitted to observe the raffle drawing.

(2) A person shall not be required to be present at a raffle drawing in order to be eligible for the prize drawing.

(3) Each ticket seller shall return to the charitable organization the stubs or other detachable sections or duplicates of all tickets sold prior to the drawing, and all tickets that were not sold. If all sold tickets are not returned or accounted for, the organization shall not conduct the raffle and shall refund all raffle ticket purchases.

(4) Before drawing, the charitable organization shall place each stub or other detachable section or duplicate of each ticket sold into a receptacle from which the winning tickets are to be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.

(5) If the winner is not present at the drawing, the organization shall notify the winner by certified mail within seven (7) days of the drawing that the winner shall claim the prize within thirty (30) days.

(6) If a winner does not wish to claim the prize but wishes to donate it to the organization, the winner shall provide the organization a written statement within the thirty (30) day period stating that the winner wishes to donate the prize to the organization. A prize winner shall not donate the prize back to the organization if to do so would violate KRS 238.540(7).

(7) If a raffle winner does not claim the prize or donate it to the organization within thirty (30) days after having been contacted, the organization shall notify the Department of Charitable Gaming and draw another ticket in the presence of department personnel.

(8) The requirements of subsections (5), (6), and (7) of this

section shall be waived, and the organization shall be allowed to draw tickets until a winner is present if:

- (a) The raffle tickets sell for one (1) dollar or less;
- (b) The raffle sales are initiated and concluded and all winners are selected at a licensed charity fundraising event; or
- (c) The raffle sales are initiated and concluded and all winners are selected at a licensed special limited charity fundraising event.]

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 11 a.m.

CONTACT PERSON: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email Doug.Hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for the construction and distribution of raffle materials and for the conduct of raffles.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the standards for the construction and distribution of raffle materials and for the conduct of raffles.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, the Charitable Gaming Advisory Commission reviewed this regulation at the Commission's second quarter meeting on May 2, 2018. No written comments were received from the Commissioners. KRS 238.515 authorizes the department to promulgate administrative regulations to carry out and implement KRS Chapter 238. This administrative regulation establishes the standards for the construction and distribution of raffle materials and for the conduct of raffles for use in charitable gaming.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide for one comprehensive regulation governing use of raffles in the conduct of charitable gaming. The original draft of these amendments allowed for raffle winners to be selected by random number generator, but after reviewing comments from the public, the Department has decided that further research into electronic raffles is needed before implementing these amendments, so all references to electronic raffles and random number generators were removed.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment eliminates the requirement that any unsold raffle tickets be returned to the charitable organization prior to the drawing and sets out a process in the event a raffle winner is ineligible by law to claim a prize. It also removes the requirement that the organization cancel the raffle and refund raffle ticket purchases if all sold tickets are not returned or accounted for. The original draft of these amendments allowed for raffle winners to be selected by random number generator, but after reviewing comments from the public, the Department has decided that further research into electronic raffles is needed before implementing these amendments, so all references to electronic raffles and random number generators were removed.

(b) The necessity of the amendment to this administrative regulation: Charitable organizations experience difficulty getting individuals to return sold and unsold tickets when conducting a raffle. The amendment eliminates the harsh consequence to the organization of having to cancel a raffle when someone selling tickets does not cooperate by returning sold or unsold tickets. The original draft of these amendments allowed for raffle winners to be

selected by random number generator, but after reviewing comments from the public, the Department has decided that further research into electronic raffles is needed before implementing these amendments, so all references to electronic raffles and random number generators were removed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in accordance with KRS Chapter 13A which are necessary to carry out the purposes and intent of KRS Chapter 238. These amendments set forth the standards governing the use of raffles in the conduct of charitable gaming.

(d) How the amendment will assist in the effective administration of the statutes: The amendment permits charitable organizations to conduct raffles when sellers of raffle tickets fail to return sold or unsold tickets. The original draft of these amendments allowed for raffle winners to be selected by random number generator, but after reviewing comments from the public, the Department has decided that further research into electronic raffles is needed before implementing these amendments, so all references to electronic raffles and random number generators were removed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming and its employees are affected by this administrative regulation. New applicants who may apply as a result of the passage of House Bill 164 will also be affected by this administrative regulation amendment. In addition, the licensees and exempt organizations will be affected by this administrative regulation. As of March 2018, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, as follows:

Over 600 charitable gaming organizations;

Over 800 exempt charitable gaming organizations;

Twenty-four (24) manufacturers of charitable gaming supplies;

Twenty-three (23) distributors of charitable gaming supplies; and

Thirty-four (34) charitable gaming facilities.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question 3 will have to conform to the requirements of this regulation, which establishes the standards for the construction and distribution of raffle materials and for the conduct of raffles.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to 820 KAR 1:050 will impose no new costs on charitable organizations. The original draft of these amendments allowed for raffle winners to be selected by random number generator, but after reviewing comments from the public, the Department has decided that further research into electronic raffles is needed before implementing these amendments, so all references to electronic raffles and random number generators were removed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Charitable organizations will benefit from being able to conduct raffles as planned as opposed to having to cancel raffles when there are unsold tickets. The original draft of these amendments allowed for raffle winners to be selected by random number generator, but after reviewing comments from the public, the Department has decided that further research into electronic raffles is needed before implementing these amendments, so all references to electronic raffles and random number generators were removed.

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

(a) Initially: There will be no additional cost to implement this administrative regulation initially.

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

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

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because the standards set forth in this administrative regulation apply equally to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming is the agency responsible for implementing this regulation. Local fire departments and school districts that offer raffles for charitable gaming will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515(2) and (9).

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to administer this administrative regulation for subsequent years.

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

Revenues (+/-): See Other Explanation below.

Expenditures (+/-): No impact.

Other Explanation: The amendment permits charitable organizations to conduct scheduled raffles when sold or unsold tickets are not accounted for, through no fault of their own. The original draft of these amendments allowed for raffle winners to be selected by random number generator, but after reviewing comments from the public, the Department has decided that further research into electronic raffles is needed before implementing these amendments, so all references to electronic raffles and random number generators were removed. Charitable organizations may see an increase in revenue because of this change.

PUBLIC PROTECTION CABINET Department of Charitable Gaming (Amended After Comments)

820 KAR 1:057. Recordkeeping[Accurate records].

RELATES TO: KRS 238.536, 238.550[(5)], 238.560[(2)]

STATUTORY AUTHORITY: KRS 238.515[(4),—(9)], 238.550[(3)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515[(4)] and 238.550[(5)] authorize the Department of Charitable Gaming[~~department~~] to establish and enforce standards ~~off[or]~~ accounting, recordkeeping, and reporting to the department to ensure charitable gaming receipts are properly accounted for[~~counted and reported~~]. This administrative regulation establishes the minimum requirements for accounting, recordkeeping, and reporting to the department and establishes allowable charitable gaming expenses[~~accurate records~~].

Section 1. Bank Account and Records. (1) A charitable[~~A licensed charitable gaming~~] organization shall maintain a single bank account for charitable gaming receipts. This account shall be separate from any other account maintained by the charitable organization.

(2) Disbursements for charitable gaming expenses and charitable donations shall be made by check or electronic fund transfer directly from the charitable gaming account.

(3) All receipts and donations from each charitable gaming session[~~occasion~~] shall be deposited by the second business day following the charitable gaming session[~~occasion~~] at which they were received. The deposit for each charitable gaming session[~~occasion~~] shall be made separately and shall not be combined with the deposit from any other charitable gaming session[~~occasion~~].

(4) All types of deposits, including startup cash, returned[~~bad~~] checks collected and check collection fees, progressive game carry forward, cash prizes not awarded, and adjusted gross receipts, shall be listed separately on the deposit reconciliation sheet[~~;~~] and the deposit slip[~~;~~, if possible]. Each individual check shall be listed separately on the deposit slip. If a register tape is run listing the amounts of the individual checks, it may be attached to the deposit slip. Total cash and coins shall be listed separately. The charitable organization shall keep a copy of the deposit slip.

(5) Checks that have been returned for insufficient funds that have not been collected shall be retained by the charitable organization for three (3) years following the close of the calendar year in which the check was issued. If the check has been turned over[~~to someone else~~] for collection, the charitable organization shall retain [keep] a copy of the check with contact information ~~for~~[~~regarding~~] the person or entity collecting the check.

(6) Monthly bank statements and reconciliations for all accounts shall be maintained by the charitable organization for three (3) years following the close of a calendar year.

(7) Bank image copies of the fronts and backs of checks from any account into which charitable gaming funds are deposited or transferred shall be made available to the department upon request[~~Copies of the fronts and backs of checks from any account into which charitable gaming funds are deposited or transferred shall be provided to the department upon request~~].

(8) Gross receipts shall include the money received from the sale of raffle tickets, bingo cards or faces, pickle jars, bonanza balls,[~~or~~] hot balls, card-minding devices, pulltabs, electronic pulltab devices and electronic pulltabs, charity fundraising event games, special limited charity fundraising event games, returned[~~bad~~] check collections, credit card fees collected by a charitable organization at a charitable gaming session, and any[~~reasonable~~] check collection fees minus returned[~~bad~~] checks.

Section 2. Start-up Cash. (1) If the source of start-up cash is not the charitable gaming account, the source of the start-up cash shall be identified on the charitable gaming session[~~occasion~~] sheet and signed by the chairperson of the charitable organization.

(2) Start-up cash from one (1) charitable organization shall not be commingled with the start-up cash from another charitable organization. The start-up cash shall be identified on the check with drawing the funds and on the deposit slip[~~;~~, if possible].

Section 3. Charitable Organization Records. (1) The chief financial officer shall be the custodian of the gaming records and shall be responsible for ensuring that the records are accurate, complete, and maintained regularly for inspection by the

department.

(2) A charitable[an] organization that hand-writes data and later enters the information onto another form or computer program shall retain the hand-written records along with the other form or computer generated record.

(3) Charitable organizations shall prepare and maintain accurate and adequate corporate or other organizational records, such as[including] articles of incorporation, minutes of board of directors meetings, and resolutions.

(4) Charitable organizations shall maintain detailed records of all expenditures made in furtherance of its charitable purpose, including all charitable contributions.

(5) All records shall be made available for inspection and audit at the request of the department.

(6) Any charitable organization's records, or copies of those records, deemed necessary to complete an inspection, audit, or investigation may be obtained[retained] by the department[or its employees or agents]. The department shall provide a written receipt of the records at the time of taking possession[removal].

(7) Charitable organizations shall provide records requested by the department[, or any of its employees,] within ten (10) calendar days, unless a longer response time is granted[allowed by the request]. ~~(8) An organization shall perform an inventory and obtain permission of the department before destroying a bulk amount of gaming supplies. The gaming supplies shall be destroyed by burning in compliance with state and federal law, shredding, destroying or defacing in some manner to prevent reuse of any pulltab, flare, prize board, seal card, bingo paper or any portion thereof. An organization may also donate gaming supplies to the department for demonstration and training purposes if the department so requests.~~

~~(9) When an organization ceases to game, the organization shall:~~

~~—(a) Perform a final inventory;~~

~~—(b) 1. Return all unused product to a distributor;~~

~~2. Donate the product to another organization with the permission of the department or, if another organization does not want the gaming supplies, they may be donated to the department, upon request, for training and demonstration purposes; or~~

~~3. Destroy the product with the permission of the department; and~~

~~—(c) Spend or disburse the charitable gaming funds consistent with its charitable purpose.]~~

Section 4. Charitable Gaming Session Records. (1) Each charitable organization shall prepare and maintain records for each charitable gaming session. The charitable gaming session records shall be prepared or completed by a volunteer or chairperson of the charitable organization. The charitable gaming session records shall not be completed by an independently compensated bookkeeper.

(2) Gaming proceeds shall be counted by an officer or a chairperson of the charitable organization and the count shall be verified. A count may be verified by a volunteer.

(3) A charitable gaming session record shall contain:

(a) The date of the charitable gaming session;

(b) The name and license number of the charitable organization conducting the charitable gaming session;

(c) The name and address of the donor of every donated prize with a fair market value in excess of \$500; and

(d) A deposit reconciliation worksheet which records:

1. All currency, coins, checks, and credit card receipts available for deposit;

2. All profit or loss from each gaming activity, all start-up cash, all cash from incomplete pulltab sales, any progressive game carry forward, returned checks collected and check collection fees, and all other gaming receipts that should be available for deposit;

3. Any variance between the amount of currency, coins, checks, and credit card receipts actually available for deposit, and the amount that should be available for deposit according to the charitable gaming session records;

4. The amount of donations received at the charitable gaming session which will be deposited into the general account;

5. The printed name and signature of the chairperson in charge of the charitable gaming session;

6. The printed name and signature of the person taking the deposit from the charitable gaming session;

7. The printed name and signature of the person making the deposit, if different from the person taking the deposit; and

8. The printed name and signature of the person in possession of the start-up cash, and the amount and source of the start-up cash.

(4) If a charitable organization offers coupons for bingo paper or a card-minding device, a voucher shall be completed when the coupon is redeemed, and the coupon and the voucher shall be retained with the charitable gaming session records.

(5) If a charitable organization offers coupons for pulltabs or electronic pulltab devices, the type and number of pulltabs, electronic pulltab devices, and credits loaded on each device, if any, given away shall be recorded on the charitable gaming session records and on CG-FIN Attachment C and D. The coupon shall be retained with the charitable gaming session records.

(6) If the charitable organization sells gift certificates for bingo paper or a card-minding device, the receipts for the sale shall be counted as gaming receipts on the day they are received. When the gift certificate is redeemed, a voucher shall be completed and the gift certificate and the voucher shall be retained with the charitable gaming session records.

(7) If the charitable organization sells gift certificates for pulltabs or electronic pulltab devices, the receipts for the sale shall be counted as gaming receipts on the day they are received. When the gift certificate is redeemed, the type and number of pulltabs, electronic pulltab devices, and credits loaded on each device, if any, given away shall be recorded on the charitable gaming session records and on CG-FIN Attachment C and D. The gift certificate shall be retained with the charitable gaming session records.

(8) If the charitable organization plays a paper pulltab game which contributes in whole or in part to a progressive raffle jackpot, the charitable organization shall report its deposits and receipts on Worksheet WS-06c, Worksheet WS-14b, and Worksheet WS-15a.

(9) All charitable gaming receipts and records shall be kept separate from noncharitable gaming receipts and records.

(10) All charitable gaming session records shall be retained by the charitable organization for a period of three (3) years. Charitable gaming session records shall be made available for inspection and audit by the department upon request.

(11) Charitable organizations shall provide records requested by the department within ten (10) calendar days unless a longer response time is requested and granted by the department.

Section 5. Bingo Paper Sale Records. Bingo paper sale records shall contain the following information:

(1) Attendance determined by headcount of number of people playing bingo at a charitable gaming session;

(2) Each type of bingo paper being sold;

(3) The serial number of the set of each type of paper sold;

(4) The number of each type of bingo paper given away with the voucher being redeemed attached to the charitable gaming session records, if applicable;

(5) Number of each type of bingo paper destroyed;

(6) The number of each type of bingo paper sold;

(7) The price of each type of bingo paper sold;

(8) The number of pickle jar, bonanza ball, or hot ball games sold;

(9) The price of pickle jar, bonanza ball, or hot ball games and whether the price is per person or per pack;

(10) The number of player pick bingo games sold;

(11) The price of each player pick bingo game sold;

(12) The amount of money expected to be received from the sale of bingo paper, player pick, and pickle jar, bonanza ball, or hot ball for that charitable gaming session;

(13) The amount of money actually received from the sale of bingo paper, player pick, and pickle jar, bonanza ball, or hot ball for that charitable gaming session;

(14) The cash short or cash over from the sale of bingo paper.

player pick, and pickle jar, bonanza ball, or hot ball for that charitable gaming session; and

(15) The sales report printed from the player pick machine that includes the number of games sold, price for each game, and the amount of money expected from the sale of player pick games for that charitable gaming session;

(16) Records of all carryover or cumulative bingo games played which shall contain the following information:

(a) The name of each progressive bingo game in play;

(b) The amount carried over from the previous charitable gaming session;

(c) The receipts from the current charitable gaming session;

(d) The amount paid out for the current charitable gaming session; and

(e) The amount carried forward to the next charitable gaming session;

(17) A copy of the charitable gaming session program, which shall include:

(a) The charitable organization name and license number;

(b) A specific description of all bingo products for sale and the price of each product; and

(c) All bingo games played and the payout and alternate payout, if any, for each game; and

(18) Form CG-Vol.

Section 6. Bingo Payout Records. (1) Bingo payout records shall contain the following information:

(a) A list of all bingo games that will be played at that charitable gaming session;

(b) Each pickle jar, bonanza ball, or hot ball game available to be awarded;

(c) The prize expected or available to be awarded for each bingo game and door prize;

(d) The prize that was actually awarded for each bingo game and door prize;

(e) A notation for the prize awarded for each bingo game and door prize, specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise, the cost of the merchandise and the fair market value of the merchandise;

(f) If a voucher was issued for card-minding devices or bingo paper, the fair market value of the card-minding devices or bingo paper;

(g) The total amount of all cash awarded for bingo prizes and door prizes;

(h) The total amount of all checks issued as bingo prizes and door prizes;

(i) The total cost and fair market value of all merchandise awarded for bingo prizes and door prizes;

(j) A grand total of cash, checks, and fair market value of merchandise awarded for bingo prizes and door prizes, which shall not exceed \$5,000; and

(k) If a check from the charitable organization's charitable gaming account was issued as a prize instead of cash, the number of the check.

(2) If a paper pulltab or electronic pulltab device is awarded as a bingo prize, door prize, and/or promotional item, the person in charge of bingo payouts shall purchase the pulltabs or electronic pulltab device and any credits loaded on the device from the pulltab manager by transfer of cash from bingo payout to pulltab sales. It shall be recorded as a cash payout on the bingo payout session record, and it shall be included as a gross receipt on the charitable gaming session's pulltab record and on CG-FIN Attachment C and D.

Section 7. Card-minding Device Records. Card-minding device records shall contain the following information:

(1) The type of programs loaded, including the number of faces;

(2) The number of units rented for each type of program;

(3) The number of each type of card-minding device rental given away, with the redeemed voucher attached to the charitable gaming session records;

(4) The number of units voided for each type of program;

(5) The price per unit for each type of program;

(6) The amount of money expected to be received from the rental of card-minding devices;

(7) The actual amount of money received from the rental of card-minding devices for that charitable gaming session;

(8) The cash short or cash over from the rental of card-minding devices for that charitable gaming session;

(9) The total sales activity report completed on Form CG-FIN;

(10) A copy of the charitable gaming session program, which shall include:

(a) The charitable organization name and license number;

(b) A specific description of all bingo products for sale and the price of each product;

(c) All bingo games played and the payout and alternate payout, if any, for each game; and

(11) Form CG-Vol.

Section 8. Pulltab Records. (1) Pulltab records shall contain the following information for each charitable gaming session:

(a) The name, serial number, and form number of all games played;

(b) The name of all progressive jackpot games in play during that charitable gaming session;

(c) The ticket count for each pulltab game sold;

(d) The price for each ticket;

(e) The prize expected or available to be awarded for each pulltab game, including the progressive jackpot games;

(f) If a pulltab is awarded as a pulltab prize, the information required by subsection (2) of this section.

(g) The prize that was actually awarded for each pulltab game, including the progressive jackpot games;

(h) A notation for the prize awarded for each pulltab game specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;

(i) If a pulltab game was played in conjunction with a progressive jackpot game, as designed by the manufacturer, the amount contributed to the progressive jackpot;

(j) The cash short or cash over for each charitable gaming session with pulltabs;

(k) The total amount of all cash awarded for pulltab prizes;

(l) The total amount of all checks issued as pulltab prizes;

(m) The total cost of all merchandise awarded for pulltab prizes;

(n) If a check from the charitable organization's charitable gaming account was issued as a pulltab prize instead of cash, the number of the check;

(o) The total amount of money from any incomplete sale of pulltab games;

(p) Records of any progressive pulltab games sold which shall contain the following information:

1. The name of each progressive pulltab jackpot game in play;

2. The amount carried over from the previous charitable gaming session;

3. The receipts from the current charitable gaming session;

4. The amount paid out for the current charitable gaming session;

5. The amount carried forward to the next charitable gaming session;

6. The serial number of all games that contributed to the prize pool; and

(r) Form CG-Vol.

(2) If a pulltab is awarded as a pulltab prize, the person in charge of pulltab payouts shall purchase the pulltabs from the deal being awarded as the prize by transfer of cash from the deal being sold to the deal being awarded as the prize. It shall be recorded as a cash payout for the deal being sold and it shall be included as a gross receipt for the deal being awarded as a pulltab prize and on CG-FIN Attachment C and D.

Section 9. Electronic Pulltab Device Records. Electronic pulltab device records shall contain the following information:

(1) The name, serial number, and form number of all electronic

pulltab games played:

- (2) The ticket count for each electronic pulltab game sold;
- (3) The price for each electronic pulltab ticket sold;
- (4) The name of all electronic progressive jackpot games in play during that charitable gaming session;
- (5) The prize expected or available to be awarded for each electronic pulltab game;
- (6) The amount of money expected to be received from the sale of electronic pulltab devices and electronic pulltabs at a charitable gaming session;
- (7) The actual amount of money received from the sale of electronic pulltab devices and electronic pulltabs at a charitable gaming session;
- (8) The cash short or cash over from the sale of electronic pulltab devices and electronic pulltabs at a charitable gaming session;
- (9) The electronic pulltab receipts and payouts report, Form CG-EPRP;
- (10) All information required under Section 5 of this administrative regulation; and
- (11) Form CG-Vol.

Section 10. Raffle Records. (1) If the raffle tickets sell for one hundred (100) dollars or more, the raffle records shall contain the following information:

- (a) The number of raffle tickets printed;
- (b) The sales price for each ticket;
- (c) The date raffle ticket sales began;
- (d) The date the raffle drawing was held;
- (e) A voided raffle ticket or copy of a raffle ticket;
- (f) If tickets are given to volunteers to sell, a list of each volunteer's name with the total number of the tickets and ticket numbers given to them;
- (g) The total amount of money collected for the raffle event;
- (h) The total number of ticket stubs collected from the sale of all raffle tickets for the raffle event;
- (i) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;
- (j) Total cash short or cash over amount from raffle ticket sales for the raffle event;
- (k) A list of all raffle prizes awarded;
- (l) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;
- (m) The total amount of all cash awarded for raffle prizes;
- (n) The total amount of all checks issued as raffle prizes;
- (o) If a check from the charitable organization's charitable gaming account was issued as a prize instead of cash, the number of the check;
- (p) Each winning ticket stub;
- (q) All unsold tickets;
- (r) A list of all raffle expenses including a copy of all invoices supporting each expense; and
- (s) If the raffle is being conducted on a special event raffle license issued by the department pursuant to KRS 238.535(14)(b), the organization shall report its session record using Worksheet WS-23d, Worksheet-23e, and, when applicable, Worksheet, WS-23f.

(2) If the raffle tickets sell for fifty (50) dollars to \$100, the raffle records shall contain the following information:

- (a) The number of raffle tickets printed;
- (b) The sales price for each ticket;
- (c) The date raffle ticket sales began;
- (d) The date the raffle drawing was held;
- (e) A voided raffle ticket or copy of a raffle ticket;
- (f) If tickets are given to volunteers to sell, a list of each volunteer's name with the total number of the tickets and ticket numbers given to them;
- (g) The total amount of money collected for the raffle event;
- (h) The total number of ticket stubs collected from the sale of all raffle tickets for the raffle event;
- (i) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;

(j) Total cash short or cash over amount from raffle ticket sales for the raffle event;

- (k) A list of all raffle prizes awarded;
- (l) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;
- (m) The total amount of all cash awarded for raffle prizes;
- (n) The total amount of all checks issued as raffle prizes;
- (o) If a check from the charitable organization's charitable gaming account was issued as a prize instead of cash, the number of the check;
- (p) Each winning ticket stub;
- (q) A list of all raffle expenses including a copy of all invoices supporting each expense; and
- (r) If the raffle is being conducted on a special event raffle license issued by the department pursuant to KRS 238.535(14)(b), the organization shall report its session record using Worksheet WS-23c, Worksheet-23e, and, when applicable, Worksheet, WS-23f.
- (3) If the raffle tickets sell for more than five (5) dollars but less than fifty (50) dollars, the raffle records shall contain the following information:
- (a) The number of raffle tickets printed;
- (b) The sales price for each ticket;
- (c) The date raffle ticket sales began;
- (d) The date the raffle drawing was held;
- (e) A voided raffle ticket or copy of a raffle ticket;
- (f) The total amount of money collected for the raffle event;
- (g) The total number of ticket stubs collected from the sale of all raffle tickets for the raffle event;
- (h) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;
- (i) Total cash short or cash over amount from raffle ticket sales for the raffle event;
- (j) A list of all raffle prizes awarded;
- (k) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;
- (l) The total amount of all cash awarded for raffle prizes;
- (m) The total amount of all checks issued as raffle prizes;
- (n) If a check from the charitable organization's charitable gaming account was issued as a prize instead of cash, the number of the check;
- (o) Each winning ticket stub;
- (p) A list of all raffle expenses including a copy of all invoices supporting each expense; and
- (q) If the raffle is being conducted on a special event raffle license issued by the department pursuant to KRS 238.535(14)(b), the organization shall report its session record using Worksheet WS-23b, Worksheet-23e, and, when applicable, Worksheet, WS-23f.
- (4) If the raffle ticket sells for five (5) dollars or less, the raffle records shall contain the following information:
- (a) The beginning and ending serial number or ticket number for each roll of tickets sold or the beginning and ending number of the tickets printed;
- (b) The quantity of tickets sold;
- (c) The sales price of the tickets;
- (d) The date of the raffle;
- (e) The total amount of money collected for the raffle event;
- (f) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;
- (g) Total cash short or cash over amount from raffle ticket sales for the raffle event;
- (h) A list of all raffle prizes awarded;
- (i) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;
- (j) The total amount of all cash awarded for raffle prizes;
- (k) The total amount of all checks issued as raffle prizes;
- (l) If a check from the charitable organization's charitable gaming account was issued as a prize instead of cash, the number of the check;

(m) Each winning ticket stub; and
(n) A list of all raffle expenses, including a copy of all invoices supporting each expense.

(o) Nothing in this subsection shall prohibit an organization from using preprinted tickets for raffle tickets that sell for five (5) dollars or less, but the organization shall maintain a session record that complies with Section 10(3) of this administrative regulation if it sells preprinted tickets for five (5) dollars or less.

(p) If the raffle is being conducted on a special event raffle license issued by the department pursuant to KRS 238.535(14)(b), the organization shall report its session record using Worksheet WS-23a, Worksheet-23e, and, when applicable, Worksheet, WS-23f.

Section 11. Charity Fundraising Event Records. (1) Charity fundraising event records shall contain the following information:

(a) The name of each game of chance played;
(b) The price to play each game of chance;
(c) The adjusted gross receipts from the sale of each game of chance;

(d) The grand total of adjusted gross receipts received from the play of all games of chance;

(e) The total amount of all checks issued for each game of chance prize and door prize;

(f) The total cost of all merchandise awarded for each type of game of chance prize and door prize;

(g) If a check from the charitable organization's charitable gaming account was issued as a prize instead of cash, the number of the check;

(h) If bingo games are conducted, accurate bingo paper sale records, card-minding device records, and bingo payout records;

(i) If pulltabs are sold, accurate pulltab records;

(j) If a raffle is conducted, accurate raffle records; and

(k) If the charity fundraising event continues for more than one (1) day, a summary of the required information for each day.

(2) Special limited game records for a charity fundraising event shall contain:

(a) The name of each game to be played;

(b) The adjusted gross receipts for each game for each day of the charity fundraising event; and

(c) A list of all merchandise prizes awarded and the cost.

Section 12. Special Limited Charity Fundraising Event Records. (1) Special limited charity fundraising event records shall contain the following information for special limited charitable gaming events:

(a) The name of each game played;

(b) The quantity of scrip, chips, or imitation money the central bank started with prior to any sales, and the corresponding cash amount associated with each denomination of scrip, chips, or imitation money;

(c) The quantity of scrip, chips, or imitation money the central bank sold during the special limited charity fundraising event;

(d) The amount of money received by the central bank from the sale of scrip, chips, or imitation money;

(e) Cash short or cash over from the sale of scrip, chips, or imitation money;

(f) The quantity of scrip, chips, or imitation money collected by the central bank and redeemed for prizes;

(g) Prizes awarded by the central bank;

(h) A notation for prizes awarded specifying whether each prize was cash, check, or merchandise, and if merchandise, a description of that merchandise and the cost.

(2) The amount of money corresponding to the scrip, chips, or imitation money collected by the central bank shall be compared to the sale of scrip, chips, or imitation money by the central bank at the conclusion of the special limited charity fundraising event. Any variance shall be documented and cash short or cash over shall be determined.

(3) For all tournaments played during special limited charity fundraising events, the special limited charity fundraising event records shall contain the following information in addition to the regular records required at special limited charity fundraising

events:

(a) A record of attendance shall be kept for the special limited charitable games; and

(b) A copy of the charitable gaming session program, which shall include the:

1. Charitable organization name and license number;

2. Cost to enter, the cost of the buy backs, and the cost of the add ons;

3. Rules of the game;

4. Manner for raising blinds or closing tables; and

5. Prizes. The prizes may be listed as a percentage of the receipts.

(4) If bingo games are conducted, accurate bingo paper sale records, card-minding device records, and bingo payout records shall be maintained.

(5) If pulltabs are sold, accurate pulltab records shall be maintained.

(6) If raffles are conducted at a special limited charity fundraising event, accurate raffle records shall be maintained.

(7) The organization shall complete Form CG-Vol and keep it with the charitable gaming session record for that event.

Section 13. Other Allowable Expenses. In addition to those authorized expenses provided for in KRS 238.550, each of the following expenses is determined to be legitimate and shall be allowable charitable gaming expenses of a charitable organization:

(1) The following customary and usual banking fees or charges paid to any financial institution, check reader, or verification company in connection with a charitable organization's charitable gaming account and activities:

(a) Monthly service charges;

(b) Check verification service charges;

(c) Check printing charges;

(d) Charges relating to returned checks;

(e) Copying charges for bank records; and

(f) Credit card processing charges;

(2) Volunteer food, to be consumed on gaming premises, not to exceed fifteen (15) dollars per volunteer, per day;

(3) Any noncash item not to exceed fifty (50) dollars in fair market value given upon achieving a predetermined goal in a raffle;

(4) Clothing provided to volunteers as authorized in these administrative regulations;

(5) Payments made to the Department of Charitable Gaming;

(6) Printing costs incurred in connection with a charitable organization's charitable gaming activities;

(7) Payments for the purchase of prizes to be awarded during the charitable organization's conduct of charitable gaming;

(8) Promotional items;

(9) Federal excise taxes levied under 26 U.S.C. 4401 and 4411, or fees associated with the filing of Internal Revenue Service Form 11-C and paid by a charitable organization during the calendar year; and

(10) Customary and usual fees or charges incurred in the collection of checks dishonored for insufficient funds.

Section 14. Charitable Gaming Expense Categories. (1) The items that may be included as a utilities expense, pursuant to KRS 238.550(9)(c), shall be the money paid for electric, gas, water, sewer, telephone, and trash collection. It may also include any cable or internet expenses that are incurred by the charitable organization for credit card services, card-minding devices, or electronic pulltab systems.

(2) The items that may be included as an advertising expense, pursuant to KRS 238.550, shall be the expenses for a handout, flyer, radio, television, advertising sign, billboard, or other media used to promote an event or activity required to be licensed under KRS Chapter 238 and any printing costs associated with them.

(3) The items that may be included as a bookkeeping expense, pursuant to KRS 238.550, shall be the costs of completing the financial report, the federal excise tax form, and the federal gaming forms. Bookkeeping expenses shall not include expenses associated with handling charitable gaming funds, preparing

charitable gaming session records, or ordering supplies.

(4) The items that may be included as security services, pursuant to KRS 238.550, shall be the expenses associated with paying a person whose sole duty is to promote and provide peace, order, and safety at a charitable gaming event which:

(a) May include patrolling the parking lot or accompanying the charitable organization's personnel to the bank or night depository with the charitable gaming receipts; and

(b) Shall not include costs for security or alarm systems or for special lighting for the building or parking lot.

Section 15. Raffle Recipient Account. (1) A licensed charitable organization receiving distributions from an organization licensed pursuant to KRS 238.535(14)(b) shall maintain a separate bank account which shall be referred to as the "raffle recipient account," in addition to the charitable gaming account and general account maintained by the licensed charitable organization. The raffle recipient account shall be for the sole purpose of receiving distributions from organizations licensed pursuant to KRS 238.535(14)(b) to hold special event raffles. The funds distributed into the raffle recipient account shall not be commingled with any other account maintained by the licensed charitable organization or any personal account or business account. If the license charitable organization receives distributions from more than one organization licensed pursuant to KRS 238.535(14)(b), the licensed charitable organization shall maintain a separate raffle recipient account for each relationship.

(2) Any distributions received by a licensed charitable organization from an organization licensed pursuant to KRS 238.535(14)(b) shall be by check drawn on the charitable gaming account or electronic fund transfer from the charitable gaming account from the organization licensed pursuant to KRS 238.535(14)(b). All distributions shall be made within **ten (10) business(five (5)) days of the raffle drawing[date that charitable gaming receipts are deposited into the charitable gaming account of the organization licensed pursuant to KRS 238.535(14)(b)].**

(3) Any expenditures from the raffle recipient account shall be directly to forward the charitable purpose of the licensed charitable organization. No other expenses shall be paid from the raffle recipient account. Distributions into the raffle recipient account shall not be transferred to any other account maintained by the licensed charitable organization or any other person or business.

Section 16. Incorporated by Reference. (1) Form CG-Vol, "Charitable Gaming Volunteer Sign Up Sheet (2018)", is incorporated by reference.

(2) Worksheet WS-06c, "Pulltabs Contributing to a Progressive Raffle Jackpot (2018)", is incorporated by reference.

(3) Worksheet WS-14b, "Progressive Raffle Receipts and Payouts with Pulltab Contributions to Jackpot (2018)", is incorporated by reference.

(4) Worksheet WS-15a, "Progressive Raffle with Pulltab Contribution to Jackpot Deposit Reconciliation (2018)", is incorporated by reference.

(5) Worksheet WS-23a, "Raffle Receipts and Payouts with a Ticket Price of \$5 or Less (2018)", is incorporated by reference.

(6) Worksheet WS-23b, "Raffle Receipts and Payouts with a Ticket Price of More than \$5, but Less than \$50 (2018)", is incorporated by reference.

(7) Worksheet WS-23c, "Raffle Receipts and Payouts with a Ticket Price of \$50 or More, but Less than \$100 (2018)", is incorporated by reference.

(8) Worksheet WS-23d, "Raffle Receipts and Payouts with a Ticket Price of \$100 or More (2018)", is incorporated by reference.

(9) Worksheet WS-23e, "501(c)(7) Raffle Deposit Reconciliation (2018)", is incorporated by reference.

(10) Worksheet WS-23f, "Deposit Accountability (When Charitable Gaming Receipts Are Deposited Before the Raffle Draw (2018)", is incorporated by reference.

(11) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard,

Frankfort, Kentucky 40601-3714, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 11 a.m.

CONTACT PERSON: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email Doug.Hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes recordkeeping standards for charitable gaming in Kentucky pursuant to KRS Chapter 238. This administrative regulation also incorporates changes required by the passage of House Bill 164 in the 2018 Regulation Session.

(b) The necessity of this administrative regulation: This regulation is necessary for the Department of Charitable Gaming to establish recordkeeping standards pursuant to KRS Chapter 238 for charitable gaming in Kentucky. Additionally, House Bill 164 passed during the 2018 legislative session creates a new license type, and this administrative regulation includes guidance regarding the raffle recipient account required by House Bill 164.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, the Charitable Gaming Advisory Commission reviewed this regulation at the Commission's second quarter meeting on May 2, 2018. No written comments were received from the Commissioners. KRS 238.515 authorizes the department to promulgate administrative regulations to carry out and implement KRS Chapter 238. This administrative regulation forth the standards for recordkeeping consistent with KRS Chapter 238.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes recordkeeping standards for charitable gaming in Kentucky pursuant to KRS 238.515(4).

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment combines into one regulation the requirements for charitable gaming recordkeeping in Kentucky pursuant to KRS Chapter 238. The substantive content of the following regulations are included in this regulation amendment as new sections: 820 KAR 1:058, Gaming occasion records, and 820 KAR 1:120, Allowable expenses. 820 KAR 1:058, Gaming occasion records, and 820 KAR 1:120, Allowable expenses, as individual regulations, are included in the repealer regulation filed by the Department of Charitable Gaming. This amendment will assist any person seeking to know and comply with recordkeeping requirements since they are now all in one regulation. Lastly, this administrative regulation incorporates changes required by the passage of House Bill 164 in the 2018 Regulation Session which included the creation of a new license type and maintenance of a separate raffle recipient account by certain organizations licensed by the Department. After reviewing comments, the deadline for organizations conducting a special event raffle to transfer the proceeds of the raffle to a licensed charitable organization was modified to allow these organizations more time to transfer the proceeds.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment combines into one regulation all regulations related to recordkeeping, to make the regulation more user-friendly.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in accordance with KRS Chapter 13A which are necessary to carry out the purposes and intent of Chapter 238. These amendments establish the recordkeeping standards for charitable gaming in Kentucky pursuant to KRS 238.515(4).

(d) How the amendment will assist in the effective administration of the statutes: KRS 238.515 requires the department to regulate the conduct of charitable gaming, and authorizes the department to establish charitable gaming standards. The proposed amendment combines into one regulation, 820 KAR 1:057, all regulations related to recordkeeping. It is anticipated that this change will assist those required to comply with recordkeeping rules.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming and its employees are affected by this administrative regulation. New applicants who may apply as a result of the passage of House Bill 164 will also be affected by this administrative regulation amendment. In addition, the licensees and exempt organizations will be affected by this administrative regulation. As of March 2018, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, as follows:

Over 600 charitable gaming organizations;

Over 800 exempt charitable gaming organizations;

Twenty-four (24) manufacturers of charitable gaming supplies;

Twenty-three (23) distributors of charitable gaming supplies; and

Thirty-four (34) charitable gaming facilities.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question 3 will have to conform to the requirements of this regulation for recordkeeping, including provision and maintenance of the referenced documents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not increase costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment combines into one regulation the standards for recordkeeping for organizations, which should make compliance simpler due to being able to locate the rules more easily.

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

(a) Initially: There will be no additional cost to implement this administrative regulation initially.

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

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

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because all charitable organizations are subject to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Charitable Gaming and any local fire department or school licensed as a charitable organization and which chooses to conduct charitable gaming will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515(2), (4), and (9).

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not incur administrative cost for the first year.

(d) How much will it cost to administer this program for subsequent years? This amendment will not incur administrative cost for subsequent years.

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

Revenues (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: None.

PUBLIC PROTECTION CABINET Department of Charitable Gaming (Amended After Comments)

820 KAR 1:060. Prohibited conduct[Tipping prohibited].

RELATES TO: KRS 238.510, 238.540(4), 238.550(4)

STATUTORY AUTHORITY: KRS 238.515(2), (4), (9)

NECESSITY, FUNCTION, AND CONFORMITY: The Department[Office] of Charitable Gaming is authorized by KRS 238.515(2) to establish and enforce reasonable standards for the conduct of charitable gaming. This administrative regulation prohibits tips or other gratuities for volunteers working at charitable gaming events and prohibits employees of the Department of Charitable Gaming from playing any charitable games, removing any potential conflict of interest or appearance of impropriety[KRS 238.540(4) provides that charitable gaming be conducted and administered only by the charitable organization using volunteer personnel and prohibits persons engaged in the conduct and administration of charitable gaming from receiving compensation of any kind. This administrative regulation prohibits tips or other gratuitous conduct].

Section 1. Tipping Prohibited. (1) The charitable organization conducting gaming shall take one (1) or more of the following measures to inform the public that, pursuant to KRS 238.540(4), its volunteers are unable to accept tips or other forms of gratuities[gratuitous conduct]:

(a) Post signs in a conspicuous location that volunteers are not permitted to accept tips;

(b) State prominently on the charitable gaming session[Include a notation in a conspicuous location on an occasion] program that volunteers are not permitted to accept tips; or

(c) Announce during[Make an announcement immediately prior to the beginning of] the charitable gaming session[or event] that

volunteers are not permitted to accept tips.

(2) Except as provided in subsection (3) of this section, a charitable organization shall not pay remuneration or expenses other than those authorized in KRS 238.550(4), award, or otherwise provide any sort of benefits, to, for, or on behalf of any person engaged as a volunteer in the conduct of charitable gaming~~[sponsored by the charitable organization]~~.

(3) A charitable organization ~~may~~shall be permitted to provide volunteer workers the following:

(a) Food or drink of incidental value not to exceed fifteen (15)~~ten (10)~~ dollars per day to be consumed on the premises where charitable gaming occurs;

(b) Any article of clothing worn by the volunteers on the premises where charitable gaming occurs which identifies the volunteer worker as a volunteer~~[for the charitable organization]~~; ~~and~~[or]

(c) Any noncash item not to exceed twenty-five (25) dollars in fair market value given to volunteers upon achievement of predetermined goals in the conduct of a raffle.

(4) All allowable expenditures made by charitable organizations for volunteers~~[as allowed under subsection (3) of this section]~~ shall be reported on the charitable organization's financial reports~~[quarterly report required by 820 KAR 1:025]~~.

Section 2. Rebuttable Presumption of Compensation. (1) ~~There is~~[It shall create] a rebuttable presumption of compensation if a person volunteers at more than four (4) charitable gaming sessions~~[occasions]~~ a week excluding charity fundraising events as defined~~[outlined]~~ in 820 KAR 1:055.

(2) ~~There is~~[It shall create] a rebuttable presumption of compensation if a person volunteers at more than four (4) special limited charitable fundraising events per year.

Section 3. Department Employees Prohibited From Playing Charitable Games. (1) No Department of Charitable Gaming employee, during his or her term of employment, shall play any charitable game authorized in KRS Chapter 238 unless the employee's participation in the game is authorized in advance by the Commissioner as a necessary function of the employee's job duties.

Section 4. Officers, Agents, or Employees of Manufacturers and Distributors. (1) No distributor, distributor's agent, or distributor's employee may play or participate in any charitable gaming in the Commonwealth of Kentucky involving products sold or leased by the distributor while such person is employed by a licensed distributor.

(2) No manufacturer, manufacturer's agent, or manufacturer's employee may play or participate in any charitable gaming in the Commonwealth of Kentucky involving products made, sold, or leased by the manufacturer while such person is employed by a licensed manufacturer.

(3) Servicing of electronic gaming devices shall not be considered conduct or participation in charitable gaming.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 11 a.m.

CONTACT PERSON: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email Doug.Hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prohibits certain acts in the conduct of charitable gaming.

(b) The necessity of this administrative regulation: This regulation is necessary to prohibit certain acts in the conduct of charitable gaming.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, the Charitable Gaming Advisory Commission reviewed this regulation at the Commission's second quarter meeting on May 2, 2018. No written comments were received from the Commissioners. KRS 238.515(9) authorizes the department to promulgate administrative regulations in order to carry out and implement KRS Chapter 238. KRS 238.515(2) grants the department the power to establish and enforce reasonable standards for the conduct of charitable gaming.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Department of Charitable Gaming is charged with the responsibility of licensing and regulating charitable gaming in Kentucky. This regulation establishes certain acts as prohibited conduct by persons involved in licensed charitable gaming.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment combines into one regulation previously promulgated prohibitions. The content and substance of 820 KAR 1:100, department employees prohibited from playing charitable games, which previously had been separately located in 820 KAR Chapter 1, has been moved into 820 KAR 1:060. 820 KAR 1:100, as an individual regulation, has been included in the repealer regulation filed by the Department of Charitable Gaming. The proposed amendment combines into one regulation prohibited conduct by persons involved in licensed charitable gaming so that the rules are more easily located. After reviewing comments, the proposed regulation was amended to lessen the restrictions concerning whether manufacturers and distributors or their employees may participate in charitable gaming; instead of a complete ban on participating, the restriction now only prohibits them from playing their own games.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment combines into one regulation certain acts as prohibited conduct by persons involved in licensed charitable gaming.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in accordance with KRS Chapter 13A which are necessary to carry out the purposes and intent of Chapter 238. KRS 238.515(2) authorizes the department to establish reasonable standards for the conduct of charitable gaming. This regulation prohibits certain acts in the conduct of charitable gaming.

(d) How the amendment will assist in the effective administration of the statutes: KRS 238.515 requires the department to regulate the conduct of charitable gaming, and authorizes the department to establish charitable gaming standards. The proposed amendment combines into one regulation certain acts as prohibited conduct by persons involved in licensed charitable gaming, which previously had been separately located in 820 KAR Chapter 1. Thus the requirements for proper conduct are now more easily located.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming and its employees are affected by this administrative regulation. New applicants who may apply as a result of the passage of House Bill 164 will also be affected by this administrative regulation amendment. In addition, the licensees and exempt organizations will be affected by this administrative regulation. As of March 2018, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, as follows:

Over 600 charitable gaming organizations;

Over 800 exempt charitable gaming organizations;

Twenty-four (24) manufacturers of charitable gaming supplies; Twenty-three (23) distributors of charitable gaming supplies; and Thirty-four (34) charitable gaming facilities.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will have to conform to the requirements of this regulation by not engaging in the prohibited conduct.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no additional cost for compliance with the regulation for licensed charitable organizations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendment combines into one regulation prohibited conduct by certain persons involved in charitable gaming to make the regulation more user-friendly by locating these standards in one place.

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

(a) Initially: There will be no additional cost to implement this administrative regulation initially.

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

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

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because all entities are subject to the same standard and prohibited from engaging in the conduct outlined.

regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to administer this administrative regulation for subsequent years.

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

Revenues (+/-): No impact.

Expenditures (+/-): No impact.

Other: None.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming is the agency responsible for implementing this regulation. Local fire departments and school districts that conduct charitable gaming will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515(2) and (9).

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

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

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

(c) How much will it cost to administer this program for the first year? There is no additional cost to administer this administrative

PROPOSED AMENDMENTS

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 15:110. Ethanol tax credit.

RELATES TO: KRS 141.010, 141.020, 141.030, 141.040, 141.0401, 141.422, 141.4242, 141.4246, 141.4248

STATUTORY AUTHORITY: KRS 131.130[(4)], 141.4246
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.4242 provides [for] a nonrefundable tax credit to[for] producers of ethanol. KRS 131.130(1) authorizes the department to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS 141.4246(2) requires the department to promulgate an administrative regulation to establish the manner in which a pass-through entity shall electronically notify the department of who may claim the approved tax credit. This administrative regulation establishes guidelines and filing requirements for an ethanol producer filing a tax credit claim for gallons of ethanol produced in this state.

Section 1. Definitions. (1) "Applicant" means an ethanol producer that files a tax credit claim as provided by KRS 141.4242.

(2) "Application" or "Schedule ETH" means the Schedule ETH, Application, and Credit Certificate of Income Tax/LLET Credit Ethanol (Revenue Form 41A720ETH)[, incorporated by reference in 103-KAR-3:040;] that is used to make an ethanol tax credit claim with the department for gallons of ethanol produced in this state as provided by KRS 141.4242(3).

(3) "ASTM" means the American Society for Testing and Materials.

(4) "Corporation" is defined by KRS 141.010(4)[141.010(24)].

(5) "Department" is defined by KRS 141.010(5)[141.010(2)].

(6) "Ethanol" is defined by KRS 141.422(9).

(7) "Ethanol producer" is defined by KRS 141.422(11).

(8) "Identification number" means[the]:

(a) Social Security number for individuals;

(b) Federal Employer Identification Number for general partnerships, estates, and trusts; and

(c) Kentucky corporation income tax and limited liability entity tax account number for corporations and limited liability pass-through entities.

(9) "Individual" is defined by KRS 141.010(10)[141.010(7)].

(10) "Limited liability pass-through entity" is defined by KRS 141.010(15)[141.010(28)].

(11) "Pass-through entity" is defined by KRS 141.010(21)[141.010(26)].

(12) "Tax credit" means the cellulosic ethanol tax credit authorized by KRS 141.4242.

Section 2. Application for Tax Credit. An applicant shall mail to the department a completed application on or before January 15 for the preceding calendar year.

Section 3. Proof of ASTM standard specification. (1) A[An] ethanol producer shall provide proof that the ethanol gallons reported on the application meet ASTM standard specification D4806 for ethanol.

(2) Proof submitted by an ethanol producer shall be in the form of documentation of laboratory results that certify that the ethanol reported on the Schedule ETH meets the ASTM standard specification.

(3) An independent ASTM certified laboratory shall be used to generate the laboratory results that are required by this section.

(4) Failure to submit documented laboratory results that certify that the cellulosic ethanol meets the ASTM standard specification with the Schedule ETH shall result in the department disallowing the credit.

(5)(a) An ethanol producer shall have the ethanol tested as provided by subsection (2) of this section on July 1 and December 31 of each calendar year to determine if the ethanol meets the

ASTM standard specification[speciation].

(b) A copy of the laboratory results for July 1 and December 31 of each calendar year shall be attached to the application, Schedule ETH, submitted to the department as provided by Section 2 of this administrative regulation.

(c) Failure to provide proof of meeting the ASTM standard specification on July 1 and December 31 of each calendar year with the application shall result in the denial of the credit [elaimed] for gallons of ethanol back to the previous testing date of July 1 or December 31.

(d) If proof is timely submitted and the proof certifies that the ethanol does not meet the ASTM standard specification, then all credit claimed for gallons of ethanol back to the previous testing date of July 1 or December 31 shall be disallowed.

Section 4. Filing Requirements. (1) An applicant claiming the tax credit shall attach the credit certificate issued by the department to the[its] tax return on which the tax credit is claimed.

(2) A partner, member, or shareholder claiming the tax credit shall attach a copy of Schedule K-1: Form 720S, Form number 41A720S(K-1); Form 765, Form number 41A765(K-1);[;] or Form 765GP, Form number 42A765GP(K-1);[; incorporated by reference in 103-KAR-3:040;] to the partner's, member's or shareholder's tax return on which the credit is claimed.

Section 5. Electronic Filings for Pass-through Entities. (1) Each pass-through entity or agricultural cooperative association organized under KRS Chapter 272 claiming the ethanol tax credit shall file a report with the department by electronic mail at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov.

(2) The electronic mail shall contain a separate attachment in plain format text or plain ASCII format that includes each partner's, member's, or shareholder's:

(a) Name;

(b) Address;

(c) Telephone number;

(d) Identification number; and

(e) Distributive share of the tax credit.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: August 14, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2018 at 10:00 a.m. in Room 8A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation removes an outdated reference to the department Income Tax Forms Manual, 103 KAR 3:040, which was

repealed in 2017; and updates statutory references to conform to recent changes in HB 487 of the 2018 GA.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update 103 KAR 15:110 to remove incorrect and/or outdated information which may deem this regulation deficient without removal.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.4242 requires the department to promulgate a regulation to establish the manner in which a producer shall notify the department of the credit claimed for gallons of ethanol produced in this state. This regulation provides the most recent up to date information needed to comply with KRS 141.4242.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the reporting guidelines necessary to comply with the requirements of the statute.

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c). (d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Producers of ethanol in Kentucky will benefit from the updated information contained in this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None. This amendment only removes outdated information and statutory references.

(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 new or additional cost involved.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These changes will not impact the entities identified in question (3).

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

(a) Initially: There are no new costs are associated with this regulation. Current department staff and resources will be used to implement this administrative regulation.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering was not applied to this regulation as all producers in Kentucky are required to follow the same process to report gallons produced in the state to the department.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue, will be impacted.

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

regulation. KRS 131.130 and 141.4242.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for state and local government agencies.

(a) How much 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:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 15:120. Cellulosic ethanol tax credit.

RELATES TO: KRS 141.010, 141.020, 141.030, 141.040, 141.0401, 141.422, 141.4244, 141.4246, 141.4248

STATUTORY AUTHORITY: KRS 131.130(1), 141.4246

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.4244 provides a nonrefundable tax credit to producers of cellulosic ethanol. KRS 131.130(1) authorizes the department to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS 141.4246(2) requires the department to promulgate an administrative regulation to establish the manner in which a pass-through entity shall electronically notify the department of who may claim the approved tax credit. This administrative regulation establishes guidelines and filing requirements for a cellulosic ethanol producer filing a tax credit claim for gallons of cellulosic ethanol produced in this state.

Section 1. Definitions. (1) "Applicant" means a cellulosic ethanol producer that files a tax credit claim as provided by KRS 141.4244.

(2) "Application" or "Schedule CELL" means the Schedule CELL, Application, and Credit Certificate of Income Tax/LLET Credit Cellulosic Ethanol (Revenue Form 41A7220CELL); ~~incorporated by reference in 103-KAR-3-040;~~ that is used to make a cellulosic ethanol tax credit claim with the department for gallons of cellulosic ethanol produced in this state as provided by KRS 141.4244(3).

(3) "ASTM" means the American Society for Testing and Materials.

(4) "Cellulosic ethanol" is defined by KRS 141.422(6).

(5) "Cellulosic ethanol producer" is defined by KRS 141.422(7).

(6) "Corporation" is defined by KRS 141.010(4) ~~[141.010(24)-]~~.

(7) "Department" is defined by KRS 141.010(5) ~~[141.010(2)-]~~.

(8) "Identification number" ~~[the]~~ means:

(a) Social Security number for individuals;

(b) Federal Employer Identification Number for general partnerships, estates, and trusts; and

(c) Kentucky corporation income tax and limited liability entity tax account number for corporations and limited liability pass-through entities.

(9) "Individual" is defined by KRS 141.010(13) ~~[141.010(7)-]~~.

(10) "Limited liability pass-through entity" is defined by KRS

~~141.010(15)~~~~[141.010(28)]~~.

(11) "Pass-through entity" is defined by KRS ~~141.010(21)~~~~[141.010(26)]~~.

(12) "Tax credit" means the cellulosic ethanol tax credit authorized by KRS 141.4244.

Section 2. Application for Tax Credit. An applicant shall mail to the department a completed application on or before January 15 for the preceding calendar year.

Section 3. Proof of ASTM standard specification. (1) A cellulosic ethanol producer shall provide proof that the cellulosic ethanol gallons reported on the application meet ASTM standard specification D4806 for ethanol that is produced from cellulosic biomass materials.

(2) Proof submitted by a cellulosic ethanol producer shall be in the form of documentation of laboratory results that certify that the cellulosic ethanol reported on the Schedule CELL meets the ASTM standard specification.

(3) An independent ASTM certified laboratory shall be used to generate the laboratory results that are required by this section.

(4) Failure to submit documented laboratory results that certify that the cellulosic ethanol meets the ASTM standard specification with the Schedule CELL shall result in the department disallowing the credit.

(5)(a) A cellulosic ethanol producer shall have the cellulosic ethanol tested as provided by subsection (2) of this section on July 1 and December 31 of each calendar year to determine if the cellulosic ethanol meets the ASTM standard specification.

(b) A copy of the laboratory results for July 1 and December 31 of each calendar year shall be attached to the application, Schedule CELL, submitted to the department as provided by Section 2 of this administrative regulation.

(c) Failure to provide proof of meeting the ASTM standard specification on July 1 and December 31 of each calendar year with the application shall result in the denial of the credit for gallons of cellulosic ethanol back to the previous testing date of July 1 or December 31.

(d) If proof is timely submitted and the proof certifies that the cellulosic ethanol does not meet the ASTM standard specification, then all credit claimed for gallons of cellulosic ethanol back to the previous testing date of July 1 or December 31 shall be disallowed.

Section 4. Filing Requirements. (1) An applicant claiming the tax credit shall attach the credit certificate issued by the department to the tax return on which the tax credit is claimed.

(2) A partner, member, or shareholder claiming the tax credit shall attach a copy of Schedule K-1: Form 720S, Form number 41A720S(K-1); Form 765, Form number 41A765(K-1); or Form 765GP, Form number 42A765GP(K-1) ~~incorporated by reference in 103 KAR 3:040,~~ to the partner's, member's or shareholder's tax return on which the credit is claimed.

Section 5. Electronic Filings for Pass-through Entities. (1) Each pass-through entity or agricultural cooperative association organized under KRS Chapter 272 claiming the cellulosic ethanol tax credit shall file a report with the department by electronic mail at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov.

(2) The electronic mail shall contain a separate attachment in plain format text or plain ASCII format that includes each partner's, member's, or shareholder's:

- (a) Name;
- (b) Address;
- (c) Telephone number;
- (d) Identification number; and
- (e) Distributive share of the tax credit.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: August 14, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2018 at 10:00 a.m. in Room 8A, State Office

Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 15:120 to remove an outdated reference to the department Income Tax Forms Manual, 103 KAR 3:040, which was repealed in 2017; and updates statutory references to conform with HB 487 of the 2018 GA.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update 103 KAR 15:120 to remove incorrect and/or outdated information which may deem this regulation deficient and cause confusion for taxpayers seeking guidance for this credit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.4246 requires the department to promulgate a regulation to establish the manner in which a producer shall notify the department of the credit claimed for gallons of cellulosic ethanol produced in this state. This administrative regulation provides the most recent and up to date information needed to comply with KRS 141.4246.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the reporting guidelines necessary to comply with the requirements of the statute.

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c). (d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Producers of cellulosic ethanol in Kentucky will be affected by the information contained in this regulation for reporting.

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

(a) List 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. This amendment only removes outdated information and updates statutory references to conform to HB 487.

(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 new or additional cost involved.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This change will not impact the entities identified in question (3).

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

(a) Initially: There are no new costs associated with this regulation.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering was not applied to this regulation as all producers of cellulosic ethanol in Kentucky are required to follow the same process to report gallons produced in the state to the department.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue, will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1) and 141.4246.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for state and local government agencies.

(a) How much 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:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 15:140. Biodiesel tax credit.

RELATES TO: KRS 141.010, 141.020, 141.030, 141.040, 141.0401, 141.422, 141.423, 141.424

STATUTORY AUTHORITY: KRS 131.130, 141.424, 141.425

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.423 establishes a nonrefundable tax credit for biodiesel producers, biodiesel blenders, and renewable diesel producers. KRS 141.425 authorizes the department to promulgate administrative regulations necessary to administer the biodiesel tax credit. KRS 141.424 requires the department to promulgate an administrative regulation to establish the manner in which a pass-through entity shall electronically notify the department of who may claim the approved tax credit.

Section 1. Definitions. (1) "Applicant" means a biodiesel producer, biodiesel blender, or renewable diesel producer that files a tax credit claim as provided by KRS 141.423.

(2) "Application" or "Schedule BIO" means the Schedule BIO, Application and Credit Certificate of Income Tax/LLET Credit Cellulosic Ethanol (Revenue Form 41A720BIO) [Incorporated by reference in 103-KAR-3:040;] that is used to make a tax credit claim with the department for gallons of biodiesel produced in this state, gallons of biodiesel used in blended biodiesel produced in this state, or gallons of renewable diesel produced in this state as provided by KRS 141.423(4).

(3) "ASTM" means the American Society for Testing and Materials.

(4) "Biodiesel" is defined by KRS 141.422(4).

(5) "Biodiesel blender" means an entity that blends biodiesel with petroleum diesel as provided by KRS 141.422(8).

(6) "Biodiesel producer" is defined by KRS 141.422(5).

(7) "Blended biodiesel" is defined by KRS 141.422(8).

(8) "Corporation" is defined by KRS 141.010(4)[141.010(24)].

(9) "Department" is defined by KRS 141.010(5)[141.010(2)].

(10) "Identification number" means the:

(a) Social Security number for individuals;

(b) Federal Employer Identification Number for general partnerships, estates, and trusts; and

(c) Kentucky corporation income tax and limited liability entity tax account number for corporations and limited liability pass-through entities.

(11) "Individual" is defined by KRS 141.010(13)[141.010(7)].

(12) "Limited liability pass-through entity" is defined by KRS 141.010(15) [141.010(28)].

(13) "Pass-through entity" is defined by KRS 141.010(21) [141.010(26)].

(14) "Renewable diesel" is defined by KRS 141.422(12).

(15) "Renewable diesel producer" is defined by KRS 141.422(13).

Section 2. Application for Tax Credit. An applicant shall mail to the department a completed application on or before January 15 for the preceding calendar year.

Section 3. Proof of ASTM standard specification. (1) A biodiesel producer or biodiesel blender shall provide proof the biodiesel gallons reported on the application meet ASTM standard specification D6751 for biodiesel fuel (B100) blend stock distillate fuels.

(2) A renewable diesel producer shall provide proof that the renewable diesel gallons reported on the application meet ASTM standard specification D396 for fuel oils intended for use in various types of fuel-oil-burning equipment, D975 for diesel fuel oils suitable for various types of diesel fuel engines, or D1655 for aviation fuels.

(3) Proof submitted by a biodiesel producer or a renewable diesel producer shall be in the form of documentation of laboratory results that certify that the biodiesel or renewable diesel reported on the Schedule BIO meets the ASTM standard specification.

(4) A biodiesel blender shall obtain from the biodiesel producer a copy of laboratory results that certify that the biodiesel reported on the Schedule BIO meets the ASTM standard specification.

(5) An independent ASTM certified laboratory shall be used to generate the laboratory results that are required by this section.

(6) Failure to submit documented laboratory results that certify that the biodiesel, renewable diesel, or the biodiesel used in the blended biodiesel meets the ASTM standard specification with the Schedule BIO shall result in the department disallowing the credit.

(7)(a) A biodiesel producer, biodiesel blender, or renewable diesel producer shall have the biodiesel, blended biodiesel, or renewable diesel tested as provided by subsection (4) of this section on July 1 and December 31 of each calendar year to determine if the biodiesel, blended biodiesel, or renewable diesel meets the ASTM standard specification.

(b) A copy of the laboratory results for July 1 and December 31 of each calendar year shall be attached to the Schedule BIO submitted to the department as provided by Section 2 of this

administrative regulation.

(c) Failure to provide proof of meeting the ASTM standard specification on July 1 and December 31 of each calendar year with the application shall result in the denial of the credit claimed for gallons of biodiesel or renewable diesel back to the previous testing date of July 1 or December 31.

(d) If proof is timely submitted and the proof certifies that the biodiesel or renewable diesel does not meet the ASTM standard specification, then all credit claimed for gallons of biodiesel, renewable diesel, or biodiesel used in the blended biodiesel back to the previous testing date of July 1 or December 31 shall be disallowed.

Section 4. Filing Requirements. (1) An applicant claiming the tax credit shall attach the credit certificate issued by the department to its tax return on which the tax credit is claimed.

(2) A partner, member, or shareholder claiming the tax credit shall attach a copy of Schedule K-1, Form 720S, Form number 41A720S(K-1), Form 765, Form number 41A765(K-1), or Form 765GP, Form number 42A765GP(K-1) [incorporated by reference in 103 KAR 3:040,] to the partner's, member's, or shareholder's tax return on which the credit is claimed.

Section 5. Electronic Filings for Pass-through Entities. (1) Each pass-through entity claiming the biodiesel tax credit shall file a report with the department by electronic mail at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov.

(2) The electronic mail shall contain a separate attachment in plain format text or plain ASCII format that includes each partner's, member's or shareholder's:

- (a) Name;
- (b) Address;
- (c) Telephone number;
- (d) Identification number; and
- (e) Distributive share of the tax credit.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: August 14, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2018 at 10:00 a.m. in Room 8A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation removes an outdated reference to the department Income Tax Forms Manual, 103 KAR 3:040, which was repealed in 2017; and updates statutory references to conform to recent changes in HB 487 of the 2018 GA.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update 103 KAR 15:140 to remove incorrect and/or outdated information which may deem

this regulation deficient under KRS Chapter 13A without removal.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.425 requires the department to promulgate a regulation to establish the manner in which a biodiesel producer or blender shall notify the department of the credit claimed for gallons of biodiesel fuel produced in this state. This administrative regulation provides the most recent up to date information needed to comply with KRS 141.425.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the reporting guidelines necessary to comply with the requirements of the statute.

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c). (d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Producers and blenders of biodiesel fuel in Kentucky will benefit from the updated information contained in this regulation for reporting.

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

(a) List 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. This amendment only removes an outdated reference to a repealed regulation and updates statutory references.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with these updates.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have the most recent and up to date information they may need.

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

(a) Initially: There are no new costs associated with this amendment. Currently department funding will cover any expenses associated with implementing this administrative regulation.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering was not applied to this regulation as all producers of biodiesel fuel in Kentucky are required to follow the same process to report gallons produced in the state to the department.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue, will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 141.424 and 141.425.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for state and local government agencies.

(a) How much 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:

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)**

103 KAR 16:352. Corporation income taxes policies and circulars.

RELATES TO: KRS 131.130(1), 141.010,[141.012,] 141.040, 141.120, 141.160, 141.170, 141.200, 141.206, 141.210,[141.206] 141.990

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. The Department of Revenue has many policies and circulars, a number of which predate the enactment of KRS Chapter 13A, that conflict with current tax laws. This administrative regulation rescinds corporation income taxes policies and circulars.

Section 1. The following corporation income taxes policies and circulars of the Department of Revenue are rescinded and shall be null, void, and unenforceable:

(1) Revenue Policy 41P010 - Cooperatives. This policy is being rescinded because it conflicts with KRS 141.160 and 141.170.

(2) Revenue Policy 41P020 - Short period return or change in tax period resulting from change in ownership. This policy is being rescinded because it restates KRS 141.140(1).

(3) Revenue Policy 41P030 - Six-year statute of limitations. This policy is being rescinded because it restates KRS 141.210(2).

(4) Revenue Policy 41P040 - Declaration of estimated tax penalty. This policy is being rescinded because it restates KRS 141.990(3).

(5) Revenue Policy 41P070 - Income and deductions. This policy is being rescinded because it is obsolete.

(6) Revenue Policy 41P071 - Claim of right. This policy is being rescinded because it was incorporated into 103 KAR 16:320.

(7) Revenue Policy 41P080 - Coal royalty income. This policy is being rescinded because it restates KRS 141.010(12)(d).

(8) Revenue Policy 41P100 - Deductibility of state taxes. This policy is being rescinded because it is obsolete due to the repeal of the New York Subsidiary Capital tax. 103 KAR 16:360, Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income, provides guidance on the deductibility

of the New York Franchise Tax on Business Corporations which includes subsidiary capital in the tax base.

(9) Revenue Policy 41P110 - Deductibility of state taxes. This policy is being rescinded because guidance on the deductibility of the Massachusetts corporation excise tax is provided in 103 KAR 16:360, Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income.

(10) Revenue Policy 41P120 - Deductibility of state taxes. This policy is being rescinded because the Indiana gross receipts tax was repealed effective January 1, 2003, making this policy obsolete.

(11) Revenue Policy 41P121 - Deductibility of state taxes. This policy is being rescinded because guidance on the deductibility of the West Virginia Business and Occupations Tax is provided in 103 KAR 16:360, Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income.

(12) Revenue Policy 41P125 - Windfall profit tax. This policy is being rescinded because it restates KRS 141.010(13) and the provision of the Internal Revenue Code referred to in the policy has been repealed.

(13) Revenue Policy 41P130 - Taxation of income from activities on the outer continental shelf. This policy is being rescinded because it restates KRS 141.010(12), (13), (14), and 141.120 and the holding of a court decision.

(14) Revenue Policy 41P140 - Subpart F Income. This policy is being rescinded because it conflicts with KRS 141.010(12).

(15) Revenue Policy 41P150 - Expenses Related to Nonbusiness or Nontaxable Income. This policy is being rescinded because it was incorporated into 103 KAR 16:060.

(16) Revenue Policy 41P160 - First-Year Net Operating Loss. This policy is being rescinded because it restates KRS 141.012, which was repealed effective for taxable years beginning on or after January 1, 2006.

(17) Revenue Policy 41P170 - Sales Factor. This policy is being rescinded because it is obsolete. Guidance on the sales factor is provided by 103 KAR 16:270.

(18) Revenue Policy 41P180 - Property Factor. This policy is being rescinded because it is obsolete. Guidance on the property factor is provided by 103 KAR 16:290.

(19) Revenue Policy 41P190 - Net Rental Income. This policy is being rescinded because guidance on the treatment of net rental income in the property factor is provided by 103 KAR 16:290, Apportionment; Property Factor.

(20) Revenue Policy 41P200 - Partnership and Joint Venture Income Classified Business Income. This policy is being rescinded because it conflicts with KRS 141.206.

(21) Revenue Policy 41P210 - Business Apportionment Factor for Corporations Reporting Income on Completed Contract Method. This policy is being rescinded because it was incorporated into 103 KAR 16:340.

(22) Revenue Policy 41P220 - Separate Accounting. This policy is being rescinded because statements in the policy conflict with KRS 141.200(15). Parts of the policy not in conflict with KRS 141.200(15) were incorporated into 103 KAR 16:330.

(23) Revenue Policy 41P230 - Financial Organizations. This policy is being rescinded because it was incorporated into 103 KAR 16:150.

(24) Revenue Policy 41P240 - Homeowners Associations. This policy is being rescinded because it restates KRS 141.010 and 141.040.

(25) Revenue Policy 41P250 - Taxation of Foreign Sales Corporations and Domestic International Sales Corporations. This policy is being rescinded because it is obsolete. Updated guidance is provided in 103 KAR 16:370, Corporation Income Tax Treatment of Foreign Sales Corporations and Domestic International Sales Corporations.

(26) Revenue Policy 41P260 - Corporate Distributions, Liquidations and Reorganizations. This policy is being rescinded because it restates KRS 141.010(10).

(27) Revenue Circular 41C020 - Safe harbor or finance leases. This circular is being rescinded because it is obsolete. Updated guidance is provided in 103 KAR 16:380, Safe Harbor or Finance Leases.

(28) Revenue Policy 41P150 – Expenses Related to Nonbusiness or Nontaxable Income. This policy is being rescinded because it is obsolete. Updated guidance is provided in 103 KAR 16:060.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: August 14, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2018 at 10:00 a.m. in Room 8A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation updates 103 KAR 16:352 to remove an outdated department policy that is no longer relevant, now provided in a regulatory format, or are no longer in use.

(b) The necessity of this administrative regulation: This amendment is necessary to conform to revisions made to authorizing statutes and update outdated language so taxpayers have the most up to date information possible.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It removes outdated references and guidance that are now being provided in other statutory or regulatory language, which supersedes an internal policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation adds Revenue Policy 41P150 the list of officially rescinded department policies. This policy is now obsolete or has been replaced with regulatory or statutory guidance that supersedes the guidance in these policies.

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

(a) How the amendment will change this existing administrative regulation: See (1)(d).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: By removing outdated information from circulation, it keeps our guidance more current. Conforming to statute that requires the department to administer Kentucky tax laws in an efficient manner.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None. This circular has been rescinded

for many years.

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

(a) List 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 actions needed.

(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 any entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will no longer look to outdated information for guidance.

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

(a) Initially: No additional costs are expected. Current staff and funding will be utilized.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental budgetary 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 needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established or increased with this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied. All persons, businesses, entities, etc. affected by these policies will be treated the same when complying with these changes.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1) and 141.010(26).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no estimated effect on the expenses or revenues of any state or local agency from this administrative regulation. The amendment to this regulation only adds two circulars to the official list that were not added earlier.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 17:100. Division of income between married individuals filing separate tax returns.

RELATES TO: KRS 141.020, 141.300, 141.305

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation establishes the requirements for determining how income derived from joint ownership of property and self-employment is divided among married individuals filing separate tax returns.

Section 1. Income derived from the joint ownership of real property, tangible personal property, or intangible property shall be divided in accordance with the actual ownership of the property [equally] by married individuals filing separate tax returns. If actual ownership is not known or specified, income shall be divided equally. Income derived from property not held jointly shall be attributable to its individual owner.

Section 2. Income derived from self-employment by a husband and wife filing separate tax returns shall be divided according to the federal Small Business and Work Opportunity Tax Act of 2007 (Publication L. 110-28) and other guidance issued by the U.S. Department of the Treasury and the Internal Revenue Service. [(4) Income derived from self-employment by a husband and wife filing separate tax returns shall be divided according to the percentage amount of each spouse's contribution of services and capital, unless self-employment taxes have been paid by each spouse separately, or a partnership agreement provides evidence of separate income.

(2) The following shall serve as an example:

Capital Contributions			Services Contributions	
Husband	30%	+	75%	= 105/2 = 53%
Wife	70%	+	25%	= 95/2 = 47%

Section 3. ~~If a joint declaration of estimated tax is made by a husband and wife, but a joint return is not made for the same taxable year, the joint estimated tax payments for the taxable year shall be divided in the same manner as provided under Internal Revenue Code Section 6015, 26 U.S.C. 6015.]~~

DANIEL BORK, Commissioner

APPROVED BY AGENCY: August 14, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2018 at 10:00 a.m. in Room 8A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: Amends 103 KAR 17:100 to remove outdated information and provide a citation to the federal code used by the department when calculating self-employment income divided among married individuals filing separate tax returns. Previously individuals had to pay income tax based on a 50/50 equal share, even if one individual did not own 50% of the business, resulting in an unequitable tax liability on occasion. This amendment will ensure taxpayers are required to report and pay only the true and fair portion of the tax they owe.

(b) The necessity of this administrative regulation: This regulation is necessary to provide taxpayers with the most recent and updated guidance on the reporting of self-employment income by spouses who file separate returns and may report different percentages of income.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes require that the department provide guidance to the public regarding the taxation of self-employment income by married individuals filing separately.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will reduce errors by taxpayers and reduce compliance efforts and time to calculate the correct tax owed to the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes outdated language that was in conflict with the federal treatment of the tax and with current department policies and processes.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any individual(s) with self-employment income that files a separate income tax return from their spouse.

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

(a) List 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 actions, other than reporting the actual way their income is divided by actual ownership percentage instead of 50/50 as before.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By following the new guidelines, filers will potentially pay less tax than they were previously required to pay based on the 50/50 split method instead of actual ownership percentage.

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

(a) Initially: There will be no additional expenses incurred outside the current department funding and staff to implement this administrative regulation.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation

VOLUME 45, NUMBER 3 – SEPTEMBER 1, 2018

establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since all individuals required to file a income tax return under this regulation will follow the same requirements and be 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? Only the Finance and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(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. There will be no effect on expenditures and revenues for the department or any other government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenue will be generated by this amendment. This amendment is merely updating the method that married taxpayers filing separate returns use to report self-employment income tax owed to the Commonwealth. The actual amount of tax owed per household may increase or decrease very little based on this new method.

(b) How 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:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 17:130. Individual income tax - military personnel - nonresidents.

RELATES TO: KRS 141.020 and 50 U.S.C. App. 571

STATUTORY AUTHORITY: KRS 131.130, 141.020, 141.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. 50 U.S.C. App. 571, known as the Servicemembers Civil Relief Act (Pub. L. 108 - 189), prohibits a state from imposing a tax on income or compensation from military service on servicemembers who are temporarily located in the state because of military assignments and prohibits a state from using the military income to increase any tax due on income from nonmilitary sources. A servicemember shall file state income tax returns with his or her state of legal domicile, which usually is the state of residence prior to entering military service. This administrative regulation establishes the income tax filing requirements for servicemembers of the U.S. government, including residents of other states that are serving in the military and stationed in Kentucky.

Section 1. Definition. "Servicemember" means servicemember as defined in 50 U.S.C. App 511(1).

Section 2. A Kentucky resident servicemember shall file and report all income earned or received under the provisions of 103 KAR 17:060.

Section 3. A nonresident servicemember who is temporarily located in Kentucky because of military assignment shall not be required to report income or compensation from service in the military. Income from nonmilitary Kentucky sources shall be subject to Kentucky income tax and shall be reported under the provisions of 103 KAR 17:060.

Section 4. A civilian spouse of a nonresident servicemember shall be taxed in Kentucky in accordance with the provisions of 50 U.S.C. App. 571, also known as the Military Spouses Residency Relief Act or "MSRRA" (Pub.L. No. 111-97)[who lives or works in Kentucky shall determine filing requirements based upon the provisions of 103 KAR 17:060].

Section 5. A nonresident civilian who marries a Kentucky resident servicemember who is living outside of Kentucky shall not be considered a resident of Kentucky merely because the servicemember is considered a resident for tax purposes.

Section 6. A resident servicemember may change his or her state of domicile from Kentucky to another state in which he or she resides. Notice of intent to change shall be filed with the personnel department of the appropriate military service.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: August 14, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2018 at 10:00 a.m. in Room 8A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation only removes an inappropriate reference to 103 KAR 17:060 as it applies to a civilian spouse of a nonresident servicemember stationed in Kentucky in Section 4 of this regulation, and replaces it with the correct reference to 50 U.S.C. App. 571 as the guidelines for civilian spouses to use when determining their taxable income in Kentucky.

b) The necessity of this administrative regulation: This administrative regulation is necessary to update 103 KAR 17:130 to remove incorrect and/or outdated information to provide taxpayers with the most recent and up to date information from the department.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: The amendment to Section 4 of this regulation removes any ambiguity to the taxpayer regarding the application of federal law to the taxation of nonresident spouses of servicemembers. Before this amendment, the regulation referenced the taxability of servicemember spouses under the provisions of 103 KAR 17:060. However, federal law supersedes Kentucky statutes and regulations in this circumstance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the reporting guidelines necessary to comply with the requirements of the statute.

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c). (d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Resident and non-resident military personnel and their spouses could be affected by the information contained herein.

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

(a) List 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. This amendment only adds a reference to 50 U.S.C. App. 571 as guidance for military spouses when filing taxes.

(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 new or additional cost involved.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be allowed certain exemptions from state income taxes for spouses of nonresident servicemembers in accordance with 50 U.S.C. App. 571.

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

(a) Initially: There are no new costs associated with this regulation. Current department staff and resources will be used to implement this administrative regulation.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering was not applied to this regulation as all military residents and their spouses will be treated exactly the same when filing their income taxes.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue, will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(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. There will be no effect on expenditures and revenues for state and local government agencies.

(a) How much 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:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 17:140. Individual income tax - reciprocity - nonresidents.

RELATES TO: KRS 141.070

STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation establishes reciprocity requirements for Kentucky residents, and residents of states with which Kentucky has negotiated reciprocal agreements under the provisions of 141.070.

Section 1. In accordance with KRS 141.070, reciprocal agreements with other states exempting specific income from tax shall apply only to the specific types of income listed. Income from other sources may require the filing of a nonresident income tax return.

Section 2. The agreements shall provide the same exemption for the listed income from withholding tax.

Section 3. A list of states that Kentucky has negotiated reciprocal agreements and the type of income exemption available are listed in this section:

(1) Illinois.

(a) Reciprocity with Illinois shall be in accordance with the reciprocity agreement titled "Agreement between Director of Revenue for the State of Illinois and the Commissioner of Revenue of the Commonwealth of Kentucky".

(b) Residents of Illinois shall be exempt from Kentucky income tax on wages and salaries.

(2) Indiana. Residents of Indiana shall be exempt from Kentucky income tax on wages, salaries, and commissions.

(3) Michigan.

(a) Reciprocity with Michigan shall be in accordance with the reciprocity agreement titled "Reciprocal Income Tax Agreement between Commonwealth of Kentucky and State of Michigan".

(b) Residents of Michigan shall be exempt from tax on income earned from personal services in Kentucky. Personal services shall include salaries and wages.

(4) Ohio.

(a) Except as provided in paragraphs (b) and (c) of this subsection, reciprocity with Ohio shall be in accordance with the reciprocity agreement titled "Reciprocal Income Tax Agreement between Commonwealth of Kentucky and State of Ohio".

(b) Except as provided in paragraph (c) of this subsection, residents of Ohio shall be exempt from Kentucky income tax on salaries and wages.

(c) Effective for calendar years beginning on or after January 1, 2007, the reciprocity agreement with Ohio shall not apply with respect to wages which an S corporation pays to a shareholder-employee if the shareholder-employee is a "twenty (20) percent or greater" direct or indirect equity investor in the S corporation.

(5) Virginia.

(a) Reciprocity with Virginia shall be in accordance with the reciprocity agreement titled "Reciprocal Income Tax Agreement between Commonwealth of Kentucky and Commonwealth of Virginia".

(b) Virginia residents commuting daily to work in Kentucky shall be exempt from income tax on salaries and wages.

(6) West Virginia.

(a) Reciprocity with West Virginia shall be in accordance with the reciprocity agreement titled "Reciprocal Income Tax Agreement between State of West Virginia and Commonwealth of Kentucky".

(b) Residents of West Virginia shall be exempt from Kentucky income tax on salaries and wages.

(7) Wisconsin.

(a) Reciprocity with Wisconsin shall be in accordance with the reciprocity agreement titled "Reciprocal Income Tax Agreement between Commonwealth of Kentucky and State of Wisconsin".

(b) Residents of Wisconsin shall be exempt from tax on income earned from personal services in Kentucky. Personal services shall include salaries and wages.

Section 4. For a person domiciled in one (1) of the states listed in Section 3 of this administrative regulation, but who maintains a place of abode and spends more than 183 days in Kentucky during the year, reciprocity shall not apply and that person shall be considered a Kentucky resident for tax purposes.

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

(a) Agreement between Director of Revenue for the State of Illinois and the Commissioner of Revenue of the Commonwealth of Kentucky, January 28, 1971;

(b) Reciprocal Income Tax Agreement between State of Indiana and Commonwealth of Kentucky, January 1, 1965.

(c) Reciprocal Income Tax Agreement between Commonwealth of Kentucky and State of Michigan, February 16, 1968;

(d)[(e)] Reciprocal Income Tax Agreement between Commonwealth of Kentucky and State of Ohio, January 7, 1972;

(e)[(d)] Reciprocal Income Tax Agreement between Commonwealth of Kentucky and Commonwealth of Virginia, September 2, 1964;

(f)[(e)] Reciprocal Income Tax Agreement between State of West Virginia and Commonwealth of Kentucky, April 9, 1965; and

(g) Reciprocal Income Tax Agreement between Commonwealth of Kentucky and State of Wisconsin, June 21, 1965.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601[40602], Monday through Friday, 8 a.m. to 5 p.m.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: August 14, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2018 at 10:00 a.m. in Room 8A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of

the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 17:140 to add references to the Indiana and Wisconsin reciprocity agreements with Kentucky for non-resident income tax filers. These agreements have been in place since 1965 and may have been inadvertently overlooked when this regulation was originally drafted.

(b) The necessity of this administrative regulation: To provide the most accurate and up to date information for Kentucky taxpayers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By ensuring that statutory guidelines are incorporated into affected regulations as mandated, and provided as guidance for those affected by the statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Correcting outdated or incorrect language in regulations help to decrease taxpayer assistance efforts by the department and confusion for taxpayers.

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Anyone wishing to know if all or part of their income is taxable in Kentucky under a reciprocity agreement with their current state of residence.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no required actions for this correction.

(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 required with this correction.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will likely be a minimal benefit of impact for this correction. These agreements have been in place since 1965, so it is likely that those using this guidance are already aware of this.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no additional cost to the department by filing this update.

(a) Initially: No additional costs outside current department funding will be used.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental budgetary 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 needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established with this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied. All nonresident filers living in a reciprocity state will be treated equally as per the agreements with their current state of residency.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and 141.050.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by the correction made to this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 18:180. Kentucky economic development acts wage assessment [Industrial Revitalization Act job revitalization assessment fees].

RELATES TO: KRS 141.347, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.22-010, 154.22-070, 154.23-010, 154.23-055, 154.24-010, 154.24-110, 154.25-010, 154.25-040, 154.26-010, 154.26-100, 154.28-010, 154.28-110, 154.32-010, 154.32-090[141.403, 154.26-010, 154.26-100]

STATUTORY AUTHORITY: KRS 131.130(1), 141.347(9), 141.400(9), 141.401(9), 141.402(8), 141.403(9), 141.407(9), 141.415(9)[141.403(9)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.347(9), 141.400(9), 141.401(9), 141.402(8), 141.403(9), 141.407(9), and 141.415(9) authorize[141.403(9) authorizes] the department to promulgate administrative

regulations to require the filing of forms necessary to comply with the Kentucky economic development acts contained in KRS 154.22, 154.23, 154.24, 154.25, 154.26, 154.28, and 154.32[KRS 154.26-010 to 154.26-100, the Kentucky Industrial Revitalization Act], and the allowable income tax credit that a company may retain under those statutes. This administrative regulation establishes the filing requirements for the wage assessments[assessment] authorized by the subchapters of KRS 154 referenced above[KRS 154.26-100].

Section 1. Definitions. (1) "Annual Report" means Form 42A900, Wage Assessment Annual Report for Economic Development Credits, as prescribed by the department at <https://revenue.ky.gov> [Number 42A814, which is incorporated by reference in 103 KAR 1:050].

(2) ["Approved company" is defined in KRS 154.26-010(4).

(3) "Assessment" is defined in KRS 154.26-010(6).

(4) "Authority" is defined in KRS 154.26-010(7).

(5) "Department" means the Kentucky Department of Revenue.

[(6) "Economic development project" or "project" is defined in KRS 154.26-010(9).]

(3) "Gross wages" means any payment an employer gives an employee for services performed before any deductions permitted by federal or Kentucky law to yield "Taxable wages."

(4) "KBI" means the Kentucky Business Investment Program Act, which is codified as KRS 154.32-010 to 154.32-100 and referenced in KRS 141.415.

(5) "KEOZ" means the Kentucky Economic Opportunity Zone Act, which is codified as KRS 154.23-005 to 154.23-080 and referenced in KRS 141.401.

(6) "KIDA" means the Kentucky Industrial Development Act, which is codified as KRS 154.28-010 to 154.28-140 and referenced in KRS 141.400.

(7) "KIRA" means the Kentucky Industrial Revitalization Act, which is codified as KRS 154.26-010 to 154.26-125 and referenced in KRS 141.403.

(8) "KJDA" means the Kentucky Jobs Development Act, which is codified as KRS 154.24-010 to 154.24-160 and referenced in KRS 141.407.

(9) "KJRA" means the Kentucky Jobs Retention Act, which is codified as KRS 154.25-010 to 154.25-050 and referenced in KRS 141.402.

(10) "KREDA" means the Kentucky Rural Economic Development Act, which is codified as KRS 154.22-010 to 154.22-102 and referenced in KRS 141.347.

(11) "Taxable wages" means any payment an employer gives an employee for services performed as reported in box 1 of Internal Revenue Service Form W-2, Wage and Tax Statement[(7) "Gross wages subject to income tax" mean any payment an employer gives an employee for services performed as reported in box 1 of Internal Revenue Service Form W-2, Wage and Tax Statement.

(8) "KIRA" means the Kentucky Industrial Revitalization Act, which is codified as KRS 154.26-010 to 154.26-100].

Section 2. Annual Report for Assessment. (1) An approved company with a Kentucky economic development act project authorized under the statutes listed in Section 1 of this administrative regulation[KIRA project] shall file an annual wage assessment report with the department.

(2) The[An] annual report[for the KIRA assessment] shall be faxed or mailed[to the department] on or before March 15 of each calendar year to the department, to report wage assessment credits[assessments] claimed for the preceding calendar year.

(3) Information required on the annual report shall include:

(a) Company[Business] name;

(b) Project[KIRA] number assigned by the Cabinet for Economic Development;

(c) Kentucky withholding account number;

(d) Activation date of project;

(e) Total annual gross or taxable wages for all employees as described below:

1. Gross wages shall be used for the KEOZ, KIDA, KIRA, KJRA and KREDA credits; and

2. Taxable wages shall be used for the KBI and KJDA credits[gross wages subject to income tax for all KIRA employees];

(f) Total annual wage assessment credit claimed[Kentucky KIRA assessments claimed];

(g) Total annual local wage assessment credit claimed[KIRA wage assessments claimed]; and

(h) Total annual Kentucky tax withheld and reported for all employees.

(4) Information required to be submitted as an attachment to the annual report in a spreadsheet format if not included on Form 42A900 shall include:

(a) Each eligible employee's name;

(b) Each eligible employee's Social Security number or requested part thereof;

(c) Each eligible employee's state of residence;

(d) Each eligible employee's hire date;

e) Annual gross or taxable wages per eligible employee as described below:

1. Gross wages shall be used for the KEOZ, KIDA, KIRA, KJRA and KREDA credits; and

2. Taxable wages shall be used for the KBI and KJDA credits[Annual gross wages subject to income tax per eligible employee];

(e) Annual Kentucky income tax withheld per eligible employee; and

(f) Annual Kentucky wage assessment credit[KIRA wage assessment] claimed per eligible employee.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: August 14, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2018 at 10:00 a.m. in Room 8A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: Amends 103 KAR 18:180 to consolidate the reporting requirements for Kentucky economic development credits authorized under various subchapters of KRS 154 that are now reported on Form 42A900 to the Department of Revenue.

(b) The necessity of this administrative regulation: This regulation is necessary to provide taxpayers with the most recent and up to date information on filing an annual report of wage assessment with the department. Previously, annual reports for wage assessment credits were reported on multiple forms until they were consolidated into one form for all credits in October of 2017. Updating this regulation will provide businesses with the correct information and form number required to file an annual report.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes require that the department provide guidance to the public for annual reporting of wage assessments claimed for certain economic development credits. This regulation provides the required information.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will streamline the reporting process, reduce confusion for businesses and staff, and ensure reporting to the department on the correct form.

(2) If 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 to this regulation streamlines the filing process to one form, and removes the need for multiple regulations to provide guidance on the annual reporting of wage assessment credits for certain economic development credits authorized under KRS 154 as listed herein.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any company with an approved economic development project that must file an annual wage assessment report with the department.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: These entities will benefit from the updated information provided and from having it available in one location instead of many.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Nothing other than using the updated form 42A900.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By following the appropriate steps and using the correct form to file their annual report, the entities will have a faster and easier process for complying with the department.

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

(a) Initially: There will be no additional expenses outside the current department budget to implement this administrative regulation.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since all companies required to file an annual report under this regulation will follow the same requirements and be 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? Only the Finance

and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(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. There will be no effect on expenditures and revenues for the department or any other government agency. The new form listed in this amendment has been in use since October of 2017, so any initial savings as a result of a streamlined reporting process has already been realized.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenue will be generated for any agency 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? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Pharmacy
(Amendment)**

201 KAR 2:370. Pharmacy services in long-term care facility (LTCF).

RELATES TO: KRS 315.010, 315.020, 315.030, 315.121

STATUTORY AUTHORITY: KRS 315.002, 315.005, 315.191

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the Kentucky Board of Pharmacy to establish requirements to regulate and control pharmacies. KRS 315.002 and 315.005 require standards of practice in all settings where drugs are handled and requires the board to ensure safety of all drug products provided to the citizens of Kentucky. This administrative regulation establishes requirements for pharmacy services in long-term care facilities.

Section 1. Definitions. (1) "Long-term care facility" ("LTCF") means:

(a) An intermediate care facility;

(b) A skilled nursing facility;

(c) An intermediate care facility for intellectually and developmentally disabled; or

(d) A nursing home.

(2) "Emergency Drug" means those drugs that are required to meet the immediate therapeutic needs of patients that are not available from any other authorized source in sufficient time to prevent risk of harm to patients because of delay.

(3) "Emergency Medication Kit" ("EMK") means an onsite manual or automated mechanism for delivering emergency medications.

(4) "Long Term Care Facility Drug Stock" ("LTCF drug stock") means a dose or doses generated from a prescription order sufficient until the next pharmacy business day or IV Fluids that are used for replenishment, which contain no additive drugs, or irrigation solutions.

(5) "Automated Dispensing System" ("ADS") means a mechanical system that performs operations or activities, other

than compounding or administration, relative to the storage, packaging, counting, labeling, and dispensing of medications, and which collects, controls, and maintains all transaction information.

Section 2. General Requirements. (1) The pharmacist-in-charge of the dispensing pharmacy shall be responsible for policies and procedures governing the procurement, distribution, storage, security, and control of all drugs that are provided to a LTCF, and shall review all policies and procedures at least once every twelve (12) months.

(2) The pharmacist in charge of a dispensing pharmacy shall:

(a) Provide LTCF drug stock or an EMK only to facilities that authorize entry by a board agent for the purposes of inspection or investigation of the LTCF drug stock or EMK at the facility;

(b) Written authorization for entry shall be maintained by the PIC of the dispensing pharmacy; and

(c) Written authorization for entry shall be immediately provided to the board by the PIC upon request of a board agent.

(d) Maintain a current list of all locations where LTCF drug stock or an EMK are stored, which shall be made immediately available upon request by a board agent.

(3) Dispensing.

(a) Controlled substance medications shall be dispensed only by prescription drug order.

(b) Non-controlled substance medications shall be dispensed only on a medical order or prescription drug order of a licensed practitioner.

(c) A medical order entered on the medical record of a patient at a LTCF shall contain:

1. Name of patient;

2. Date of issuance;

3. Name, strength, and dosage form of drug prescribed;

4. Directions for use; and

5. Practitioner's name.

(d) Each licensee shall comply with United States Pharmacopeia (USP) Chapter 7 regarding labeling and packaging.

(4) The services of a pharmacist shall be readily available at all times.

(5) Emergency Drugs.

(a) Emergency drugs for controlled substances in a LTCF EMK shall be stocked pursuant to 902 KAR 55:070.

(b) Emergency drugs for non-controlled substances in an EMK shall not exceed six (6) individual doses of thirty (30) different non-controlled substances, per LTCF.

(c) The pharmacist-in-charge may request a waiver from the board to increase the number of doses or numbers of non-controlled substances in the EMK based on evidence of use.

(d) An EMK shall be assessed for outdated, damaged or adulterated drugs, and stock adequacy by:

1. A pharmacist or any lawful person as stated in 902 KAR 55:070 on a monthly basis for controlled substances.

2. A pharmacist, a PIC authorized pharmacist intern, or certified pharmacy technician on a monthly basis for non-controlled substances.

(e) EMK drugs shall be supplied in unit dose packaging unless precluded by manufacturer packaging.

(f) An EMK shall be conspicuously labeled.

(g) An EMK drug shall be accessed only upon a lawful prescription order.

(h) All prescription orders shall be reviewed by a pharmacist within one (1) pharmacy business day.

(6) Initial Dose of LTCF drug stock in a LTCF.

(a) LTCF drug stock of drugs shall not exceed fifteen (15) individual doses each of 150 non-controlled substances.

(b) The pharmacist-in-charge may request from the board a waiver to increase the number of non-controlled substance items to be placed in LTCF drug stock based upon evidence of use.

(c) The pharmacist-in-charge shall be responsible for authenticating the need for LTCF drug stock.

(d) A pharmacist shall review the prescription drug or medical order before the release of medication.

(e) LTCF drug stock shall be inspected by pharmacy personnel at least monthly and documentation shall be maintained to

determine if:

1. Medications are outdated; and
2. Stocks are maintained at adequate levels.
- (f) Except for LTCF drug stock of intravenous fluids with no additive drugs or irrigation solutions, the LTCF drug stock shall be replenished by:
 1. A tamper-resistant secure container delivered from the pharmacy; or
 2. A tamper-resistant secure container for the stocking of an ADS; or
 3. A pharmacist, pharmacist intern, or a certified pharmacy technician who shall be under the immediate supervision of a pharmacist on-site, if there is no pharmacy on-site; or
 4. A pharmacist, pharmacist intern, or a certified pharmacy technician who shall be under the supervision of a pharmacist, if there is a pharmacy on-site.

Section 3. (1) The pharmacist-in-charge of an ADS in a LTCF shall be responsible for the following:

- (a) Initial validation of the ADS accuracy prior to use for distribution to patients assuring that the ADS:
 1. Is in good order and accurately dispenses the correct strength, dosage form, and quantity of drug prescribed; and
 2. Complies with the recordkeeping and security safeguards pursuant to Section 4 of this administrative regulation.
- (b) Assuring that non-controlled substance prescription drug orders and medical orders are reviewed and approved by a pharmacist prior to access, except for emergency drugs; and
- (c) Assuring that controlled substance prescription drug orders are reviewed and approved by a pharmacist prior to accessing the controlled substance emergency drugs.
- (d) Implementing an ongoing quality assurance program that monitors performance of the ADS, pursuant to the written policies and procedures.
- (e) Assigning, discontinuing or changing personnel access to the system.
- (f) Assuring appropriate access to medications.

Section 4. Standards. (1) A permit holder utilizing an ADS shall comply with the following provisions:

- (a) A pharmacy shall maintain the following documentation:
 1. Name and address of the LTCF where the system is being used;
 2. The ADS manufacturer's name, model, and serial number;
 3. An operations manual;
 4. Description of how the system is used;
 5. Written quality assurance procedures to determine continued appropriate use of the system; and
 6. Written policies and procedures for system operation, safety, security, accuracy, access and malfunction.
- (2) All written policies and procedures shall be maintained in the pharmacy responsible for the ADS.
- (3) An ADS shall maintain adequate security systems and procedures, pursuant to written policies and procedures, that prevent unauthorized access to patient records and maintain patient confidentiality.
- (4) ADS records and data shall meet the following requirements:
 - (a) All events involving the contents of the ADS shall be recorded electronically; and
 - (b) Records shall be maintained by the pharmacy for five (5) years, be available to the board, and shall include the following:
 1. The time and location of each system access;
 2. Identification of the individual accessing the system;
 3. Name of the patient for whom the drug was ordered;
 4. Name, strength, dosage form and quantity of drug accessed;
 5. Type of transaction;
 6. The prescription or transaction number if assigned; and
 7. The name of the prescriber.
 - (c) All events involving user database modifications shall be recorded electronically and maintained.
 - (d) A twenty-four (24)-hour emergency call center shall be available for any ADS malfunction.

(5) The stocking of all medications in an ADS shall be performed by a:

- (a) Pharmacist;
 - (b) Pharmacist intern; or
 - (c) Certified pharmacy technician who shall be under the general supervision of a pharmacist on-site.
 - (6) If the pharmacy utilizes a tamper resistant barcoding technology, microchip, or other equivalent tamper-resistant ADS, a pharmacist-verified drug can then be loaded by a pharmacist-in-charge trained pharmacist, pharmacist intern, or certified pharmacy technician.
 - (7) A record of medications stocked in an ADS shall be maintained for five (5) years and shall include identification of the person stocking the ADS and the pharmacist checking for accuracy.
 - (8) The pharmacist-in-charge shall provide a policy for accounting for medications removed from an ADS and subsequently wasted.
 - (9) The pharmacist-in-charge shall provide a policy for accounting for medications returned to an ADS. (Section 4. Definitions. (1) "Immediate supervision" is defined by KRS 315.010(11).
 - (2) "Long-term care facility" or "LTCF" means:
 - (a) An intermediate care facility;
 - (b) A skilled nursing facility;
 - (c) A hospital other than an acute care hospital licensed pursuant to 902 KAR 20:016;
 - (d) An intermediate care facility for intellectually and developmentally disabled; or
 - (e) A personal care facility.
 - (3) "Pharmacist-in-charge" means a pharmacist mandated as in-charge under KRS 315.020 and who meets the requirements of 201 KAR 2:205.
 - (4) "Supervision" is defined by KRS 315.010(25).
- Section 2. General Requirements. (1) The pharmacist-in-charge of the dispensing pharmacy shall be responsible for policy and procedures governing the procurement, distribution, and control of all drugs that are provided to a long-term care facility.
- (2) Dispensing.
 - (a) Medications shall be dispensed only on the medical order (for a non-controlled substance) or a prescription drug order of a licensed practitioner.
 - (b) A medical order (for a non-controlled substance) shall be considered a prescription drug order if it is entered on the medical record of a patient at an LTCF and if the medical order contains the:
 1. Name of patient;
 2. Date of issuance;
 3. Name, strength, and dosage form of drug prescribed;
 4. Directions for use;
 5. Quantity of length of therapy as defined in policy and procedures or as defined by medical order; and
 6. Practitioner's name.
 - (3) Emergency Drugs.
 - (a) The pharmacist-in-charge of the dispensing pharmacy shall establish policy and procedures for supplying emergency drugs.
 - (b) For expediency and efficiency, emergency drugs shall be limited in number to include controlled substances stocked pursuant to 902 KAR 55:070 that shall not exceed six (6) individual doses of six (6) different controlled substances and shall not exceed six (6) individual doses of thirty (30) different non-controlled substances, and whose prompt use and immediate availability are generally regarded as essential in the proper treatment of sudden and unforeseen patient emergencies.
 - (c) The pharmacist-in-charge may request from the board a waiver to increase the number of non-controlled substance items to be included in the emergency kit based upon evidence of use.
 - (d) Emergency drug stock shall be inspected by pharmacy personnel on at least a monthly basis and documentation maintained to determine if contents have become outdated and if the stocks are being maintained at adequate levels.
 - (e) Emergency drug stock shall not be stocked in a personal

care facility.

(4) Long Term Care Facility Pharmacy Stock.

(a) ~~Pharmacy stock of drugs in an LTCF shall not exceed fifteen (15) individual doses each of 150 non-controlled substances.~~

(b) ~~Pharmacy stock of drugs in a personal care facility shall not exceed five (5) individual doses each of thirty (30) non-controlled substances.~~

(c) ~~The pharmacist-in-charge may request from the board a waiver to increase the number of non-controlled substance items to be placed in pharmacy stock based upon evidence of use.~~

(d) ~~The pharmacist-in-charge shall be responsible for authenticating the need for pharmacy stock.~~

(e) ~~A pharmacist shall review the prescription drug or medical order before the release of medication.~~

(f) ~~Pharmacy stock shall be inspected by pharmacy personnel on at least a monthly basis and documentation maintained to determine if contents have become outdated and if stocks are being maintained at adequate levels.~~

(g) ~~Pharmacy stock shall be used for a patient for no more than the next business day.~~

(h) ~~Except for pharmacy stock of intravenous fluids with no additive drugs or irrigation solutions, the pharmacy stock shall be replenished by:~~

1. ~~A secure box delivered by the pharmacy; or~~

2. ~~A pharmacist or a pharmacist intern, or a certified pharmacy technician, who shall be under the immediate supervision of a pharmacist on-site, unless there is a pharmacy on-site, then the pharmacy stock shall be replenished by a pharmacist or a pharmacist intern or a certified pharmacy technician under the supervision of a pharmacist on-site.]~~

CATHY HANNA, R.Ph., President

APPROVED BY AGENCY: July 18, 2018

FILED WITH LRC: August 13, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 9 a.m. at the Transportation Cabinet Auditorium, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for pharmacy services in long-term care facilities.

(b) The necessity of this administrative regulation: KRS 315.002 and 315.005 authorize the board to regulate the practice of pharmacy. KRS 315.191 authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies. Long-term care facilities utilize the services of pharmacists and pharmacies. This regulation establishes requirements for pharmacy services in long-term care facilities, and the conduct of pharmacists who engage in the practice of pharmacy on behalf of long-term care facilities

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes guidelines and criteria for the pharmacies and pharmacists who provide care to long-term care facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Pharmacies and pharmacists will understand what is expected when providing services to long-term care facilities.

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

(a) How the amendment will change this existing administrative regulation: The amendments better clarify pharmacy and pharmacist requirements, especially through the use of automation.

(b) The necessity of the amendment to this administrative regulation: The criteria needed to be updated to include automation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.002 and 315.005 authorize the board to regulate the practice of pharmacy. KRS 315.191 authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies. The amendment fleshes out how pharmacy and pharmacist services are to be provided in long-term care facilities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies who provide services to long-term care facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates less than 100 long term care facilities utilize the services of pharmacies and pharmacists.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacies and pharmacists will have to familiarize themselves with new guidelines, especially since more services will be provided via automation. The board will help to educate pharmacists and pharmacies in these changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected costs for the identities to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pharmacy services will be provided in a safe, and effective manner to patients of long-term care facilities.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists and sponsors that desire approval for continuing education credit.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.002 and 315.005 require standards of practice in all settings where drugs are handled.

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

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

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

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

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

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

**GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Amendment)**

201 KAR 9:260. Professional standards for prescribing and dispensing controlled substances.

RELATES TO: KRS 218A.172, 218A.205, 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 218A.205(3)(a), (b), 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licenses. KRS 218A.205(3)(a) and (b) require the board, in consultation with the Kentucky Office of Drug Control Policy, to establish mandatory prescribing and dispensing standards related to 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. This administrative regulation establishes the professional standards for prescribing and dispensing controlled substances.

Section 1. Applicability. (1) A physician who is authorized to prescribe or dispense a controlled substance shall comply with the standards of acceptable and prevailing medical practice for prescribing and dispensing a controlled substance established in this administrative regulation.

(2) The professional standards established in this administrative regulation shall not apply to a physician prescribing or dispensing a controlled substance:

(a) To a patient as part of the patient's hospice or end-of-life treatment;

(b) To a patient admitted to a licensed hospital as an inpatient, outpatient, or observation patient, during and as part of a normal and expected part of the patient's course of care at that hospital;

(c) To a patient for the treatment of pain associated with cancer or with the treatment of cancer;

(d) To a patient who is a registered resident of a long-term-care facility as defined in KRS 216.510;

(e) During the effective period of any period of disaster or mass casualties which has a direct impact upon the physician's practice;

(f) In a single dose to relieve the anxiety, pain, or discomfort experienced by that patient submitting to a diagnostic test or procedure;

(g) That has been classified as a Schedule V controlled substance;

(h) That is a Schedule II controlled substance as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services; or

(i) 1. That is a Schedule II controlled substance prescribed or administered immediately prior to, during, or within the fourteen (14) days following:

a. A major surgery, being any operative or invasive procedure or a delivery; or

b. A significant trauma, being any acute blunt, blast, or penetrating bodily injury that has a risk of death, physical disability, or impairment; and

2. The usage does not extend beyond fourteen (14) days.

Section 2. Professional Standards for Documentation of Patient Assessment, Education, Treatment Agreement and Informed Consent, Action Plans, Outcomes and Monitoring. (1) Each physician prescribing or dispensing a controlled substance shall obtain and document all relevant information in a patient's medical record in a legible manner and in sufficient detail to enable the board to determine whether the physician is conforming to professional standards for prescribing or dispensing controlled substances and other relevant professional standards.

(2) If a physician is unable to conform to professional standards for prescribing or dispensing controlled substances due to circumstances beyond the physician's control, or the physician makes a professional determination that it is not appropriate to comply with a specific standard, based upon the individual facts applicable to a specific patient's diagnosis and treatment, the physician shall document those circumstances in the patient's record and only prescribe or dispense a controlled substance to the patient if the patient record appropriately justifies the prescribing or dispensing of a controlled substance under the circumstances.

Section 3. Professional Standards for the Prescribing or Dispensing of Controlled Substances for the Treatment of Pain and Related Symptoms Associated with a Primary Medical Complaint. Prior to the initial prescribing or dispensing of any controlled substance for pain or other symptoms associated with the same primary medical complaint, the first physician prescribing or dispensing a controlled substance shall:

(1) Obtain an appropriate medical history relevant to the medical complaint, including a history of present illness, and:

(a) If the complaint does not relate to a psychiatric condition, conduct a physical examination of the patient relevant to the medical complaint and related symptoms and document the information in the patient's medical record; or

(b) If the complaint relates to a psychiatric condition, perform, or have performed by a psychiatrist or other designated mental health provider, an evaluation appropriate to the presenting complaint and document the relevant findings;

(2) Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the patient encounter, and appropriately utilize that information in the evaluation and treatment of the patient;

(3) After examining the benefits and risks of prescribing or dispensing a controlled substance to the patient, including nontreatment or other treatment, make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled

substance in the amount specified;

(4) Only prescribe or dispense Schedule II controlled substances in accordance with the standards established in Section 9 of this administrative regulation;

(5) Not prescribe or dispense a long-acting or controlled-release opioid (e.g. OxyContin, fentanyl patches, or methadone) for acute pain that is not directly related to and close in time to a specific surgical procedure;

(6) Explain to the patient that a controlled substance used to treat an acute medical complaint is for time-limited use, and that the patient should discontinue the use of the controlled substance when the condition requiring the controlled substance use has resolved; and

(7) Explain to the patient how to safely use and properly dispose of any unused controlled substance and educate the patient in accordance with Section 8 of this administrative regulation.

Section 4. Professional Standards for Commencing Long Term Use of Prescribing or Dispensing of Controlled Substances for the Treatment of Pain and Related Symptoms Associated with a Primary Medical Complaint. (1) Before a physician commences to prescribe or dispense any controlled substance to a patient sixteen (16) years or older for pain or other symptoms associated with the same primary medical complaint for a total period of longer than three (3) months, the physician shall comply with the mandatory professional standards established in subsection (2) of this section. These standards may be accomplished by different licensed practitioners in a single group practice at the direction of or on behalf of the prescribing physician if:

(a) Each practitioner involved has lawful access to the patient's medical record;

(b) There is compliance with all applicable standards; and

(c) Each practitioner performing an action to meet the required standards is acting within the practitioner's legal scope of practice.

(2)(a) The physician shall obtain the following information from the patient and record all relevant information in the patient's medical record:

1. History of present illness;

2. Past medical history;

3. History of substance use and any prior treatment for that use by the patient, and history of substance abuse by first degree relatives of the patient;

4. Past family history of relevant illnesses and treatment; and

5. Psychosocial history.

(b) The physician shall conduct an appropriate physical examination of the patient sufficient to support the medical indications for prescribing or dispensing a controlled substance on a long-term basis.

(c) The physician shall perform appropriate baseline assessments to establish beginning values to assist in establishing and periodically evaluating the functional goals of any treatment plan.

(d) If a specific or specialized evaluation is necessary for the formulation of a working diagnosis or treatment plan, the physician shall only continue the use of a controlled substance after determining that continued use of the controlled substance is safe and medically appropriate in the absence of that information.

(e) If the physician determines that the patient has previously received medical treatment for the presenting medical complaint or related symptoms and that review of the prior treatment records is necessary to justify long-term prescribing of a controlled substance, the physician shall obtain those prior medical records and incorporate the information therein into the evaluation and treatment of the patient.

(f)1. Based upon consideration of all information available, the physician shall promptly formulate and document a working diagnosis of the source of the patient's medical complaint and related symptoms without simply describing or listing the related symptoms.

2. If the physician is unable, despite best efforts, to formulate a working diagnosis, the physician shall consider the usefulness of additional information, such as a specialized evaluation or

assessment, referral to an appropriate specialist, and the usefulness of further observation and evaluation, before attempting again to formulate a working diagnosis.

3. If the physician is unable to formulate a working diagnosis, despite the use of an appropriate specialized evaluation or assessment, the physician shall only prescribe long term use of a controlled substance after establishing that its use at a specific level is medically indicated and appropriate.

(g)1. To the extent that functional improvement is medically expected based upon the patient's condition, the physician shall formulate an appropriate treatment plan.

2. The treatment plan shall include specific and verifiable goals of treatment, with a schedule for periodic evaluations.

(h)1. The physician shall utilize appropriate screening tools to screen each patient to determine if the patient:

a. Is presently suffering from another medical condition which may impact the prescribing or dispensing of a controlled substance; or

b. Presents a significant risk for illegal diversion of a controlled substance.

2. If, after screening, the physician determines that there is a reasonable likelihood that the patient suffers from substance abuse or dependence, or a psychiatric or psychological condition, the physician shall take the necessary actions to facilitate a referral to an appropriate treatment program or provider. The physician shall appropriately incorporate the information from the treatment program or provider into the evaluation and treatment of the patient.

3. If, after screening, the physician determines that there is a risk that the patient may illegally divert a controlled substance, but determines to continue long term prescribing of the controlled substance, the physician shall use a prescribing agreement that meets professional standards. The prescribing agreement and informed consent document may be combined into one (1) document.

4. The physician shall obtain and document a baseline drug screen.

5. If, after screening, the physician determines that the controlled substance prescribed to the patient will be used or is likely to be used other than medically or other than for an accepted therapeutic purpose, the physician shall not prescribe any controlled substance to that patient.

(i) After explaining the risks and benefits of long-term use of a controlled substance, the physician shall obtain the written informed consent of the patient in a manner that meets professional standards and educate the patient in accordance with Section 8 of this administrative regulation.

(j) The physician shall initially attempt, to the extent possible, or establish and document a previous attempt by another physician, of a trial of noncontrolled modalities and lower doses of a controlled substance in increasing order to treat the pain and related symptoms associated with the primary medical complaint, before continuing with long term prescribing of a controlled substance at a given level.

Section 5. Professional Standards for Continuing Long Term Prescribing or Dispensing of Controlled Substances for the Treatment of Pain and Related Symptoms Associated with a Primary Medical Complaint. (1) If a physician continues to prescribe or dispense a controlled substance beyond three (3) months to a patient sixteen (16) years or older for pain and related symptoms associated with the primary medical complaint, the physician shall comply with the professional standards established in subsection (2) of this section and, if a Schedule II controlled substance, Section 9 of this administrative regulation. These standards may be accomplished by different licensed practitioners in a single group practice at the direction of or on behalf of the prescribing physician as established in Section 4(1) of this administrative regulation.

(2)(a)1. The physician shall ensure that the patient is seen at least once a month initially for evaluation and review of progress. The physician may determine that the patient is to be evaluated less frequently, on a schedule determined by the physician's

professional judgment after the physician has determined:

a. The controlled substance prescribed or dispensed has been titrated to the level appropriate and necessary to treat the medical complaint and related symptoms;

b. The controlled substance prescribed or dispensed is not causing unacceptable side effects; and

c. There is sufficient monitoring in place to minimize the likelihood that the patient will use the controlled substance in an improper or inappropriate manner or divert it for an improper or inappropriate use.

(b) At appropriate intervals, the physician shall:

1. Ensure that a current history is obtained from the patient;

2. Ensure that a focused physical examination is considered, and performed, if appropriate; and

3. Perform appropriate measurable examinations as indicated in the treatment plan.

(c) At appropriate intervals, the physician shall evaluate the working diagnosis and treatment plan based upon the information gained to determine whether there has been functional improvement or any change in baseline measures. The physician shall modify the diagnosis, treatment plan, or controlled substance therapy, as appropriate.

(d) If the physician determines that the patient presents a significant risk of diversion or improper use of a controlled substance, the physician shall discontinue the use of the controlled substance or justify its continued use in the patient record.

(e) If the medical complaint and related symptoms continue with no significant improvement in function despite treatment with a controlled substance, and if improvement is medically expected, the physician shall obtain appropriate consultative assistance to determine whether there are undiagnosed conditions to be addressed in order to resolve the medical complaint.

(f) For a patient exhibiting symptoms suggestive of a mood, anxiety, or psychotic disorder, the physician shall obtain a psychiatric or psychological consultation for intervention if appropriate.

(g) If a patient reports experiencing episodes of breakthrough pain, the physician shall:

1. Attempt to identify the trigger or triggers for each episode;

2. Determine whether the breakthrough pain may be adequately treated through noncontrolled treatment; and

3. If the physician determines that the nonmedication treatments do not adequately address the triggers, and after considering the risks and benefits, determines to add an as-needed controlled substance to the regimen, take appropriate steps to minimize the improper or illegal use of the additional controlled substance.

(h) At least once a year, the physician shall perform or shall ensure that the patient's primary treating physician performs a preventive health screening and physical examination appropriate to the patient's gender, age, and medical condition.

(i) 1. At least once every three (3) months, the physician shall obtain and review a current KASPER report, for the twelve (12) month period immediately preceding the request, and appropriately use that information in the evaluation and treatment of the patient.

2. If the physician obtains or receives specific information that the patient is not taking the controlled substance as directed, is diverting a controlled substance, or is engaged in any improper or illegal use of a controlled substance, the physician shall immediately obtain and review a KASPER report and appropriately use the information in the evaluation and treatment of the patient.

3. If a KASPER report discloses that the patient is obtaining a controlled substance from another practitioner without the physician's knowledge and approval, in a manner that raises suspicion of illegal diversion, the physician shall promptly notify the other practitioner of the relevant information from the KASPER review.

4. The physician shall obtain consultative assistance from a specialist if appropriate.

(j) If appropriate, the physician shall conduct random pill counts and appropriately use that information in the evaluation and treatment of the patient.

(k) 1. During the course of long-term prescribing or dispensing

of a controlled substance, the physician shall utilize drug screens, appropriate to the controlled substance and the patient's condition, in a random and unannounced manner at appropriate times. If the drug screen or other information available to the physician indicates that the patient is noncompliant, the physician shall:

a. Do a controlled taper, consistent with subparagraph 3 of this paragraph;

b. Stop prescribing or dispensing the controlled substance immediately; or

c. Refer the patient to an addiction specialist, mental health professional, pain management specialist, or drug treatment program, depending upon the circumstances.

2. The physician shall discontinue controlled substance treatment or refer the patient to addiction management if:

a. There has been no improvement in function and response to the medical complaint and related symptoms, if improvement is medically expected;

b. Controlled substance therapy has produced significant adverse effects, including instances such as an overdose or events leading to hospitalization or disability;

c. The patient exhibits inappropriate drug-seeking behavior or diversion; or

d. The patient is taking a high-risk regimen, such as dosages ≥ fifty (50) MME/day or opioids with benzodiazepines, without evidence of benefit.

3. The physician shall:

a. Taper controlled substances in a manner slow enough to minimize symptoms and signs of opioid withdrawal; and

b. Collaborate with other specialists as needed to optimize nonopioid pain management and psychosocial support for anxiety related to the taper.

4. A physician shall

stop prescribing or dispensing any controlled substance diverted by or from the patient or taken less frequently than once a day.

Section 6. Professional Standards for the Prescribing and Dispensing of Controlled Substances in an Emergency Department. In addition to complying with the standards for the initial prescribing or dispensing of a controlled substance as established in Sections 3 and 7 of this administrative regulation, a physician prescribing or dispensing a controlled substance for a specific medical complaint and related symptoms to a patient in an emergency department shall not routinely:

(1) Administer an intravenous controlled substance for the relief of acute exacerbations of chronic pain, unless intravenous administration is the only medically appropriate means of delivery;

(2) Provide a replacement prescription for a controlled substance that was lost, destroyed, or stolen;

(3) Provide a replacement dose of methadone, suboxone, or subutex for a patient in a treatment program;

(4) Prescribe a long-acting or controlled-release controlled substance, such as OxyContin, fentanyl patches, or methadone or a replacement dose of that medication;

(5) Administer Meperidine to the patient; or

(6) Prescribe or dispense more than the minimum amount medically necessary to treat the patient's medical condition until the patient can be seen by the primary treating physician or another physician, with no refills. If the controlled substance prescription exceeds seven (7) days in length or exceeds three (3) days if a Schedule II controlled substance, the patient record shall justify the amount of the controlled substance prescribed.

Section 7. Professional Standards for the Prescribing and Dispensing of Controlled Substances for the Treatment of Other Conditions. (1) Before initially prescribing or dispensing a controlled substance to a patient for a condition other than pain, the physician shall:

(a) Obtain an appropriate medical history relevant to the medical complaint, including a history of present illness, and:

1. If the complaint does not relate to a psychiatric condition, conduct a physical examination of the patient relevant to the medical complaint and related symptoms and document the

information in the patient's medical record; or

2. If the complaint relates to a psychiatric condition, perform, or have performed by a psychiatrist or other designated mental health provider, an evaluation appropriate to the presenting complaint and document the relevant findings;

(b) Obtain and review a KASPER report for that patient, for the twelve (12) month period immediately preceding the patient encounter, and appropriately utilize that information in the evaluation and treatment of the patient;

(c) After examining the benefits and risks of prescribing or dispensing a controlled substance to the patient, including nontreatment or other treatment, make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substance in the amount specified;

(d) Avoid providing more controlled substances than necessary by prescribing or dispensing only the amount of a controlled substance needed to treat the specific medical complaint;

(e) Explain to the patient that a controlled substance used to treat an acute medical complaint is for time-limited use, and that the patient should discontinue the use of a controlled substance when the condition requiring the controlled substance use has resolved; and

(f) Explain to the patient how to safely use and properly dispose of any unused controlled substance and educate the patient in accordance with Section 8 of this administrative regulation.

(2) If the physician continues to prescribe or dispense a controlled substance to a patient for the same medical complaint and related symptoms, the physician shall fully conform to the standards of acceptable and prevailing practice for treatment of that medical complaint and for the use of the controlled substance.

(3) If a physician receives a request from an established patient to prescribe or dispense a limited amount of a controlled substance to assist the patient in responding to the anxiety or depression resulting from a nonrecurring single episode or event, the physician shall:

(a) Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the patient request and appropriately utilize the information obtained in the evaluation and treatment of the patient;

(b) Make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substance in the amount specified, with or without requiring a personal encounter with the patient to obtain a more detailed history or to conduct a physical examination; and

(c) If the decision is made that it is medically appropriate to prescribe or dispense the controlled substance, prescribe or dispense the minimum amount of the controlled substance to appropriately treat the situational anxiety or depression.

Section 8. Responsibility to Educate Patients Regarding the Dangers of Controlled Substance Use. (1) A physician prescribing or dispensing a controlled substance shall:

(a) Take appropriate steps to educate a patient receiving a controlled substance; and

(b) Discuss with each patient the effect the patient's medical condition and medication use may have on the patient's ability to safely operate a vehicle in any mode of transportation.

(2) Educational materials relating to these subjects may be found on the board's Web site, www.kbml.ky.gov.

Section 9. Additional Standards for Prescribing or Dispensing Schedule II Controlled Substances. (1) In addition to the other standards established in this administrative regulation, prior to the initial prescribing or dispensing of a Schedule II controlled substance to a human patient, a physician shall:

(a) Obtain a medical history and conduct a physical or mental health examination of the patient, as appropriate to the patient's medical complaint, and document the information in the patient's medical record;

(b) Query KASPER for all available data on the patient for the twelve (12) month period immediately preceding the patient encounter and appropriately utilize that data in the evaluation and

treatment of the patient;

(c) Make a written plan stating the objectives of the treatment and further diagnostic examinations required;

(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

(e) Obtain written consent for the treatment.

(2) In addition to the other standards established in this administrative regulation, for purposes of treating pain as or related to an acute medical condition, a physician shall not prescribe or dispense more than a three (3) day supply of a Schedule II controlled substance, unless the physician determines that more than a three (3) day supply is medically necessary and the physician documents the acute medical condition and lack of alternative medical treatment options to justify the amount of the controlled substance prescribed or dispensed.

(3)(a) In addition to the other standards established in this administrative regulation, a physician prescribing or dispensing additional amounts of a Schedule II controlled substance for the same medical complaint and related symptoms shall:

1. Review, at reasonable intervals based on the patient's individual circumstances and course of treatment, the plan of care;

2. Provide to the patient any new information about the treatment; and

3. Modify or terminate the treatment as appropriate.

(b) If the course of treatment extends beyond three (3) months, the physician shall:

1. Query KASPER no less than once every three (3) months for all available data on the patient for the twelve (12) month period immediately preceding the query; and

2. Review that data before issuing any new prescription or refills for the patient for any Schedule II controlled substance.

(4) To the extent not already required by the standards established in this administrative regulation, for each patient for whom a physician prescribes or dispenses a Schedule II controlled substance, the physician shall keep accurate, readily accessible, and complete medical records which include, as appropriate:

(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 or dispensed;

(h) Instructions and agreements, and

(i) Periodic reviews of the patient's file.

(5) The additional standards for prescribing or dispensing a Schedule II controlled substance established in this section shall not apply to:

(a)1. A physician prescribing or administering that controlled substance immediately prior to, during, or within the fourteen (14) days following:

a. A major surgery, being any operative or invasive procedure or a delivery; or

b. A significant trauma, being any acute blunt, blast, or penetrating bodily injury that has a risk of death, physical disability, or impairment; and

2.If the prescribing or administering is medically related to the operative or invasive procedure or delivery with medication usage that does not extend beyond the fourteen (14) days; or

(b) A physician prescribing or dispensing that controlled substance:

1. For administration in a hospital or long-term-care facility if the hospital or long-term-care facility with an institutional account, or a physician in those hospitals or facilities if no institutional account exists, 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 for use during the duration

of the patient's stay at the facility;

2. As part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;

3. As part of the patient's hospice or end-of-life treatment;

4. For the treatment of pain associated with cancer or with the treatment of cancer;

5. In a single dose to relieve the anxiety, pain, or discomfort experienced by a patient submitting to a diagnostic test or procedure;

6. Within seven (7) days of an initial prescribing or dispensing under subsection (1) of this section if the prescribing or dispensing:

a. Is done as a substitute for the initial prescribing or dispensing;

b. Cancels any refills for the initial prescription; and

c. Requires the patient to dispose of any remaining unconsumed medication;

7. Within ninety (90) days of an initial prescribing or dispensing under subsection (1) of this section if the prescribing or dispensing is done by another physician in the same practice or in an existing coverage arrangement, if done for the same patient for the same medical condition; or

8. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federalwide assurance number from the United States Department for 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.

Section 10. Violations. (1) Any violation of the professional standards established in this administrative regulation shall constitute a violation of KRS 311.595(12) and (9), which may result in the imposition of disciplinary sanctions by the board, pursuant to KRS 311.595.

(2) Each violation of the professional standards established in this administrative regulation shall be established by expert testimony by one (1) or more physicians retained by the board, following a review of the licensee's patient records and other available information including KASPER reports.

RUSSELL L. TRAVIS, M.D. President

APPROVED BY AGENCY: August 10, 2018

FILED WITH LRC: August 13, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2018 at 10:00 a.m., at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2018, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be transcribed unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 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: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118, email Leanne.Diakov@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: It is

necessary to promulgate this regulation to establish professional standards for prescribing and dispensing controlled substances the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amendment incorporates recommendations of the National Transportation Safety Board ("NTSB") that each state require its health care providers counsel patients on the risks that medical conditions and medication may have on their ability to operate any mode of transportation.

(b) The necessity of the amendment to this administrative regulation: It was necessary to amend the regulation in order to implement the NTSB recommendations for physicians.

(c) How the amendment conforms to the content of the authorizing statutes: This amended regulation acts specifically to further clarify a physician's responsibility to educate and inform patients to whom he/she prescribes or dispenses controlled substances in the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amended regulation acts specifically to further clarify a physician's responsibility to educate and inform patients to whom he/she prescribes or dispenses controlled substances in the Commonwealth of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all physicians licensed in the Commonwealth of Kentucky who prescribe or dispense controlled substances.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physicians will be required to educate and inform each patient about the risks that the patient's medical conditions and medication may have on his/her ability to operate any mode of transportation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with the requirements of this administrative regulation known to the Board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits to the physician including improving physician-patient communication and improving the overall safety to the patient and the community.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

(7) Provide an assessment of whether an 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 of fees or funding will be necessary.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in

this administrative regulation because the administrative regulation applies equally to all individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 311.565(1)(a) and KRS 218A.205(3)

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

301 KAR 1:015. Boat and motor restrictions.

RELATES TO: KRS 150.090, 150.625, 150.990, 235.010(4), 235.990

STATUTORY AUTHORITY: KRS 150.620, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters the department has acquired. KRS 235.280 requires the department, with approval of the Department of Fish and Wildlife Resources Commission, to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of this state. This administrative regulation establishes size limits of boats and motors on small lakes for safety reasons and to minimize interference with other users.

Section 1. Definition. "Idle speed" means the slowest possible speed at which maneuverability can be maintained.

Section 2. (1) On a lake established in subsection (2) of this section, a person shall not operate a:

(a) House boat;

(b) Monohull boat with a center-line length exceeding twenty-two (22) feet; or

(c) Pontoon boat with a float or decking exceeding twenty-two (22) feet, except on:

1. Guist Creek Lake, where a pontoon boat with a float or decking up to twenty-four (24) feet or a monohull boat with a center-line length up to twenty-four (24) feet and seating for at least eight (8) passengers may be operated; or

2. A lake established in clauses a. through c. of this

subparagraph, where a pontoon boat with a float or decking up to thirty (30) feet or a monohull boat with a center-line length up to twenty-four (24) feet and seating for at least eight (8) passengers may be operated:

a. Cedar Creek Lake;

b. Lake Beshear; or

c. Lake Malone.

(2) List of lakes:

(a) Ballard WMA lakes, Ballard County;

(b) Beaver Creek Lake, Anderson County;

(c) Bert Combs Lake, Clay County;

(d) Boatwright WMA lakes, Ballard County;

(e) Boltz Lake, Grant County;

(f) Briggs Lake, Logan County;

(g) Bullock Pen Lake, Grant County;

(h) Carnico Lake, Nicholas County;

(i) Carpenter Lake, Daviess County;

(j) Carter Caves Lake, Carter County;

(k) Cedar Creek Lake, Lincoln County;

(l) Corinth Lake, Grant County;

(m) Dennie Gooch Lake, Pulaski County;

(n) Elmer Davis Lake, Owen County;

(o) Fishpond Lake, Letcher County;

(p) Goose Lake, Muhlenberg County;

(q) Greenbo Lake, Greenup County;

(r) Guist Creek Lake, Shelby County;

(s) Island Lake, Ohio County;

(t) Kentucky River WMA, Boone Tract lakes, Henry County;

(u) Kincaid Lake, Pendleton County;

(v) Kingdom Come Lake, Harlan County;

(w) Kingfisher lakes, Daviess County;

(x) Lake Beshear, Caldwell County;

(y) Lake Chumley, Lincoln County;

(z) Lake Malone, Muhlenberg County;

(aa) Lake Mauzy, Union County;

(bb) Lake Reba, Madison County;

(cc) Lake Washburn, Ohio County;

(dd) Lebanon City Lake, Marion County;

(ee) Lincoln Homestead Lake, Washington County;

(ff) Marion County Lake, Marion County;

(gg) Martin County Lake, Martin County;

(hh) McNeely Lake, Jefferson County;

(ii) Metcalfe County Lake, Metcalfe County;

(jj) Pan Bowl Lake, Breathitt County;

(kk) Pikeville City Lake, Pike County;

(ll) Shanty Hollow Lake, Warren County;

(mm) South Lake, Ohio County;

(nn) Spurlington Lake, Taylor County; or

(oo) Wilgreen Lake, Madison County.

(3) Length restrictions in this section shall not apply to a canoe.

(4) A person shall not operate a personal watercraft["personal watercraft", as defined by KRS 235.010(4),] on Cedar Creek Lake, as established in KRS 235.010(4).

Section 3. (1) A person shall not operate a boat:

(a) Motor without an underwater exhaust; or

(b) Faster than idle speed while passing a boat with an occupant actively engaged in fishing, except in a designated skiing zone.

(2) The requirements established in subsection (1) of this section shall apply on:

(a) Beaver Lake, Anderson County;

(b) Boltz Lake, Grant County;

(c) Bullock Pen Lake, Grant County;

(d) Carnico Lake, Nicholas County;

(e) Cedar Creek Lake; Lincoln County;

(f) Corinth Lake, Grant County;

(g) Elmer Davis Lake, Owen County;

(h) Greenbo Lake, Owen County;

(i) Guist Creek Lake, Shelby County;

(j) Kincaid Lake, Pendleton County;

(k) Lake Beshear, Caldwell County;

(l) Lake Malone, Muhlenberg County;

- (m) Pan Bowl Lake, Breathitt County;
- (n) Shanty Hollow Lake, Warren County;
- (o) Swan Lake, Ballard County; and
- (p) Wilgreen Lake, Madison County.

Section 4. A person shall not operate an electric or an internal combustion boat motor on:

- (1) Dennie Gooch Lake, Pulaski County;
- (2) Kingdom Come Lake, Harlan County; or
- (3) Lake Chumley, Lincoln County.

Section 5. A person shall not operate an internal combustion boat motor and shall only be allowed to use an electric trolling motor on:

- (1) Bert Combs Lake, Clay County;
- (2) Briggs Lake, Logan County;
- (3) Carpenter Lake, Daviess County;
- (4) Carter Caves Lake, Carter County;
- (5) Fishpond Lake, Letcher County;
- (6) Kentucky River WMA, Boone Tract lakes, excluding Benjy Kinman Lake, Henry County;
- (7) Kingfisher Lake, Daviess County;
- (8) Lake Mauzy, Union County;
- (9) Lake Reba, Madison County;
- (10) Lake Washburn, Ohio County;
- (11) Lebanon City Lake, Marion County;
- (12) Lincoln Homestead Lake, Washington County;
- (13) Marion County Lake, Marion County;
- (14) Martin County Lake, Martin County;
- (15) McNeely Lake, Jefferson County;
- (16) Metcalfe County Lake, Metcalfe County;
- (17) Mill Creek Lake, Wolfe County;
- (18) Pikeville City Lake, Pike County; or
- (19) Spurlington Lake, Taylor County.

Section 6. A person shall not operate a motorboat faster than idle speed on:

- (1) Ballard WMA lakes, Ballard County;
- (2) Benjy Kinman Lake at Kentucky River WMA, Henry County;
- (3) Beulah Lake, Jackson County;
- (4)[(3)] Boatwright WMA lakes, Ballard County;
- (5)[(4)] Carnico Lake, Nicholas County;
- (6)[(5)] Goose Lake, Muhlenberg County;
- (7)[(6)] Greenbo Lake, Greenup County;
- (8)[(7)] Island Lake, Ohio County;
- (9)[(8)] South Lake, Ohio County;
- (10)[(9)] Pan Bowl Lake, Breathitt County; or
- (11)[(40)] Wilgreen Lake, Madison County.

Section 7. A person operating a boat motor greater than ten (10) horsepower shall not exceed idle speed on:

- (1) Beaver Lake, Anderson County;
- (2) Boltz Lake, Grant County;
- (3) Bullock Pen Lake, Grant County;
- (4) Corinth Lake, Grant County;
- (5) Elmer Davis Lake, Owen County;
- (6) Herb Smith-Cranks Creek Lake, Harlan County;
- (7) Kincaid Lake, Pendleton County;
- (8) Martins Fork Lake, Harlan County; or
- (9) Shanty Hollow Lake, Warren County.

FRANK JEMLEY, III, Acting Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: August 2, 2018

FILED WITH LRC: August 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2018 at 10:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is

received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through September 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation limits the size of boats and motors on small lakes for safety reasons and to minimize interference with other users.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect the safety of individuals boating on these small lakes and to minimize interference with other users.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters the department has acquired. KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of this state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation helps fulfill the purpose of KRS 150.620 and 235.280 by providing fair, reasonable, equitable, and safe use of small lakes in the state.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow boats on Benjy Kinman Lake, located on the Kentucky River WMA, to operate at idle speed only instead of being restricted to use of a trolling motor.

(b) The necessity of the amendment to this administrative regulation: The current trolling motor only restriction was implemented mainly to protect a pair of bald eagles that were nesting on the lake. The tree which the eagles were nesting in has since fallen and they have relocated their nest nearby, across the Kentucky River. As a result, the use of gas motors at idle speed will no longer cause a conflict with the bald eagle nest. Allowing boaters to operate at idle speed only will provide better access to the lake and improve fishing opportunities.

(c) How the amendment conforms to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All individuals operating gas-powered boats on Benjy Kinman Lake 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: Individuals boating on Benjy Kinman Lake will now be able to operate their gas-powered motors at idle speed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in

question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will allow for better access and fishing opportunities for individuals boating on Benjy Kinman Lake.

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

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same requirements apply to all boaters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.620 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? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 1:132. Sale of live bait.

RELATES TO: KRS 150.175, 150.180, 150.280, 150.450, 150.485

STATUTORY AUTHORITY: KRS 150.025(1), 50 C.F.R. 17.11

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative

regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. 50 C.F.R. 17.11 establishes federally threatened or endangered fish species. This administrative regulation establishes the requirements under which live bait may be taken, transported, and sold.

Section 1. Definitions. (1) "Asian carp" means:

(a) Bighead carp;

(b) Black carp;

(c) Grass carp; or

(d) Silver carp.

(2) "Live bait" means the live ~~condition the following~~ organisms established in paragraphs (a) through (h) of this subsection. ~~[are in when taken, even though the organism may later be sold as a part no longer living.]~~

(a) Live bait fishes;

(b) Crayfish;

(c) Salamanders;

(d) Frogs, except bullfrogs;

(e) Tadpoles;

(f) Native lampreys;

(g) Asiatic clams (Genus Corbicula); or

(h) Other ~~[Any]~~ aquatic invertebrate organisms, except for mussels.

(3) "Live bait fishes" means:

(a) Rough fishes, except Asian carp and federally threatened or endangered species as established in 50 C.F.R. 17.11; or [blackside dace, palezone shiner, relict darter, Cumberland darter, and tuxedo darter.]

(b) Redear sunfish less than six (6) inches in length.

Section 2. Legal sources of live bait. (1) Live bait may be sold by a person possessing a valid:

(a) Live fish and bait dealer's license if the person purchases the live bait from a legal source as established in this section; or

(b) Commercial fishing license, if the live bait is taken pursuant to the requirements of this section.

~~(2) [Asiatic clams may be taken and sold as live bait by a person possessing a valid commercial musseling license.]~~

~~(3) [Live commercially harvested shad, herring, mooneye, goldeye, or Asian carp shall not be transported or [and] sold [as live bait].]~~

~~(3) [(4) Dead shad, dead herring, dead Asian carp, or other live bait may be sold whole or in part, if taken pursuant to Section 3 of this administrative regulation.]~~

~~(5) [Legal sources of live bait shall include:~~

~~(a) Live bait hatched and reared in Kentucky by a person possessing a valid commercial fish propagation permit;~~

~~(b) Legal commercial live bait sources in states outside of Kentucky;~~

~~(c) [A person selling Asiatic clams obtained from a legal brailing method, if the person possesses a valid commercial musseling license;~~

~~(d) [A person selling Asiatic clams obtained by means of a tagged commercial bait rake pursuant to Section 3 of this administrative regulation, if the person possesses a valid commercial fishing license; or~~

~~(d) [(e)] A person with a valid commercial fishing license who is selling [dead shad, dead herring, dead Asian carp, or] live bait, except live shad, live herring, live goldeye, and live mooneye, if taken pursuant to Section 3 of this administrative regulation.~~

~~(4) [(6)] A licensed live fish and bait dealer who purchases live bait from legal sources outside of Kentucky shall possess a bill of sale that lists the:~~

~~(a) Date of purchase; and~~

~~(b) Number of each type of live bait purchased.~~

Section 3. Legal methods of take. (1) A person shall not take live bait from any public waterway or water body for commercial purposes, except as established in this section.

(2) A person who holds a valid commercial fishing license may sell:

(a) Live bait, except live shad, live herring, live goldeye, and live mooneye, that was taken with legally set commercial fishing gear;

(b) Dead shad and dead herring, if taken with a dip net with a maximum diameter of three (3) feet[or-less] or a cast net with a maximum diameter of twenty (20) feet and possessing a maximum bar mesh of one (1) inch in the following bodies of water:

1. Cumberland River below Barkley Dam;
2. Kentucky River downstream of Lock Number Fourteen (14);
3. Mississippi River;
4. Ohio River; or
5. Tennessee River; or

(c) Asiatic clams taken in legal commercial fishing waters pursuant to 301 KAR 1:150 with a tagged commercial live bait rake having the following specifications:

1. A maximum width of twenty (20) inches;
2. A maximum tine length of five (5) inches;
3. A maximum distance in between tines of one (1) inch;
4. A basket with a maximum:
 - a. Width of twenty (20) inches;
 - b. Length of ten (10) inches; and
 - c. Height of eight (8) inches;
5. A rigid handle with a maximum length of twenty (20) feet;

and

6. The rake does not contain a bridle that would allow dragging.

(3) Any mussel other than an Asiatic clam shall be returned to the water unharmed. ~~[(4) A person shall not possess a commercial live bait rake in a boat that has a musseling brail aboard or attached to the boat.]~~

Section 4. Other requirements. (1) A person, corporation, or other business entity transporting, selling, or possessing live bait for sale in Kentucky shall hold a valid live fish and bait dealer's license and have in possession the license or exact copy thereof when transporting, selling, or holding live bait organisms in Kentucky.

(2) A live fish and bait dealer's license shall not be used in lieu of a fish propagation or transportation permit if these permits are also legally required.

(3) A person, corporation, or other business entity who transports live bait from one (1) state, through Kentucky, to another state without conducting any business in Kentucky shall not be required to have a live fish and bait dealer's license, but shall have a valid Kentucky transportation permit.

(4) A person, corporation, or other business entity is not required to possess a live fish and bait dealer's license if selling live bait as food in establishments licensed by another state agency to sell resale or wholesale food products.

FRANK JEMLEY III, Acting Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: August 2, 2018

FILED WITH LRC: August 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2018 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through September 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's

Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the conditions and provisions under which live bait may be taken, transported, and sold.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect the state's aquatic resources.

(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. 50 C.F.R. 17.11 establishes federally threatened or endangered fish species.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in protecting the state's aquatic resources by establishing the conditions and provisions under which live bait may be taken, transported, and sold.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes all references to commercial musseling as it pertains to the sale of live bait. Commercial musseling is no longer legal in Kentucky. Asiatic clams can still be sold, but only when taken using approved gear with a commercial fishing license. The regulation was modified to address the fact that it is intended to differentiate between live bait and dead bait. The federal C.F.R. is referenced to cover all federally threatened and endangered species that are prohibited from being used as bait. Finally, goldeye and mooneye were added to the list of species that cannot be transported or sold live.

(b) The necessity of the amendment to this administrative regulation: References to commercial musseling need to be removed to reflect the closure of commercial musseling in Kentucky. Goldeye and Mooneye resemble Asian carp at a young age and were added to prevent the accidental movement or sale of Asian carp. Numerous clean-up items were necessary to clarify the intent of the regulation.

(c) How the amendment conforms to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are currently no commercial mussel harvesters in Kentucky. As a result, mussel harvest amendments will not affect any individuals. Commercial fishermen who have sold or transported live goldeye or mooneye in the past 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: Those entities wishing to sell Asiatic clams will have to obtain them from licensed commercial fishermen only. Commercial fishermen who have sold or transported live goldeye or mooneye in the past will no longer be able to do so.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anglers will benefit from a decreased chance that Asian carp will be moved to other bodies of

water.

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

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? No. Tiering is not used because all people possessing and selling live bait 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) and 50 C.F.R. 17.11.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated during subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:225. Dove, wood duck, teal, and other migratory game bird hunting.

RELATES TO: KRS 150.330, 150.340, 150.603

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.360 authorizes the

department to restrict methods for the taking of wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes the requirements for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dove" means mourning dove or white-winged dove.

(2) "Migratory game bird" means mourning dove, white-winged dove, wood duck, teal, Canada goose, common gallinule, woodcock, snipe, purple gallinule, Virginia rail, or sora rail.

(3) "Teal" means green-winged teal, blue-winged teal, or cinnamon teal.

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

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

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

Section 2. Season Dates. (1) A person shall not hunt a migratory game bird except during a season established in this administrative regulation.

(2) The seasons established in paragraphs (a) through (g) of this subsection shall apply to migratory bird hunting.[-]

(a) Dove, beginning on:

1. September 1 for fifty-six (56) consecutive days;

2. Thanksgiving Day for eleven (11) consecutive days; and

3. The Saturday before Christmas for twenty-three (23) consecutive days;

(b) Woodcock, beginning on the fourth Saturday in October for forty-seven (47) consecutive days, except that the season shall be closed during the first two (2) days of modern gun deer season, as established in 301 KAR 2:172;

(c) Snipe, beginning on:

1. The third Wednesday in September for forty (40) consecutive days; and

2. Thanksgiving Day for sixty-seven (67) consecutive days;

(d) Wood duck, beginning on the third Saturday in September for five (5) consecutive days;

(e) Teal, beginning on the third Saturday in September for nine (9) consecutive days;

(f) Virginia rail, sora rail, common gallinule, and purple gallinule, beginning on September 1 for seventy (70) consecutive days; and

(g) Canada goose, beginning September 16 for fifteen (15) consecutive days except that the[following] areas[-as] established in subparagraphs 1. And 2. of this paragraph[301 KAR 2:224;-] shall be closed.[-]

1. Public land in the Ballard Zone, as established in 301 KAR 2:224; and

2. Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, U.S. 60, and Highway 826[Public land in the West-Central Goose Zone; and

3. The Northeast Goose Zone].

Section 3. Bag and Possession Limits. (1) A person shall not exceed the limits established in paragraphs (a) through (h) of this subsection.[-]

(a) Dove, There shall be a:

1. Daily limit of fifteen (15); and

2. Possession limit of forty-five (45).

(b) Eurasian collared dove, There shall not be a[-No] limit, except that a hunter, if in the field or during transport, shall keep one (1) of the parts established in subparagraphs 1. and 2. of this paragraph attached to the bird.[-]

1. The head; or

2. A fully-feathered wing.

(c) Woodcock, There shall be a:

1. Daily limit of three (3); and

2. Possession limit of nine (9).

(d) Snipe, There shall be a:

1. Daily limit of eight (8); and
2. Possession limit of twenty-four (24).
- (e) Virginia and sora rail, singly or in aggregate. There shall be

a:

1. Daily limit of twenty-five (25); and
2. Possession limit of seventy-five (75).
- (f) Common and purple gallinule, singly or in aggregate. There shall be a:
 1. Daily limit of three (3); and
 2. Possession limit of nine (9).
- (g) Wood duck and teal. There shall be a:
 1. Daily limit of six (6), which shall not include more than two (2) wood ducks; and
 2. Possession limit of eighteen (18), which shall not include more than six (6) wood ducks.
- (h) Canada goose. There shall be a:
 1. Daily limit of five (5); and
 2. Possession limit of fifteen (15).
- (2) A hunter who possesses a migratory game bird other than a dove, in the field or during transport, shall keep one (1) of the parts established in paragraphs (a) and (b) of this subsection attached to the bird.[-]
 - (a) The head; or
 - (b) A fully-feathered wing.

Section 4. Shooting Hours. A person shall not take a migratory game bird except during the times established in this section. (1) If hunting dove on WMA land, a person shall hunt:

- (a) Between 11 a.m. and sunset during the September and October portion of the season, as established in Section 2 of this administrative regulation; and
- (b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.
- (2) If hunting dove on private land, a person shall hunt:
 - (a) Between 11 a.m. and sunset on September 1; and
 - (b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.
- (3) Other species listed in this administrative regulation shall be taken between one-half (1/2) hour before sunrise and sunset.

Section 5. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

- (1) Longer than three and one-half (3 1/2) inches; or
- (2) Containing:
 - (a) Lead shot;
 - (b) Shot not approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21 for waterfowl hunting; or
 - (c) Shot larger than size "T".

Section 6. Hunter Orange. A person shall be exempt from hunter orange requirements pursuant to 301 KAR 2:132 and 2:172 if:

- (1) Hunting waterfowl or doves; or
- (2) Accompanying a person hunting waterfowl or doves.

Section 7. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) A person shall not:

- (a) Hunt wood duck or teal on an area closed to waterfowl hunting as established in 301 KAR 2:222;
- (b) Hunt in an area marked by a sign as closed to hunting; or
- (c) Enter an area marked by a sign as closed to the public.
- (2) A person hunting migratory birds on any of the following areas established in paragraphs (a) through (k) of this subsection shall only use or possess nontoxic shot approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21:
 - (a) Ballard WMA;
 - (b) Boatwright WMA;
 - (c) Doug Travis WMA;
 - (d) Duck Island WMA;
 - (e) Kaler Bottoms WMA;

- (f) Kentucky River WMA;
- (g) Ohio River Islands WMA;
- (h) Sloughs WMA;
- (i) South Shore WMA;
- (j) Yatesville Lake WMA; and
- (k) A WMA wetland management unit that is posted by sign.

(3) At Ballard WMA and the Swan Lake Unit of Boatwright WMA, a person shall not hunt:

- (a) Dove, Virginia rail, sora rail, common gallinule, purple gallinule, or snipe after October 13; or
- (b) Woodcock.
- (4) ~~In the Swan Lake Unit of Boatwright WMA, a person shall not hunt:~~

- ~~(a) Dove, Virginia rail, sora rail, common gallinule, purple gallinule, or snipe after October 13; or~~
- ~~(b) Woodcock.~~

(5) At Miller Welch - Central Kentucky WMA, a person shall not hunt:

- (a) Dove or snipe after October 13; or
- (b) Woodcock.

(5) [(6)] At Grayson Lake WMA, a person shall not hunt:

- (a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;
- (b) On Deer Creek Fork; or
- (c) On Camp Webb property or the state park, except for

~~participants[youths] drawn for any department-sponsored quota~~ dove hunt on Camp Webb property in September.

(6) [(7)] At Land Between the Lakes National Recreation Area, a person shall not hunt a migratory game bird between the last Saturday in September and November 30.

(7) [(8)] At West Kentucky WMA, a person shall not hunt Canada geese during the September season.

(8) [(9)] At Yatesville Lake, the following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

- (a) The Greenbrier Creek embayment; and
- (b) The lake area north of the mouth of the Greenbrier Creek embayment to the dam, including the island.

(9) [(10)] At Robinson Forest WMA, a person shall not hunt a migratory game bird on the main block of the WMA.

Section 8. Youth-Mentor Dove Hunts. (1) There shall be department-sponsored youth-mentor dove hunts on the first Saturday in September in which participants shall be selected by a random computerized drawing.

(2) A youth shall:

- (a) Apply on the department's Web site at fw.ky.gov between the first Monday in August and the third Friday in August; and
- (b) Carry a department-provided selection notification letter on the day of the hunt.

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

(4) At the youth-mentor hunts:

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

- (b) One (1) adult may accompany two (2) youths; and
- (c) A maximum of two (2) shotguns are allowed per party.

(5) A person shall:

- (a) Hunt within fifteen (15) feet of the assigned location stake; and

(b) Not change locations unless another location has been vacated by the assigned hunter.

(6) A person shall only discharge a firearm within fifteen (15) feet of the assigned location stake.

(7) A person shall leave their firearm at the assigned location stake when retrieving birds.

(8) A hunter participating in youth-mentor hunts shall:

- (a) Check-in prior to hunting;
- (b) Not begin hunting before 2 p.m.;
- (c) Cease hunting by 7 p.m.;
- (d) Exit the area by 7:30 p.m.; and
- (e) Check out before exiting the field.

FRANK JEMLEY III, Acting Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: July 6, 2018

FILED WITH LRC: July 20, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2018 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through September 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS). In addition, it establishes requirements for the hunting of migratory birds.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2018–2019 migratory bird seasons in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the migratory bird hunting seasons and area specific requirements consistent with state, national, and international management goals.

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

(a) How the amendment will change this existing administrative regulation: This amendment will remove the restrictions for hunting geese during September on public lands in the West-Central and Northeast goose zones. These protections were originally put in place to protect introduced populations of geese and those populations are now considered stable. This will maintain the closure to all goose hunting on Cave Run Lake necessary to protect local populations. All these changes are consistent with the long-term Mississippi Flyway and continental management efforts and are within the USFWS required frameworks. The amendment also removes the requirement for participants in Camp Webb dove hunts to be a youth.

(b) The necessity of the amendment to this administrative regulation: This amendment simplifies hunting regulations for goose hunters. Zones are no longer a necessary management tool in Kentucky's management of Canada geese. Allowing for adult

mentor hunts at Camp Webb gives the department greater flexibility in recruitment efforts.

(c) How the amendment conforms to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 40,000 migratory bird hunters in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Migratory bird hunters will now have the opportunity to hunt geese in West-Central and Northeast goose zones with the exception that the closure specified in 301 KAR 2:221 for Cave Run Lake during regular goose seasons is added for September goose seasons.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Goose hunters will have more hunting opportunity and adults will also be able to participate in the dove hunts at Camp Webb.

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

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same requirements and limits apply to all migratory bird hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.360, 150.600, and 50 C.F.R. Parts 20 and 21.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated during subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's migratory bird hunters. Restricting bag limits provides the state the ability to protect populations that may be of concern on the state level but not on a national scale. The greatest concentrations of migratory birds and the greatest hunting pressure often occur on public lands managed by the Department. The Department imposes more restrictive regulations on these lands in effort to meet migratory bird management objectives while still providing quality hunting opportunity.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 3:022. License, tag, and permit fees.

RELATES TO: KRS 150.025, 150.180, 150.183, 150.240, 150.275, 150.280, 150.290, 150.450, 150.485, 150.520, 150.525, 150.600, 150.603, 150.660, 150.720

STATUTORY AUTHORITY: KRS 150.175, 150.195(4)(f), 150.225, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175 authorizes the types of licenses, permits and tags. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation establishes fees and terms for licenses, permits, and tags.

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year. (1) Sport fishing licenses:

(a) Statewide annual fishing license (resident): twenty-three (23) dollars;

(b) Statewide annual fishing license (nonresident): fifty-five (55) ~~fifty (50)~~ dollars;

(c) Joint statewide fishing license (resident): forty-two (42) dollars;

(d) Statewide three (3) year fishing license (resident): fifty-five (55) dollars; and

(e) Trout permit (resident or nonresident): ten (10) dollars.

(2) Commercial fishing licenses:

(a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: \$150; and

(b) Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: \$600.

(3) Commercial fishing gear tags (not to be sold singly):

(a) Commercial fishing gear tags (resident) block of ten (10) tags: fifteen (15) dollars; and

(b) Commercial fishing gear tags (nonresident) block of ten (10) tags: \$100.

(4) Hunting licenses:

(a) Statewide hunting license (resident): twenty-seven (27) dollars;

(b) Statewide hunting license (nonresident): \$150~~\$140~~;

(c) Statewide junior hunting license (resident): six (6) dollars;

(d) Statewide junior hunting license (nonresident): ten (10) dollars;

(e) Shooting preserve hunting license (resident or nonresident): five (5) dollars; and

(f) Migratory game bird and waterfowl permit (resident or nonresident): fifteen (15) dollars.

(5) Combination hunting and fishing license (resident): forty-two (42) dollars.

(6) Senior or disabled combination hunting and fishing license (resident): twelve (12) dollars.

(7) Trapping licenses:

(a) Trapping license (resident): twenty (20) dollars;

(b) Trapping license (resident landowner – tenant): ten (10) dollars;

(c) Trapping license (nonresident): \$130; and

(d) Junior trapping license (resident): five (5) dollars.

(8) Game permits:

(a) Resident bear: thirty (30) dollars;

(b) Resident youth bear: ten (10) dollars;

(c) Nonresident bear: \$250;

(d) Resident bear chase: thirty (30) dollars;

(e) Resident youth bear chase: ten (10) dollars;

(f) Resident quota cow elk permit: sixty (60) dollars;

(g) Nonresident quota cow elk permit: \$400;

(h) Resident quota bull elk permit: \$100;

(i) Nonresident quota bull elk permit: \$550;

(j) Resident out-of-zone elk permit: thirty (30) dollars;

(k) Nonresident out-of-zone elk permit: \$400;

(l) Resident deer permit: thirty-five (35) dollars;

(m) Nonresident deer permit: \$185~~\$120~~;

(n) Resident youth deer: ten (10) dollars;

(o) Nonresident youth deer: fifteen (15) dollars;

(p) Deer management permit~~Bonus antlerless deer permit (two (2) tags per permit)~~ (resident or nonresident): fifteen (15) dollars;

(q)~~Bonus quota hunt deer permit (resident or nonresident): thirty (30) dollars;~~

~~(r)~~ Resident spring turkey: thirty (30) dollars;

~~(r)~~~~(s)~~ Nonresident spring turkey: eighty-five (85)~~seventy-five (75)~~ dollars;

~~(s)~~~~(t)~~ Resident fall turkey: thirty (30) dollars;

~~(t)~~~~(u)~~ Nonresident fall turkey: eighty-five (85)~~seventy-five (75)~~ dollars;

~~(u)~~~~(v)~~ Resident youth turkey: ten (10) dollars;

~~(v)~~~~(w)~~ Nonresident youth turkey: fifteen (15) dollars;

~~(w)~~~~(x)~~ Resident youth elk: thirty (30) dollars; and

VOLUME 45, NUMBER 3 – SEPTEMBER 1, 2018

~~(x)[(y)]~~ Nonresident youth elk: ~~\$200[forty (40) dollars]~~.

(9) Peabody individual permit: fifteen (15) dollars.

(10) Sportsman's license (resident), which includes a resident hunting and fishing license, spring turkey permit, fall turkey permit, trout permit, state migratory game bird and waterfowl permit, and deer permit: ninety-five (95) dollars.

(11) Junior sportsman's license (resident), which includes a junior hunting license, ~~two (2)~~ junior deer ~~permit[permits]~~, and two (2) junior turkey permits: thirty (30) dollars.

(12) Land Between the Lakes hunting permit: twenty (20) dollars.

(13) Conservation permit: five (5) dollars.

Section 2. Licenses, tags, and permits listed in this section shall be valid for the calendar year issued. (1) Live fish and bait dealer's licenses:

(a) Live fish and bait dealer's license (resident): fifty (50) dollars; and

(b) Live fish and bait dealer's license (nonresident): \$150.

(2) Commercial taxidermist license: \$150.

(3) Commercial guide licenses:

(a) Commercial guide license (resident): \$150; and

(b) Commercial guide license (nonresident): \$400.

(4) Shooting area permit: \$150.

(5) Dog training area permit: fifty (50) dollars.

(6) Collecting permits:

(a) Educational wildlife collecting permit: twenty-five (25) dollars; and

(b) Scientific wildlife collecting permit: \$100.

(7) Nuisance wildlife control operator's permit: \$100.

(8) Pay lake license:

(a) First two (2) acres or less: \$150; and

(b) Per additional acre or part of acre: twenty (20) dollars.

(9) Commercial captive wildlife permit: \$150.

(10) Commercial fish propagation permit: fifty (50) dollars.

(11) Wildlife rehabilitator's permit: twenty-five (25) dollars.

(12) Annual wildlife transportation permit: \$250.

(13) Peabody Wildlife Management Area annual event permit: \$250.

(14) Fish transportation permit: twenty-five (25) dollars.

Section 3. Licenses, tags, and permits listed in this section shall be valid for three (3) years from the date of issue. (1) Falconry permit: seventy-five (75) dollars.

(2) Noncommercial captive wildlife permit: seventy-five (75) dollars.

Section 4. Licenses, tags, and permits listed in this section shall be valid for the date or dates specified on each. (1) Short-term licenses:

(a) One (1) day resident fishing license: seven (7) dollars;

(b) One (1) day nonresident fishing license: ~~fifteen (15)[ten (10)]~~ dollars;

(c) Seven (7) day nonresident fishing license: ~~thirty-five (35)[thirty (30)]~~ dollars;

(d)~~[Fifteen (15) day nonresident fishing license: forty (40) dollars;~~

~~(e)]~~ One (1) day resident hunting license (not valid for deer, elk, or turkey hunting): seven (7) dollars;

~~(e)[(f)]~~ One (1) day nonresident hunting license (not valid for deer, elk, or turkey hunting): ~~twenty-five (25)[fifteen (15)]~~ dollars; ~~and~~

~~(f)[(g)]~~ Seven (7) day nonresident hunting license (not valid for deer, elk, or turkey hunting): ~~sixty-five (65)[fifty-five (55)]~~ dollars; ~~and~~

~~(h) Three (3) day fur bearer's license: fifty (50) dollars].~~

(2) Individual wildlife transportation permit: twenty-five (25) dollars.

(3) Special resident commercial fishing permit: \$600.

(4) Special nonresident commercial fishing permit: \$900.

(5) Commercial waterfowl shooting area permit: \$150.

(6) Shoot to retrieve field trial permits:

(a) Per trial (maximum four (4) days): seventy-five (75) dollars; and

(b) Single day: twenty-five (25) dollars.

(7) Boat dock permit: \$100 per ten (10) year permit period beginning January 1, 2008, except that the fee shall be pro-rated for the number of years remaining in the ten (10) year period.

(8) Shoreline use permit: Valid for a fifteen (15) year permit period beginning January 1, 2010 and shall contain three (3) tiers:

(a) Tier I: \$100;

(b) Tier II: \$200;

(c) Tier III: \$300; and

(d) The fees shall be pro-rated to the nearest five (5) year interval remaining in the fifteen (15) year permit period.

(9) Peabody individual event permit: twenty-five (25) dollars.

(10) Commercial roe-bearing fish buyer's permit:

(a) Commercial roe-bearing fish buyer's permit (resident): \$500; and

(b) Commercial roe-bearing fish buyer's permit (nonresident): \$1,000.

(11) Commercial roe-bearing fish harvester's permit:

(a) Commercial roe-bearing fish harvester's permit (resident): \$500; and

(b) Commercial roe-bearing fish harvester's permit (nonresident): \$1,500.

(12) Otter Creek Outdoor Recreation Area:

(a) Daily Entry Permit: three (3) dollars, with children under twelve (12) free; and

(b) Daily Special Activities Permit: seven (7) dollars.

(13) Commercial foxhound training enclosure permit: \$150.

Section 5. Licenses, tags, and permits listed in this section shall be valid on a per unit basis as specified. (1) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.

(2) Pheasant hunt permit (per person, per day): twenty-five (25) dollars.

(3) Horse stall rental (per space, per day): two (2) dollars.

(4) Dog kennel rental (per dog, per day): fifty (50) cents.

(5)~~[Commercial]~~ Captive cervid permit (per facility, per year): \$150.

(6) Noncommercial captive cervid permit (per facility, per three (3) years): seventy-five (75) dollars.

Section 6. The following licenses listed in this section shall be valid from April 1 through March 31 of the following year:

(1) Fur processor's license (resident): \$150;

(2) Fur buyer's license (resident): fifty (50) dollars; and

(3) Fur buyer's license (nonresident): \$300.

Section 7. The following Otter Creek Outdoor Recreation Act permits shall be valid from July 1 through June 30 of the following year:

(1) Annual Entry Permit: thirty (30) dollars, with children under twelve (12) free; and

(2) Annual Special Activities Permit: seventy (70) dollars.

FRANK JEMLEY III, Acting Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: August 10, 2018

FILED WITH LRC: August 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2018 at 8 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through September 30, 2018. Send written notification of intent to attend the public hearing or written

comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees and terms for licenses, permits, and tags sold by the Department of Fish and Wildlife Resources.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the department to establish reasonable license fees, permit terms, and the expiration dates of licenses and permits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.175 authorizes the types of licenses, permits, and tags that the department can issue. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 requires the Department to prescribe reasonable fees for licenses, permits, and registrations authorized by Chapter 150. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation.

(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 reasonable fees and terms for licenses, permits, and tags issued by the Department.

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

(a) How the amendment will change this existing administrative regulation: This amendment increases the license and permit fees for nonresidents for the 2019-2020 season and discontinues the 15-day nonresident fishing license, the 3-day furbearer's license, and the bonus quota hunt deer permit, and replaces the bonus antlerless deer permit with the deer management permit. The price changes are as follows: Nonresident fishing license (from \$50 to \$55); 1-day nonresident fishing license (from \$10 to \$15); 7-day nonresident fishing license (from \$30 to \$35); nonresident hunting license (from \$140 to \$150); nonresident deer permit (from \$120 to \$185); nonresident spring and fall turkey permits (from \$75 to \$85); nonresident 1-day hunting license (from \$15 to \$25); nonresident 7-day hunting license (from \$55 to \$65); nonresident youth elk permit (from \$40 to \$200).

(b) The necessity of the amendment to this administrative regulation: The department receives no state general fund tax dollars and subsists on fees derived from license sales along with federal funds leveraged through those license sales. As such, periodic fee updates are required to maintain financial stability for the department into the future. Resident licenses were increased in 2017.

(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: During the 2017-2018 license year, the department sold 26,244 nonresident fishing licenses, 36,950 1-day fishing licenses, 24,837 7-day nonresident fishing licenses, 29,590 nonresident hunting licenses, 4,351 1-day nonresident hunting licenses, 1,712 7-day nonresident hunting licenses, 6,082 nonresident spring turkey permits, and 538 nonresident fall turkey permits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Purchasers of the above resident licenses will be required to pay higher fees.

(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 the particular license that is purchased. The increased fees are listed in (2)(a) above.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Nonresident license holders will benefit from the department's continued ability to provide continued hunting, fishing, outdoor recreational, and educational opportunities, and continued quality service and enforcement of fish and wildlife regulations.

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

(a) Initially: There will be minimal cost to the department to implement this administrative regulation.

(b) On a continuing basis: There should be no additional cost to the department 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: Yes, this amendment establishes an increase in nonresident fees for the reasons listed in (2)(b) above.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes, this administrative regulation directly increases 10 nonresident license fees as listed in (2)(a) above.

(9) TIERING: Is tiering applied? No. Tiering is not applied because every person will have to pay the same price for each particular license issued.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Division of Administrative Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.175, 150.195, 150.225, and 150.620.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? License sales fluctuate from year to year, and license fee increases usually result in slightly reduced license sales during the first few years; however, this license fee increase is expected to generate approximately \$1.9 million in additional revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment should generate at least \$1.9 million in additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be a minimal cost to administer this program for the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 4:090. Buying and selling of inedible wildlife parts.

RELATES TO: KRS 150.010, ~~[150.025,]~~ 150.175, 150.180, 150.183, ~~150.305[150.304],~~ 150.330, 150.370, 150.411, 150.990

STATUTORY AUTHORITY: KRS ~~[13A.350,]~~ 150.025(1), 150.4111

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations regarding the buying, selling, or transporting of wildlife. KRS 150.4111 authorizes a person to sell the inedible parts of any legally taken wildlife to a licensed taxidermist for the purpose of mounting, authorizes a licensed taxidermist to buy or sell the inedible parts of any legally taken wildlife for the purpose of mounting, and authorizes any person to purchase from or sell to a licensed taxidermist any legally mounted specimen. This administrative regulation establishes the requirements for the buying and selling of inedible wildlife parts. ~~[The commissioner, with the concurrence of the commission, finds it necessary to regulate the buying and selling of inedible wildlife parts in order to assure the trade is limited to legally taken animals. The purpose of this administrative regulation is to detail procedures and responsibilities for taxidermists and others involved in storing, labeling and mounting wildlife, buying and selling inedible wildlife parts and the buying and selling of mounted wildlife specimens and products manufactured from processed wildlife].~~

Section 1. Definitions. (1) ~~["Licensed taxidermist" means any person, partnership, firm or corporation that engages in the business and accepts remuneration for the mounting of skins or other inedible wildlife parts or wildlife and who holds a license under the provisions of KRS Chapter 150.175.~~

(2) ~~"Federally protected wildlife" means any federal threatened or endangered species or[and] any native migratory bird.~~

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

(3) "Licensed taxidermist" means any person, partnership, firm or corporation that accepts remuneration for the mounting of skins or other inedible wildlife parts and who holds a Kentucky taxidermist license, as established in KRS 150.175.

(4) "Mounting" means to arrange processed wildlife for the purpose of display.

(5) "Permanently preserved pelt" means any processed furbearer pelt, but does not include raw fur or pelts treated with salt, borax, or sunlight.

Section 2. Licenses Required. (1) Any person, partnership, firm or corporation engaged in the business and accepting remuneration for mounting skins or other inedible parts of wildlife shall possess a Kentucky taxidermist license.

(2) A licensed taxidermist shall:

(a) Openly display a valid taxidermist license at the place of business; and

(b) Have[Such licenses are available by writing: Division of Fiscal Control, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. The license shall be openly displayed at the place of business and shall be open, along with] all records pertaining to the business and all wildlife specimens or wildlife parts[.] available for[te] inspection during normal business hours by a [any properly authorized agent of the] department conservation officer.

(3) A person or business who transforms a legally acquired, processed, inedible wildlife part into a hand-crafted or manufactured finished product shall not be required to possess a license from the department[Individuals or businesses engaged in the selling of garments or manufactured products comprised of legally taken processed wildlife are not required to possess a license from the department of Fish and Wildlife Resources].

(4) A person or business is not required to possess a license to

buy or sell legally acquired furbearer inedible parts, secretions, or permanently preserved pelts, excluding raw fur.

~~(5)[(3)] In addition to the appropriate state license, all taxidermists who mount federally protected species shall possess[must have] a valid federal taxidermist license issued by the[.Federal permit application information is available by writing:] U.S. Fish and Wildlife Service[. Division of Law Enforcement, P.O. Box 4839, Atlanta, Georgia 30302].~~

Section 3. Labeling Requirements. (1) All licensed taxidermists shall keep records of the name, address and phone number of the owner and the date killed of all wildlife or wildlife parts in their possession and shall tag each specimen or part to identify its owner. ~~[Inedible parts of wildlife so tagged may be possessed year round by a licensed taxidermist.]~~

(2) ~~Wildlife[Deer] heads harvested in Kentucky or other parts separated from the carcass for mounting by a taxidermist shall have the hunter's confirmation number, if applicable,[portion of the official game check card properly filled out and] attached to the separated part. [Parts of deer taken out of state shall be accompanied with proof of legal harvest.]~~

FRANK JEMLEY III, Acting Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: August 2, 2018

FILED WITH LRC: August 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 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 September 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the buying and selling of inedible wildlife parts.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the requirements for the buying and selling of inedible wildlife parts to sustain and protect the wildlife resources of the state, while providing a legal and reasonable market.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations regarding the buying, selling, or transporting of wildlife. KRS 150.4111 authorizes a person to sell the inedible parts of any legally taken wildlife to a licensed taxidermist for the purpose of mounting, authorizes a licensed taxidermist to buy or sell the inedible parts of any legally taken wildlife for the purpose of mounting, and authorizes any person to purchase from or sell to a licensed taxidermist any legally mounted specimen.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in administering the above

statutes by establishing the requirements for the buying and selling of inedible wildlife parts.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow individuals or businesses to buy or sell inedible parts, secretions, or permanently preserved pelts of legally acquired furbearers, excluding raw fur. The amendment also clarifies previous language associated with manufactured or hand-crafted items made from wildlife parts.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify for law enforcement and trappers that a license is not required to sell permanently preserved pelts of furbearers or inedible parts of furbearers. This practice has historically occurred without a license but has not been clearly addressed in regulation.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above. See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above. See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any furbearer hunter or trapper could benefit from this regulation amendment. During the 2017-2018 furbearer trapping season, 2,438 trapping licenses were sold. The number of furbearer hunters is unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required of furbearer hunters or trappers from this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunters and trappers will be allowed to sell inedible parts and preserved/tanned pelts of legally taken furbearers, except for raw furs, without possessing a license.

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

(a) Initially: There will not be a cost to the department to implement this regulation.

(b) On a continuing basis: There will be not continuing cost to the department.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not used because all persons who hunt or trap furbearers 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 Law Enforcement and Wildlife Divisions will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS150.025(1) and 150.4111.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Revenue will not be generated in subsequent years.

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

(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:

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amendment)

401 KAR 52:050. Permit application, registration application, and compliance forms.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 51, Part 70, 42 U.S.C. 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, [40 C.F.R. Part 51, Part 70,] 42 U.S.C. 7401-7671q

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) ~~authorizes[requires]~~ the ~~Environmental and Public Protection~~ cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation incorporates by reference the application and compliance forms used to permit or register air contaminant sources in Kentucky.

Section 1. Applicability. ~~An applicant shall use forms DEP7007 AI through HH, ["Forms DEP7007AI to DD, Permit Application to Construct or Operate an Air Contaminant Source", shall be required] to apply for a permit, permit revision, [er] permit renewal, or registration pursuant to 401 KAR 52:020, Section 4(1); [401] 52:030, Section 4(1); [er 401-KAR] 52:040, Section 4(1); or 52:070, Section 7(1), as applicable. ["Forms DEP7007AI to DD, Permit Application to Construct or Operate an Air Contaminant Source", is incorporated by reference in Section 2 of this administrative regulation.]~~

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

(a) Administrative Information, DEP7007AI, August 2018;

(b) Indirect Heat Exchangers and Turbines, DEP7007A, August 2018;

(c) Manufacturing or Processing Operations, DEP7007B, August 2018;

(d) Incinerators and Waste Burners, DEP7007C, August 2018;

(e) Episode Standby Plan, DEP7007F, August 2018;

(f) Volatile Liquid Storage, DEP7007J, August 2018;

(g) Surface Coating or Printing Operations, DEP7007K, August 2018;

(h) Mineral Processes, DEP7007L, August 2018;

(i) Metal Cleaning Degreasers, DEP7007M, August 2018;

(j) Source Emissions Profile, DEP7007N, August 2018;

(k) Perchloroethylene Dry Cleaning Systems, DEP7007P,

VOLUME 45, NUMBER 3 – SEPTEMBER 1, 2018

August 2018:

(l) Emission Offset Credit, DEP7007R, August 2018;

(m) Service Stations, DEP7007S, August 2018;

(n) Metal Plating and Surface Treatment Operations, DEP7007T, August 2018;

(o) Applicable Requirements and Compliance Activities, DEP7007V, August 2018;

(p) Good Engineering Practice and Stack Height Determination, DEP7007Y, August 2018;

(q) Compliance Schedule for Noncomplying Emission Units, DEP7007AA, August 2018;

(r) Certified Progress Report, DEP7007BB, August 2018;

(s) Compliance Certification, DEP7007CC, August 2018;

(t) Insignificant Activities, DEP7007DD, August 2018;

(u) Internal Combustion Engines, DEP7007EE, August 2018;

(v) Secondary Aluminum Processing, DEP7007FF, August 2018;

(w) Control Equipment, DEP7007GG, August 2018; and

(x) Haul Roads, DEP7007HH, August 2018["Forms DEP7007AI to DD, Permit Application to Construct or Operate an Air Contaminant Source", June 2000, is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-3999;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102-8942, (606) 929-5285;

(c) Bowling Green Regional Office, 2642 Russellville Road, Bowling Green, Kentucky 42101, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 292-6411;

(e) Frankfort Regional Office, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-3358;

(f) Hazard Regional Office, 1332 South Kentucky Highway, Suite 100[233 Birch Street, Suite 2], Hazard, Kentucky 41701, (606) 435-6022;

(g) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(h) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(i) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468; or

(3) This material is available:

(a) On request by contacting the Division for Air Quality, Permit Support Section, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502)564-3999; or

(b) On the Internet at: <http://air.ky.gov>. 401 KAR 52:050 approved for filing.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 26, 2018

FILED WITH LRC: July 30, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on September 27, 2018, at 10:00 a.m. (Eastern Time) in Conference Room 111 at 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 20, 2018, 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 shall be cancelled, and notification of the cancellation shall be posted at <http://air.ky.gov/pages/publicnoticesandhearings.aspx>. 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 September 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. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary

to participate in the hearing may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Cassandra Jobe, Supervisor, Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-6670, fax (502) 564-4245, email cassandra.jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference application and compliance forms used to permit or register air contaminant sources in Kentucky. Air contaminant sources shall be required to apply for a permit, permit revision, permit renewal, or registration pursuant to 401 KAR 52:050, Section 4(1); 52:030, Section 4(1); 52:040, Section 4(1); or 52:070, Section 7(1), as applicable.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that applications for permits and registrations contain information necessary to determine the applicability of federal and state regulations to new and existing air contaminant sources.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes forms utilized for permitting and registering air contaminant sources in Kentucky. By permitting and registering air contaminant sources, the Cabinet can continue to enforce air quality regulations and air quality in Kentucky will continue to improve.

(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 requiring information about a source to determine applicability of federal and state air 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 proposed amendment updates the content and format of the permit application and registration forms to be consistent and uniform for owners and operators of air contaminant sources.

(b) The necessity of the amendment to this administrative regulation: This proposed amendment is necessary to gather source information and to determine applicability of federal and state regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This amendment conforms to the content of the authorizing statutes by establishing permit and registration application forms for emissions from air contaminant sources.

(d) How the amendment will assist in the effective administration of statutes: The proposed amendment will assist in the effective administration of the statutes by requiring information about a source to determine applicability of federal and state regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. The proposed administrative regulation incorporates by reference the application forms, which air contaminant sources are required to use when applying for a permit, permit revision, permit renewal, or registration in the Commonwealth of Kentucky. All sources in Kentucky subject to 401 KAR 52:020, 52:030, 52:040, and 52:070 are required to use the forms in 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: Air contaminant sources will use the forms incorporated by reference in this administrative regulation when applying for a permit, permit revision, permit renewal, or registration for an air contaminant source in the Commonwealth of Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying with this administrative regulation because it updates and streamlines the permitting and registration forms that are incorporated by reference.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The streamlined forms will be easier to use, will provide clarity, uniformity, and ensure that regulated air pollutants are regulated properly. The forms can be filled out and filed electronically.

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

(a) Initially: There will be no additional costs to implement the proposed administrative regulation initially.

(b) On a continuing basis: There will be no additional costs to implement the proposed administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The Division for Air Quality's current operating budget will be used to implement the proposed 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 additional funding is necessary to implement the proposed amendments to this administrative regulation.

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

(9) TIERING: Is tiering applied? No. The proposed administrative regulation incorporates by reference the forms that are used by the cabinet for permitting and registering air contaminant sources. However, tiering is provided within the cabinet's permitting program in that sources whose emissions fall below certain levels are required to apply for registration, rather than a permit.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Any unit, part, or division or local government that operates an air contaminant source required to apply for a permit or registration under 401 KAR 52:020, 52:030, 52:040, or 52:070 would use the forms incorporated by reference in this administrative regulation. The Division for Air Quality will use the forms incorporated by reference in this administrative regulation to permit and register air contaminant sources in Kentucky.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5), 224.20-100, 40 C.F.R. Part 70.

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

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

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

years? The proposed administrative regulation will not generate revenue in subsequent years.

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

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

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

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

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

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

The federal mandate for permit applications is contained in 40 C.F.R. 70.5(c).

2. State compliance standards. This administrative regulation contains permit and registration forms used by sources subject to 401 KAR 52:020, 52:030, 52:040, and 52:070.

3. Minimum or uniform standards contained in the federal mandate.

40 C.F.R. 70.5(c) requires information to be submitted in a standard application form.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The requirement for air contaminant sources to use the same forms for permitting and registration is different than the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The cabinet is requiring the use of the same forms for permitting and registration to insure consistency in protecting human health and the environment.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amendment)

401 KAR 52:070. Registration of air contaminant [designated] sources.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Parts 60, 61, and 63

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) ~~authorizes[requires]~~ the ~~Environmental and Public Protection~~ cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. ~~[There is no federal mandate for this administrative regulation.]~~ This administrative regulation establishes the procedure for the registration of ~~[designated]~~ air contaminant sources in Kentucky.

Section 1. Applicability. (1) This administrative regulation shall apply to:

(a) A source ~~[(1) Sources]~~ that ~~has[emit or have]~~ the ~~[potential to emit (PTE)]~~:

~~1. [(a)] Two (2) tpy or more but less than ten (10) tpy of a HAP;~~
~~2. [(b)] Five (5) tpy or more but less than twenty-five (25) tpy of combined HAPs; or~~

3. More than five (5) tpy but less than twenty-five (25) tpy of a regulated air pollutant that is not a HAP; or

(b) A source [(c) For other regulated air pollutants:

1. Ten (10) tpy or more but less than twenty-five (25) tpy of a pollutant subject to an applicable requirement that does not specify the method for achieving compliance;

2. Ten (10) tpy or more but less than 100 tpy of a pollutant subject to an applicable requirement that clearly specifies the method of compliance; or

3. Ten (10) tpy or more but less than 100 tons per year of a pollutant for which there is no applicable requirement; or

(2) Sources that has the potential to emit less than the cutoffs in paragraph (a) of this subsection [(1) of this section] but is[are] subject to an applicable requirement in 40 C.F.R. Parts 60, 61, or 63.

(2) This administrative regulation shall not apply to:

(a) A source required to be permitted pursuant to 401 KAR 52:020, 401 KAR 52:030, or 401 KAR 52:040; or

(b) A source exempt pursuant to Section 2 of this administrative regulation.

Section 2. Exemptions. (1) The following sources shall be exempt from this administrative regulation:

(a) A source [Sources that are required to be permitted under 401 KAR 52:020, 401 KAR 52:030, or 401 KAR 52:040;

(b) Sources] that emits[emit] only nonprocess fugitive emissions;

(b) A source [(c) Sources] subject only to the requirements of 40 C.F.R. 60.530 to 60.539b, (Subpart AAA), Standards of Performance for New Residential Wood Heaters;

(c) A source subject only to the requirements of 40 C.F.R. 60.5472 to 60.5483, (Subpart QQQQ), Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces; or

(d) A sawmill that produces [Sawmills that produce] only rough-cut or dimensional lumber from logs and which has[have] a rated capacity of 5,000 board feet per hour or less, if the source does not include an indirect heat exchanger or waste wood burner subject to an applicable requirement in 40 C.F.R. Part 60 or 401 KAR Chapters 59 or 61.

(2) The following activities shall be exempt from this administrative regulation:

(a) A vehicle [Vehicles] used for the transportation of passengers or freight;

(b) Use of a publicly-owned road [roads];

(c) An asbestos demolition or renovation operation [operations] subject only to an applicable requirement in 401 KAR Chapter 58;

(d) An open burning covered under 401 KAR 63:005; or [and]

(e) An activity [Activities] or emission unit [units] contained in the "List of Trivial Activities", which the cabinet shall maintain and make available:

1. On request by calling the Division for Air Quality, Permit Support Section, at (502) 564-3999; and

2. On the Internet at: <http://air.ky.gov>.

Section 3. General Provisions. (1) A source [Sources that are] subject to this administrative regulation shall:

(a) Register with the cabinet;

(b) Comply with all applicable requirements; and

(c) 1. Allow an authorized representative [representatives] of the cabinet to enter the premises at all reasonable times:

a. To access and copy any records required by this administrative regulation;

b. To inspect any facility, equipment (including air pollution control equipment), practice, or operation; and

c. To sample or monitor substances or parameters to determine compliance with applicable requirements.

2. Reasonable times shall be:

a. During all hours of operation;

b. During normal office hours; or

c. During an emergency.

(2) A source [Sources] that is[are] located in an ozone nonattainment area or ozone maintenance area that is subject to this administrative regulation and has [areas and emit or have] the potential to emit [twenty-five (25) tpy or more of] VOC or NO_x shall submit an annual emission certification as follows:

(a) During the first quarter of each calendar year, the cabinet

shall survey the source [these sources] to determine [their] actual emissions during the preceding calendar year and the source shall:

1. Make the appropriate additions or corrections to the survey;

2. Return the updated survey to the cabinet within thirty (30) days of the date that the survey is mailed to the source. For this response:

a. Each day past the deadline that a source fails to submit the required information shall be a separate violation of this administrative regulation;

b. If no response is received by the deadline, the cabinet shall estimate the actual emissions based on prior history and other relevant information that is available; and

(b) Failure of the cabinet to notify a source under this subsection shall not relieve the source from the obligation to submit an emissions statement.

(3) The cabinet may require registered sources to demonstrate compliance with applicable requirements.

Section 4. When to Apply for Registration [Register]. (1) New sources. A source [Sources] that commences [commence] construction after the effective date of this administrative regulation shall submit a complete application [a registration form] to the cabinet prior to commencing construction.

(a) A source may commence construction immediately upon submittal of a complete application, as required by Section 7 of this administrative regulation [registration form].

(b) The cabinet shall review the application [registration form] and shall notify the source within sixty (60) days of receipt that:

1. A permit or registration is not required;

2. The application [registration] as submitted is accepted, and the source is a registered source; or

3. The source is required to obtain a permit and is required to take the specified action.

(2) Existing registered sources. A source [Sources] that is[are] registered with the cabinet and plans [plan] to reconstruct or modify shall comply with the following:

(a) A source [Sources] that remains [remain] eligible for registration after the change:

1. Shall submit a complete application, as established in Section 7 of this administrative regulation, [a registration form] to the cabinet prior to commencing reconstruction or modification; and

2. May commence reconstruction or modification immediately upon submittal of the complete application [registration form].

(b) A source [Sources] that is[are] not eligible for registration after the change shall:

1. Submit a complete [an] application pursuant to [under] 401 KAR 52:020, 401 KAR 52:030, or 401 KAR 52:040, as applicable; and

2. Obtain the appropriate permit prior to commencing reconstruction or modification.

Section 5. Application [Registration] at the Cabinet's Request.

(1) Upon request by the cabinet, a source that has commenced construction or operation without a permit or registration shall submit a complete application [a registration form] within thirty (30) days of request.

(2) The cabinet shall review the application [registration form] and within sixty (60) days of receipt:

(a) Shall notify the source that a permit or registration is not required; or

(b) If a permit or registration is required, shall specify the action the source is required to take, and may issue a notice of violation.

Section 6. Rescinding an Existing Permit. (1) A source that has a permit and is eligible for registration may request that the cabinet rescind its permit by submitting:

(a) A complete application, as established in Section 7 of this administrative regulation [registration form]; and

(b) A letter requesting the cabinet to rescind the permit, along with supporting documentation that provides evidence that the source meets the requirements for registration.

(2) The cabinet shall review the request and shall notify the

source within sixty (60) days of receipt that:

(a) The request is approved and the permit has been rescinded; or

(b) The request is denied and shall specify the reason for denial and any action the source is required to take.

Section 7. How to Apply for Registration[Register]. (1) Application[Registration] shall be made using the applicable forms DEP7007AI through DEP7007HH, incorporated by reference in 401 KAR 52:050.

(2) Complete applications shall be submitted to the Kentucky Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601.;

(a) Form DEP7039A, which is incorporated by reference in Section 8 of this administrative regulation; or

(b) Form DEP7105 for gasoline dispensing facilities which are subject to 401 KAR 59:174.

(2) Forms DEP7039A and DEP7105 may be obtained by contacting the Kentucky Division for Air Quality, Emissions Inventory Section, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3999, fax (502) 564-4666.

(3) Completed registration forms shall be submitted to Kentucky Division for Air Quality, Attn: EIS Section, 300 Sower Boulevard, Frankfort, Kentucky 40601.

Section 8. Incorporation by Reference. (1) "Form DEP7039A, Minor Source Registration", May 2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3999, fax (502) 564-4666;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102-8942, (606) 929-5285;

(c) Bowling Green Regional Office, 2642 Russellville Road, Bowling Green, Kentucky 42101, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 564-3999;

(e) Frankfort Regional Office, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-3358;

(f) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(g) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(h) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(i) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 26, 2018

FILED WITH LRC: July 30, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on September 27, 2018, at 10:00 a.m. (Eastern Time) in Conference Room 111 at 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 20, 2018, 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 shall be cancelled, and notification of the cancellation shall be posted at <http://air.ky.gov/pages/publicnoticesandhearings.aspx>. 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 September 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. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary

to participate in the hearing may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Cassandra Jobe, Supervisor, Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-6670, fax (502) 564-4245, email cassandra.jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for the registration of an air contaminant source in the Commonwealth of Kentucky that has the potential to emit (PTE) a regulated air pollutant that meets the minimum threshold requirements and is not required to be permitted pursuant to 401 KAR 52:020, 52:030, or 52:040.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that applications for registered sources contain the information necessary to determine applicability for federal and state regulations to new and existing air contaminant sources.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the procedures for the registration of air contaminant sources.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing requirements for registration of air contaminant sources.

(2) If 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 proposed amendment will make the application process for registered sources consistent with the application process for permitted sources and clarifies the applicability for registered sources.

(b) The necessity of the amendment to this administrative regulation: This proposed amendment will effectively gather necessary information from air contaminant sources that will assist the Division for Air Quality in determining applicability of federal and state regulations. The Cabinet will utilize the DEP7007AI through DEP7007HH forms incorporated by reference in 401 KAR 52:050 to gather information regarding air pollutants emitted by air contaminant sources.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by requiring information from air contaminant sources that are not permitted in accordance with 401 KAR 52:020, 52:030, or 52:040.

(d) How the amendment will assist in the effective administration of statutes: The proposed amended administrative regulation will assist in the effective administration of the statute by requiring air contaminant sources to submit information to the cabinet, which will allow the cabinet to accurately determine the applicability of state and federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. The proposed administrative regulation affects any air contaminant source within the Commonwealth of Kentucky that is not required to apply for a permit pursuant to 401 KAR 52:020, 52:030, or 52:040, and meets the applicability criteria established in Section 1 of the proposed amendment to the 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: Air contaminant sources will be required to submit an application to the cabinet 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): The cost of compliance with this administrative regulation will be the cost of completing the required application forms that are incorporated by reference in 401 KAR 52:050.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this administrative regulation, entities will be registered or permitted, as appropriate. This will help regulated entities to know the applicable requirements for the air contaminant source, and improve compliance with those requirements. This amendment will also lead to continued improvement in air quality in Kentucky.

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

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

(b) On a continuing basis: The Division will not incur any additional continuing 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 Division's current operating budget will be used for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Yes. The proposed administrative regulation requires air contaminant sources whose emissions meet specific threshold criteria to submit an application to the cabinet.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division for Air Quality will continue to process applications from air contaminant sources in accordance with this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the 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 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? This proposed administrative regulation will not generate revenue in subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? The Division's current 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 Department of Corrections (Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640, 532.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures", July 19[April 12], 2018, are incorporated by reference. Department of Corrections Policies and Procedures include:

- 1.2 News Media (Amended 6/10/14)
- 1.4 The Monitoring and Operation of Private Prisons (Amended 5/15/08)
- 2.1 Inmate Canteen (Amended 2/26/16)
- 2.12 Abandoned Inmate Funds (Amended 4/12/18)
- 3.1 Code of Ethics (Amended 12/10/13)
- 3.5 Sexual Harassment and Anti-Harassment (Amended 12/10/13)
- 3.9 Student Intern Placement Procedure (Amended 11/7/16)
- 3.10 Appearance and Dress for Nonuniformed Staff (Amended 1/12/18)
- 3.11 Drug Free Workplace Employee Drug Testing (Amended 12/10/13)
- 3.14 Employee Time and Attendance Requirements (Amended 6/14/16)
- 3.17 Uniformed Employee Dress Code (Amended 1/12/18)
- 3.22 Staff Sexual Offenses (Amended 12/10/13)
- 3.23 Internal Affairs Investigation (Added 8/25/09)
- 5.1 Research, Surveys and Data Requests (Amended 3/14/18)
- 5.3 Program Evaluation and Measurement (Amended 6/9/15)
- 6.1 Open Records Law (Amended 5/14/07)
- 6.2 Inmate Record (Added 11/7/16)
- 8.2 Fire Safety (Amended 3/14/14)
- 8.7 Notification of Extraordinary Occurrence (Amended 3/14/14)
- 9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 6/9/15)
- 9.6 Contraband (Amended 2/26/16)
- 9.8 Search Policy (Amended 3/14/18)
- 9.13 Transport to Court - Civil Action (Amended 07/09/07)
- 9.18 Informants (Amended 9/13/10)
- 9.19 Found Lost or Abandoned Property (Amended 10/14/05)
- 10.2 Special Management Inmates (Amended 4/11/17)
- 10.3 Safekeepers and Contract Prisoners (Amended 1/12/18)
- 11.2 Dietary Procedures and Compliance (Amended 1/12/17)
- 11.4 Alternative Dietary Patterns (Amended 1/12/17)
- 13.1 Pharmacy Policy and Formulary (Amended 1/15/15)
- 13.2 Health Maintenance Services (Amended 2/26/16)
- 13.3 Medical Alert System (Amended 3/14/14)
- 13.5 Advance Healthcare Directives (Amended 6/14/16)
- 13.6 Sex Offender Treatment Program (Amended 11/7/16)
- 13.7 Involuntary Psychotropic Medication (Amended 10/14/05)

VOLUME 45, NUMBER 3 – SEPTEMBER 1, 2018

- 13.8 Substance Abuse Program (Amended 10/12/12)
- 13.9 Dental Services (Amended 10/14/05)
- 13.10 Serious Infectious Disease (Amended 3/14/14)
- 13.11 Do Not Resuscitate Order (Amended 8/9/05)
- 13.12 Suicide Prevention and Intervention Program (Added 8/25/09)
- 13.13 Behavioral Health Services (Amended 11/7/16)
- 13.15 Inmate Observer Program (Added 8/12/16)
- 14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
- 14.2 Personal Hygiene Items (Amended 8/20/13)
- 14.3 Marriage of Inmates (Amended 1/12/17)
- 14.4 Legal Services Program (Amended 3/14/14)
- 14.5 Claims Commission (Amended 4/12/18)
- 14.6 Inmate Grievance Procedure (Amended 3/14/18)
- 14.7 Sexual Abuse Prevention and Intervention Programs (Amended 4/12/18)
- 14.8 Lesbian, Gay, Bisexual, Transgender, and Intersex Offenders (Amended 1/12/18)
- 15.1 Hair, Grooming and ID Card Standards (Amended 1/12/18)
- 15.2 Rule Violations and Penalties (Amended 8/12/16)
- 15.3 Meritorious Good Time (Amended 11/7/16)
- 15.4 Program Credit (Amended 6/12/12)
- 15.5 Restoration of Forfeited Good Time (Amended 2/26/16)
- 15.6 Adjustment Procedures and Programs (Amended 3/14/18)
- 15.7 Inmate Accounts (Amended 1/12/18)
- 15.8 Possession or Use of Unauthorized Substance and Substance Abuse Testing (Amended 4/12/18)
- 16.1 Inmate Visits (Amended 4/11/17)
- 16.2 Inmate Correspondence (Amended 11/7/16)
- 16.3 Inmate Access to Telephones (Amended 10/12/12)
- 16.4 Inmate Packages (Amended 8/12/16)
- 16.5 Video Visitation (Added 8/12/16)
- 17.1 Inmate Personal Property (Amended 3/14/18)
- 17.2 Assessment Center Operations (Amended 6/9/15)
- 17.3 Controlled Intake of Inmates (Amended 3/14/14)
- 17.4 Administrative Remedies: Sentence Calculations (Amended 8/12/16)
- 18.1 Classification of the Inmate (Amended 3/14/18)
- 18.2 Central Office Classification Committee (Amended 1/12/18)
- 18.3 Confinement of Youthful Offenders (Added 6/9/15)
- 18.5 Custody Level and Security (Amended 7/19/18[4/12/18])
- 18.7 Transfers (Amended 5/13/16)
- 18.9 Out-of-state Transfers (Amended 2/26/16)
- 18.11 Placement for Mental Health Treatment in CPTU or PCU (Amended 6/14/16)
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
- 18.13 Population Categories (Amended 4/12/18)
- 18.15 Protective Custody (Amended 1/12/18)
- 18.16 Information to the Parole Board (Amended 1/12/18)
- 18.17 Interstate Agreement on Detainers (Amended 07/09/07)
- 18.18 International Transfer of Inmates (Amended 5/14/07)
- 19.1 Governmental Services Program (Amended 10/12/12)
- 19.2 Sentence Credit for Work (Amended 2/26/16)
- 19.3 Inmate Wage/Time Credit Program (Amended 4/12/18)
- 19.4 Work Release for State Inmates in Jails (Added 4/12/18)
- 20.1 Educational Programs and Educational Good Time (Amended 8/25/09)
- 21.1 Library Services (Added 3/14/14)
- 22.1 Privilege Trips (Amended 10/14/05)
- 22.2 Recreation and Inmate Activities (Added 3/14/14)
- 23.1 Religious Programs (Amended 3/14/18)
- 25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
- 25.3 Prerelease Program (Effective 11/15/06)
- 25.4 Inmate Furloughs (Added 4/12/18)
- 25.6 Community Service Center Program and Jail Placement (Amended 3/14/18)
- 25.10 Administrative Release of Inmates (Amended 8/12/16)
- 25.11 Victim Services Notification (Amended 8/25/09)
- 25.12 Home Incarceration Program (Added 8/12/16)
- 25.13 Women's Medical Release: Pregnancy (Added 7/19/18)

- 26.1 Citizen Involvement and Volunteer Service Program (Amended 1/12/18)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections website in the policies and procedures area at <https://corrections.ky.gov/Pages/default.aspx>.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: July 19, 2018

FILED WITH LRC: July 19, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2018, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Department of Corrections (DOC) including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 196.070, 196.075, 196.173 197.020, 439.470, 439.590, 439.640, 439.3110, 532.100, and 532.260 and to meet American Correctional Association (ACA) standards requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Department of Corrections. The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference establish the policies and procedures that govern the operations of the Department of Corrections and its institutions. It provides direction and information to Corrections employees and inmates concerning the operations of the department.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds procedures for the Kentucky Department of Corrections compliance with KRS 196.173 and 439.3110 and maintains compliance with ACA standards.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035, 196.173, 197.020, 439.3110, and 532.100 and update practices for the department and its institutions.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the state correctional institutions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, 3,904 employees, 24,680 inmates, visitors, volunteers and others who enter state correctional institutions, 12 pregnant inmates, offenders on home incarceration, 200 community offenders on probation and parole, jailers and jail employees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the new policy and the procedures in it. Jailers and jail employees will have to comply with the amendment for state inmates housed in a jail. The institutional employees and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will allow compliance with statutory changes.

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

(a) Initially: No increase in funding is anticipated.

(b) On a continuing basis: No increase in funding is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds for the biennium.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of the Kentucky Department of Corrections and each state correctional institution. The impact of the new CPP 25.13 on county jails is limited to eligible state inmates housed in county or regional jails.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.030, 196.035, 196.070, 196.075, 196.173, 197.020, Chap. 218A, 439.250, 439.310, 439.3110, 439.3401, 439.470, 439.590, 439.640, 441.560, 510, 529.100, 530.020, 530.064, 531.310, 531.320 532.100, 532.260 and to meet American Correctional Association (ACA) standards requirements.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is anticipated to be generated for the Department of Corrections or county or regional jails from this new policy.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is anticipated to be generated for the Department of Corrections or county or regional jails from this new policy.

(c) How much will it cost to administer this program for the first year? The amendment

to this regulation impacts how the Kentucky Department of Corrections and state correctional institutions operate. There are no significant additional costs for the Department of Corrections under this amendment. There may be a small cost for transportation for twelve state inmates. A bus ticket costs, on average, approximately \$65 per ticket.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how the Kentucky Department of Corrections and state correctional institutions operate. The costs for the amendment are not expected to increase costs for the Kentucky Department of Corrections budgeted funds for the biennium.

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

Revenues (+/-):

Expenditures (+/-):

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Amendment)

701 KAR 5:140. Districts of innovation.

RELATES TO: KRS 156.108, 156.160(1)(g), 160.107

STATUTORY AUTHORITY: KRS 156.108, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160(1)(g) gives the Kentucky Board of Education the authority to promulgate administrative regulations and KRS 156.108 requires the Kentucky Board of Education to promulgate administrative regulations to prescribe the conditions and procedures to be used by a local board of education to be approved as a district of innovation by the Kentucky Board of Education. This administrative regulation establishes the requirements and approval process for districts of innovation.

Section 1. Definitions. (1) "Competency based learning" means a framework for the awarding of credit to students upon mastery of Kentucky [Kentucky's Core] Academic Standards set forth in 704 KAR Chapter 3 and 8 [in 704 KAR 3:303] or upon mastery of any additional competencies which shall also include explicit, measurable, transferable learning objectives that empower students and that include application and creation of knowledge along with the development of important skills and dispositions.

(2) "District of Innovation" is defined in KRS 156.108(1)(a) and does not include a district with an innovation plan that does not require the Kentucky Board of Education to approve an exemption from any administrative regulation or statute.

(3) "Eligible employees" is defined in KRS 160.107(3)(b).

(4) "Expanded learning opportunities" means initiatives that provide students additional opportunities for enrichment, personal growth, and engagement outside the traditional school day, and that may include extended day or year initiatives, before- and after-school programs, Saturday, weekend, and summer programs,

distance learning, and early childhood education initiatives.

(5) "Innovation" is defined in KRS 156.108(1)(b).

(6) "Innovative strategies" means strategies that provide non-traditional approaches to all areas of curriculum, instruction, assessment, governance, and school operation.

(7) "School of Innovation" is defined in KRS 156.108(1)(c).

Section 2. Conditions and Areas of Emphasis for Innovation.

(1) Any public school district may submit an application for approval as a District of Innovation in accordance with the application process established in Section 3 of this administrative regulation. A district may submit a District of Innovation Application for a minimum of one (1) school within the district; however, an individual school shall not submit an application except as part of a district application.

(2) A district may incorporate in its application any innovative strategies and models that have been shown to be effective in other districts or states or new innovative strategies or models created by the district or school. Innovative strategies may include:

(a) Moving to a competency based learning system, including development of alternate methods for delivering curriculum or for measuring mastery of standards and skills;

(b) Creating multiple pathways to graduation, including rigorous career and technical pathways, apprenticeships, early college high schools, early graduation options, or digital learning opportunities;

(c) Redefining [Rethinking] the times and places that learning occurs, including lengthening or flexing the school day or school year, moving learning beyond the traditional school building, or incorporating expanded learning opportunities;

(d) Implementing alternative forms of school governance that include the engagement of teachers, parents, and community members and that does not meet the requirements of KRS 160.345;

(e) Designing learning environments that include the student in the design of learning pathways; or

(f) Creating additional job classifications for certified or classified staff beyond the traditional roles of teacher and instructional assistants and compensating staff on schedules other than single salary schedules.

Section 3. Application Process. (1) A district may submit an original or renewal District of Innovation Application to the Kentucky Department of Education [department] at any time within the calendar year. Each implementation of an approved application shall begin at the start of a school term, and a district shall submit an application at least ninety (90) days prior to the beginning of a school term to have the application considered for implementation at the beginning of the upcoming school term [180 days from the date of submission of the application].

(2) A [Pursuant to KRS 160.107(3), a] district shall identify and include in its application; [those schools that have voluntarily chosen to be schools of innovation, any persistently low-achieving schools that the district chooses to make schools of innovation, and any district operated schools per KRS 160.345(1)(b) the district plans to create in its application.]

(a) Any schools that have voluntarily chosen to be schools of innovation pursuant to KRS 160.107(3)(a);

(b) Any schools identified for Comprehensive Support and Improvement pursuant to KRS 160.346 that a local board of education has chosen, pursuant to KRS 160.107(3)(c), to make schools of innovation; and

(c) Any district-operated schools that a district plans to create through the application.

(3) The department shall provide technical assistance to districts prior to application submission.

(4) In addition to the application requirements established in KRS 160.107(1), the application shall include the following components:

(a) An individual school level plan for each existing school included in the district's innovation plan and for any district-operated school the district plans to create through [under] the application;

(b) ~~A description of how the district's innovation will provide greater improvement in student outcomes, particularly among low-achieving students, than the outcomes the district would expect using its existing instructional programs. The plan shall specifically address how it more effectively improves the multiple measures required under the accountability system, including targets for student achievement, student growth, achievement gap reduction, graduation rate, and college and career readiness;~~

~~(c) A description of the district's plan to ensure that capacity exists in both human and fiscal resources to implement the changes needed in the district to ensure a successful implementation of the district's innovation plan;~~

~~(d) Where the application proposes alternative education programs and services and in order to comply with the innovation plan requirements in KRS 160.107(2)(b), a description of the district's attendance policy for non-traditional settings and the district's plan to ensure that all students meet attendance requirements as required pursuant to KRS 158.030 and KRS 158.100;~~

~~(e) A plan for developing alternate assessment options and measuring student performance outcomes in non-traditional settings including extended learning opportunities, apprenticeships, private instruction, work study, study in a foreign country, awarding of competency based learning credit, community service, independent study, or on-line learning opportunities;~~

~~(f) A description and rationale for the innovative strategies and models chosen to be implemented;~~

(d) A description of expected gains in student learning as a result of implementing these strategies, including a description of how improved student learning will be measured and reported;

(e) [(g)] A complete list of [the] statutes, administrative regulations, and local board policies, except as provided in KRS 160.107(2), from which the local district is seeking a waiver or exemption in order to implement innovative strategies and an explanation detailing [ef];

1. How the requirements of those authorities are a barrier to implementing innovative strategies [that implementation]; and

2. How a waiver or exemption, if granted by the Kentucky Board of Education, will ease or remove barriers to implementation.

(f) [(h)] Documentation of [broad] support for the proposed innovations as required by KRS 160.107(1)(d). [including educators, parents, local institutions of higher education, and business and community partners.] This documentation may [shall] include:

1. Minutes of local board of education meetings at which the District of Innovation Application was discussed;

2. Transcripts or minutes from stakeholder meetings designed specifically to develop or support the District of Innovation Application;

3. Minutes of school-based decision making council meetings at which the District of Innovation Application was discussed; or [(SBDM) councils that include information showing an affirmative vote of at least seventy (70) percent of the eligible employees to participate in the application as well as discussion of the application itself. The vote of the eligible employees shall be conducted based on school council policy related to council elections per KRS 160.345;]

4. Letters of support and commitment to adhere to the innovation plan from a variety of local stakeholder groups including parent, community, and business groups, [-] and

5. If the application contains a request for waiver of sections of KRS 160.345, evidence of the two (2) votes required by KRS 160.107(4)(b) for each school requesting the waiver, specifying the vote from the school-based decision making council and the vote from the teachers and staff in the school;]

(g) For each school included in the District of Innovation Application, evidence showing at least seventy (70) percent of eligible employees cast an affirmative vote to request inclusion as required by KRS 160.107(3);

(h) For each school included in the District of Innovation Application that is requesting a waiver of the school council structure outlined in KRS 160.345;

1. Evidence showing the school-based decision making council voted and at least seventy (70) percent of eligible employees voted to approve the waiver request as required by KRS 160.107(4)(b); and

2. A description of the governance model to be used in the affected school to ensure teachers, parents, and staff continue to share leadership responsibilities as required by KRS 160.107(4)(d).

(i) A detailed budget indicating how the local board of education shall support implementation of the innovation plan over the course of the initial five (5) year innovation period;

(j) Signatures of the superintendent and board chair along with official board minutes documenting the vote to approve submission of the application; and

(k) [Signature of the chair of the SBDM council for each school participating in the application;

(l)] A description of how the district shall support job-embedded professional learning; [-; and

(m) For each school in the plan that is requesting a waiver of the school council structure outlined in KRS 160.345, a description of the governance model to be used in the school. The new governance model shall ensure that teachers, parents, and staff continue to share leadership responsibilities as outlined in KRS 160.107(4)(d).]

(5)[(a)] A committee designated by the Commissioner of Education [commissioner] shall review and recommend approval or denial of a completed application to the Kentucky Board of Education within forty-five (45) [sixty-(60)] days from receipt of the completed application based on use of the District of Innovation Application Scoring Rubric. [(b) An incomplete or denied application shall be returned to the district and, if re-submitted, the committee shall review and recommend approval or denial to the Kentucky Board of Education within sixty (60) days of receipt of the re-submitted application.]

(6)(a) The Kentucky Board of Education shall make the final decision on approval or denial of the application at its first regularly scheduled meeting following the committee's review of the application and recommendations based on the District of Innovation Application Scoring Rubric.

(b) A successful application shall be given an initial approval for five (5) years.

(7) At the end of the term of approval, a District of Innovation with an active application may submit a renewal application using the same application process established for initial applications in this section. Each renewal of a District of Innovation shall not exceed five (5) years.[(e) A district that is approved and whose application is still active after five (5) years may submit a renewal application using the application process established in this administrative regulation. Each renewal of a district of innovation shall not exceed five (5) years.]

(8)[(7)](a) A [district approved as a] District of Innovation may amend its plan as needed at any time by submitting a written amendment request to the department.

(b) The amendment request shall contain the following:

1. The description of the amendment, a proposed timeline for implementation, and a justification for the request;

2. How the proposed amendment improves the application; [-s opportunities to be successful; and]

3. Evidence [All appropriate evidence] that the amendment [affecting an individual school of innovation] was supported in a manner similar to that established in Section 3, subsection (4)(f) [(h) of this section] of this administrative regulation; and [-]

4. Evidence that an amendment affecting an individual School of Innovation complies with subsection (4)(g) and (h), if applicable, of this section.

(c) The amended plan shall be referred to a [the] committee designated pursuant to subsection (5) of this section [of this administrative regulation]. The committee shall review and recommend approval or denial of an [the] amendment request to the Kentucky Board of Education [and make a determination for approval] within forty-five (45) [sixty-(60)] days from receipt of the amendment submission based on use of the District of Innovation Application Scoring Rubric.

(d) The Kentucky Board of Education shall make the final decision on approval or denial of the amended plan at its first regularly scheduled meeting following the committee's review of the amendment request and recommendations based on the District of Innovation Application Scoring Rubric.

(e) An amended plan approved by the Kentucky Board of Education shall be in effect for the remainder of the period of approval granted pursuant to subsection (6) or (7) of this section.

Section 4. Monitoring of Plan Implementation. (1) District and school innovation plans shall:

(a) Be incorporated within the overall district and school comprehensive improvement plans [plan]; or

(b) Replace the district and school comprehensive improvement plans [plan].

(2) At the completion of the second year after plan approval and each year thereafter for the term of the approval status, [a district approved as] a District of Innovation shall annually provide an implementation report [data] to the department [commissioner] that shall include the following data:

(a) Number of students served by the innovation plan, including the total number and the total number disaggregated by socio-economic status, race or ethnicity, gender, disability, and grade level;

(b) Number of students served by the innovation plan that are not on track to graduate from high school, including the total number and the total number disaggregated by socio-economic status, race or ethnicity, gender, disability, and grade level;

(c) Documentation of student performance measures, including proficiency, growth, and transition readiness; and [progress toward graduation and college and career readiness;

(d) Total number of certified teachers participating in the innovation plan and their roles and responsibilities;

(e) Documentation of certified and classified staff operating in a non-traditional school environment;

(f) Documentation of any extended learning opportunities in which students in the school of innovation participate for the purposes of earning or recovering credit, including qualifications of instructors, time spent, and student outcomes; and

(g) [(d)] Other measurable outcomes specific to the district's innovation plan as described in the initial application or through modification of the original plan. [(3) At the end of the second year after plan approval and each year thereafter for the term of the approval status, a district approved as a District of Innovation shall receive an annual site visit from a review team selected and trained by the department. The purpose of the visit shall be to monitor progress and interview staff and students to collect qualitative data on the effect of the innovation plan and for future research needs.]

Section 5. Probation, Revocation, and Appeal Procedures. (1) After its annual review of a district's implementation report [and the report of the site visit team], the Kentucky Board of Education may [- on the anniversary of the application approval;] determine that a district's status as a District of Innovation shall be placed on probation or revoked. [district shall be placed on probation and shall provide the district with a corrective action plan.]

(2) A District of Innovation placed on probation shall be provided with a corrective action plan and, upon the subsequent year's review of the implementation report, [reports, if] the Kentucky Board of Education [does not believe the district has met the expectations of the corrective action plan, it] may revoke a district's approval as a District of Innovation if it does not believe the district has met the expectations of the corrective action plan.

(3) Prior to having its status as a District of Innovation placed on probation or revoked, a district shall receive a site visit from a review team selected and trained by the department. The purpose of the visit shall be to monitor the district's progress in implementing the innovation plan, collect qualitative data on the effectiveness of the innovation plan, and verify the district's compliance with all applicable laws. A site visit shall be made following adequate advance notice to the district and may include the gathering of information through:

(a) Direct observation;

(b) Interviews with staff and students; or

(c) Examination of records.

(4) [(3)] Upon notification of probation or revocation of District of Innovation status, the Kentucky Board of Education shall give the district thirty (30) days to appeal the decision in writing and shall rule on the appeal at its next regularly scheduled meeting following the submission of the appeal.

(5) [(4)] Any district that has had its status as a District of Innovation revoked shall wait a minimum of one (1) calendar year before re-applying to be a District of Innovation.

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

(a) "District of Innovation Application", August 2018 [~~March 2013~~]; and

(b) "District of Innovation Application Scoring Rubric", August 2018 [~~March 2013~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Continuous Improvement and Support, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Division of Innovation and Partner Engagement, 1st floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, Jr., Ph.D., Interim Commissioner of Education
HAL HEINER, Chairperson

APPROVED BY AGENCY: August 15, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 25, 2018, at 1 p.m. in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018.

CONTACT PERSON: Todd Allen, Interim General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation prescribes the conditions and procedures to be used by a local education agency seeking approval as a District of Innovation from the Kentucky Board of Education (KBE).

(b) The necessity of this administrative regulation: The amendments to this regulation are necessary to provide clarification on and imbed more flexibility in the process a local education agency follows when applying to the KBE to be approved as a District of Innovation.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the KBE in KRS 160.107 and KRS 156.108, which

specifically requires the KBE promulgate regulations to "prescribe the conditions and procedures to be used by a local board of education to be approved as a district of innovation."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists local education agencies by providing a mechanism to seek approval as a District of Innovation from the KBE, and the amendments to this regulation will provide greater clarity and flexibility in the District of Innovation Application process.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this regulation will provide greater clarity and flexibility in the District of Innovation Application process. Specifically, this regulation clarifies the definition of "District of Innovation;" shortens the timeline for a local education agency to apply for and be approved as a District of Innovation by the KBE; streamlines the Districts of Innovation Application by removing components that are duplicative or not required by statute; eliminates unnecessary annual data reporting as well as mandatory annual site visits; and, permits more prompt revocation of District of Innovation status when warranted.

(b) The necessity of the amendment to this administrative regulation: The amendments to this regulation are necessary to provide clarification on and imbed more flexibility in the process a local education agency follows when applying to the KBE to be approved as a District of Innovation.

(c) How the amendment conforms to the content of the authorizing statute: KRS 156.108(3) requires the KBE promulgate regulations to "prescribe the conditions and procedures to be used by a local board of education to be approved as a district of innovation." The amendments to this regulation provide greater clarity and flexibility in the process a local education agency follows when applying to the KBE to be approved as a District of Innovation.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this regulation provide greater clarity and flexibility in the process a local education agency follows when applying to the KBE to be approved as a District of Innovation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local education agencies, the KBE, and the Kentucky Department of Education (KDE) will be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A local education agency seeking approval or re-approval as a District of Innovation by the KBE will have to use the amended District of Innovation Application and otherwise comply with the procedures in the amendment to this administrative regulation. A local education agency that is or becomes a District of Innovation will have to comply with the monitoring and oversight provisions of the amendment to this administrative regulation, which reduces annual data reporting and eliminates mandatory annual site visits but implements more stringent accountability by permitting a more prompt revocation of District of Innovation status when warranted. The KBE and KDE will implement the amended District of Innovation Application as well as the additional application procedures under the amendment to this administrative regulation, including the reduced review and approval timeline by the KBE. The KBE and KDE will also implement the changed monitoring and oversight provisions of the amendment 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): There is no anticipated budget impact related to the amendment of this administrative regulation for local education agencies, the KBE, or KDE.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All stakeholders will benefit for the greater clarity and flexibility provided by the amendment to this administrative regulation. The clarity provided through the amendment of this administrative regulation provides for a more streamlined, efficient District of Innovation Application process, which benefits local education agencies as well as the KBE and KDE. The expanded flexibility offered through the amendment of this administrative regulation fosters even more innovation in Kentucky public school districts as intended by the legislature when it enacted KRS 156.108 and KRS 160.107.

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

(a) Initially: The KBE is required by KRS 156.108(3) to "prescribe the conditions and procedures to be used by a local board of education to be approved as a district of innovation." This requirement has existed since 2012, and the administrative body has been reviewing and approving District of Innovation Applications as well as monitoring KBE-approved Districts of Innovation pursuant to statute and this administrative regulation since 2013. As a result, there is no initial cost related to implementing the amendment to this administrative regulation.

(b) On a continuing basis: As a result of the obligations under KRS 156.108 and KRS 160.107, the administrative body incurs an ongoing cost of staff and resources in reviewing and approving District of Innovation Applications and in monitoring KBE-approved Districts of Innovation pursuant to this administrative regulation. There are, though, no additional anticipated costs related to the amendment of this administrative regulation for the administrative body. In fact, the administrative body may experience minimal cost savings due to the amendment of this administrative regulation, specifically the removal of mandated annual site visits to Districts of Innovation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no additional anticipated costs for the implementation and enforcement of the amendment of this administrative regulation; however, ongoing costs of staff and resources for the administrative body related to this administrative regulation and its enabling statutes are paid using state funds.

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

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

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied because the amendment to this administrative regulation applies equally to all local education agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies, the Kentucky Board of Education (KBE), and the Kentucky Department of Education (KDE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.108, KRS 156.160(1), and KRS 160.107.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amendment to this administrative regulation is not expected to impact the expenditures and revenues of any local government agency. At the state level, since 2012, the KBE has been required by KRS 156.108(3) to "prescribe the conditions and procedures to be used by a local board of education to be approved as a district

of innovation." Further, the KBE has been reviewing and approving District of Innovation Applications as well as monitoring KBE-approved Districts of Innovation pursuant to statute and this administrative regulation since 2013. As a result, additional expenditures and revenues of a state government agency related to administering this program for the first full year are not anticipated.

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

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

(c) How much will it cost to administer this program for the first year? The KBE is required by KRS 156.108(3) to "prescribe the conditions and procedures to be used by a local board of education to be approved as a district of innovation." This requirement has existed since 2012, and the administrative body has been reviewing and approving District of Innovation Applications as well as monitoring KBE-approved Districts of Innovation pursuant to this administrative regulation since 2013. As a result, additional costs related to administering this program for the first year are not anticipated.

(d) How much will it cost to administer this program for subsequent years? As a result of the obligations under KRS 156.108 and KRS 160.107, there is an ongoing cost of staff and resources in reviewing and approving District of Innovation Applications and in monitoring KBE-approved Districts of Innovation pursuant to this administrative regulation. There are, though, no additional anticipated costs related to the amendment of this administrative regulation. In fact, minimal cost savings may be experienced due to the amendment of this administrative regulation, specifically the removal of mandated annual site visits to Districts of Innovation.

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

Revenues (+/-): N/A

Expenditures (+/-): NA

Other Explanation: N/A

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Amendment)

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics.

RELATES TO: KRS 61.805 - 61.850, 156.070(2), 160.380, 160.445, 20 U.S.C. 1681

STATUTORY AUTHORITY: KRS 156.070(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools, including interscholastic athletics in the schools. KRS 156.070(2) authorizes the board to designate an agency to manage athletics. This administrative regulation designates an agent for middle and high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures, and rules of the agent.

Section 1. Definitions. (1) "Contact" means that drills are run at Level 3, thud, or Level 4, live action.

(2) "KBE" means Kentucky Board of Education.

(3) "KHSAA" means Kentucky High School Athletics Association.

(4) "Level 0" or "air" means that players run a drill unopposed and without contact.

(5) "Level 1" or "bags" means that a drill is run against a bag or

another soft contact surface.

(6) "Level 2" or "control" means that a drill is run at the assigned speed until the moment of contact; one (1) player is predetermined the winner by the coach; contact remains above the waist; and players stay on their feet.

(7) "Level 3" or "thud" means that a drill is run at the assigned speed through the moment of contact; there is not a predetermined winner; contact remains above the waist; players stay on their feet; and a quick whistle ends the drill.

(8) "Level 4" or "live action" means that a drill is run in game-like conditions and is the only time that players are taken to the ground.

(9) "Non-contact" means that drills are run at Level 0, air; Level 1, bags; or Level 2, control.

(10) "OCR" means Office for Civil Rights.

Section 2. The KHSAA shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the middle and high school level in the common schools, including a private school desiring to associate with KHSAA or to compete with a common school.

Section 3. To remain eligible to maintain the designation as the agent to manage interscholastic high school athletics, the KHSAA shall:

(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its high school Board of Control;

(2) Sponsor an annual meeting of its member high schools;

(3) Provide for each member high school to have a vote on KHSAA constitution and bylaw changes submitted for consideration;

(4) Provide for high school regional postseason tournament net revenues to be distributed to the member high schools in that region participating in that sport, utilizing a share approach determined by the high schools within that region playing that sport;

(5) Provide for students desiring to participate at the high school level (regardless of level of play) to be enrolled in at least grade seven (7) unless the student has participated at the high school level prior to the 2014 - 2015 school year;

(6) Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by December 31;

(7) Advise the Department of Education of all legal action brought against the KHSAA;

(8) Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;

(9) Employ a commissioner and evaluate that person's performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;

(10) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;

(11) Permit the Board of Control to assess fines on a member high school;

(12) Utilize a trained independent hearing officer instead of an eligibility committee for a high school athletic eligibility appeal;

(13) Establish a philosophical statement of principles to use as a guide in a high school eligibility case;

(14) Conduct continual cycles of field audits of the association's entire high school membership which provides that each high school is audited regarding each school's compliance with 20 U.S.C. Section 1681 (Title IX) and submit annual summary reports, including the highlighting of any potential deficiencies in OCR compliance to the Kentucky Board of Education;

(15) As a condition precedent to high school membership, require each member high school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);

(16) Conduct all meetings related to high school athletics in accordance with KRS 61.805 through 61.850;

(17) Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution,

KHSAA Bylaws, and other rules governing the conduct of high school interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school prior to being made public;

(18) Not punish or sanction, in any manner, a school, student, coach, or administrator for allowing a student to play in an athletic contest or practice with the team during a time when an order of a court of competent jurisdiction permits the student to participate or otherwise stays or enjoins enforcement of a KHSAA final decision on eligibility; and

(19) Require any student enrolled initially in grade seven (7) through twelve (12) who is repeating a grade for any reason, to be ineligible, during the school year that the grade is repeated, to compete in interscholastic athletics competition at any level.

Section 4. To remain eligible to maintain the designation as the agent to manage interscholastic athletics at the middle school level, the KHSAA shall implement the following requirements for all participants in middle school interscholastic athletics, distribute these requirements to all middle schools, and publish via the KHSAA Web site:

(1) Require that these provisions apply to all middle school interscholastic athletics. The following indicates that a team is representative of a school and classified as middle school athletics:

(a) The contest, event, or tournament is sponsored by a school or combined group of schools;

(b) Competitors wear a school issued uniform;

(c) The contest, event, or tournament is sponsored by an outside entity as a school entry event, which is advertised or promoted as a school event, whether or not an entry fee is required;

(d) A school entity pays an entry fee, for the student or team, including payment by booster organizations;

(e) A school representative accompanies the student-athlete or transports the student-athlete to the contest, event, or tournament;

(f) A designated or hired member of a school coaching staff, whether paid or unpaid, is present and offering instruction, advice, evaluation, or refinement of skills or exercising other duties defined as coaching within the sport rules;

(g) Transportation to or from the contest, event, or tournament utilizes school provided or approved transportation;

(h) Competitors in the contest, event, or tournament wear apparel identifying them by the name of the school, including the formal name, informal name, or team nickname;

(i) Competitors in the contest, event, or tournament are provided promotional or other resources by the school including school media recognition, signage, and items clearly indicative of school representation;

(j) Competition in a contest, event, or tournament has, in any form, jurisdiction of the local school board or school based decision making body, including financial or other approval control; or

(k) Competition in a contest, event, or tournament is covered by any school or school system provided or procured insurance policy;

(2) Require that any head or assistant coach, whether paid or unpaid, desiring to coach interscholastic athletics at the middle school level:

(a) Meet the requirements of KRS 156.070(2)(f)2.;

(b) Meet the requirements of KRS 160.380(4) and (6); and

(c) Provide to the school documentation of successful completion of a C.P.R. course including the use of an automatic external defibrillator and the first aid training, conducted by an instructor or program approved by a college or university, the American Red Cross, the American Heart Association, or other bona fide accrediting agency that is approved by the KHSAA based upon industry standards. Initial certification shall use in-person instruction and certification shall be updated as required by the approving agency;

(3) Require the adherence to the following items regarding safety, sports medicine, and risk minimization for all interscholastic athletics at the middle school level:

(a) Each student, prior to trying for a place on a middle school athletic team, shall provide an annual medical examination, in

accordance with KRS 156.070(2)(d), and shall use the KHSAA form PPE;

(b) All participants at the middle school level shall adhere to all sports medicine and risk minimization policies in use at the high school level that may be supplemented by the school, school district, conference, or association including:

1. Heat index and heat illness programs;
2. Wrestling weight management programs;
3. Concussion and other head injury policies including policies for minimizing impact exposure and concussion risks;

4. The following football drill work and practice activity limitations:

a. Football contact and non-contact practice shall use the appropriate clothing and equipment for the level of drill, including:

(i) A drill conducted in helmets-only shall be a Level 0, air, or Level 1, bags;

(ii) A drill conducted in shells (shorts, shoulder pads, and helmets) shall be a non-contact drill; and

(iii) A contact drill shall be conducted in full equipment;

b. Middle school football shall practice a minimum of eleven (11) days before engaging another group or opponent in full contact, using the following minimum schedule:

(i) Five (5) days in helmets;

(ii) Followed by three (3) days in helmets and shoulder pads; and

(iii) Concluding with three (3) days in full equipment practice; and

c. Contact drills shall not be conducted more than twenty-one (21) days before the first regular season contest;

5. The following baseball pitching limitations shall apply to all interscholastic play at the middle school level including scrimmages, regular season and post season games:

a. The pitch count shall be based on pitches thrown for strikes (including foul balls), balls, balls in play, and outs;

b. Warm-up pitches allowed before each inning, warm-up pitches allowed by the umpire in case of injury or game delay, and plays attempted against the batter-runner or any runner at first, second, or third base shall not count against this limit;

c. A pitcher at any level who reaches the pitch count limit in the middle of an at-bat shall be allowed to finish that hitter;

d. The required calendar rest shall begin on the day following the date on which the game began or a resumed game began regardless of the conclusion time of the game; and

e. The rest periods shall be based on the following total pitches:

(i) Maximum pitches – eighty-five (85);

(ii) Fifty-six (56) pitches or more – three (3) calendar days rest;

(iii) Thirty-six (36) to fifty-five (55) pitches – two (2) calendar days rest;

(iv) Twenty (20) to thirty-five (35) pitches – one (1) calendar day rest; and

(v) One (1) to nineteen (19) pitches – no mandated rest;

6. Students seeking to play or practice, including scrimmages, regular season and post season games, in the sport of fastpitch softball, shall be required to wear face protection, commercially manufactured for softball facial protection and worn as intended by the manufacturer, when playing the positions of first base, third base, and pitcher; and

7. Teams participating in middle school athletics as defined by subsection (1) of this section shall use KHSAA licensed officials in the sports of baseball, basketball, field hockey, football, soccer, softball, and volleyball;

(4) Create a permanent Middle School Athletics Advisory Committee. This committee shall:

(a) Be autonomous with respect to the Board of Control of the KHSAA;

(b) Be composed of no less than three (3) middle school representatives from each Supreme Court district as well as no less than three (3) at large representatives from throughout the state;

(c) Provide an opportunity for nonprofit athletic groups, parents, and others to participate and provide input on the sport, athletic event, or athletes involved in interscholastic activities

through local school districts;

(d) Meet not less than twice annually to review current programs and policies; make recommendations for improvements to and participation in middle school interscholastic activities, as well as any changes in statute, administrative regulation, or policy related to middle school interscholastic athletics; and assist in the development of model guidelines for schools, districts, conferences, and associations to be used in implementing a middle school athletic program; and

(e) Report regularly, not less than annually, to the commissioner of the KHSAA and issue, in conjunction with the commissioner, a formal written report annually to the KBE with recommendations for changes in statute, administrative regulation, or policy;

(5) Require any organization conducting a school based event at the middle school level to submit the following, which shall be published and listed on the KHSAA Web site:

(a) Annual financial reports of all sanctioned and approved events sponsored by the organization; and

(b) Documentation of financial accountability including verification of federal status and tax documents including an annual IRS Form 990;

(6) Provide notice to the middle schools related to any program conducted by KHSAA related to educating school administrators about the provisions of 20 U.S.C. 1681, Title IX;

(7) Provide educational materials and a mechanism to facilitate the monitoring and tracking capabilities for the middle schools to ensure compliance with the provisions of KRS 160.445 and other requirements for coaches at the middle school level;

(8) Require any student enrolled initially in grade five (5) through eight (8) who is repeating a grade for any reason, to be ineligible, during the school year that the grade is repeated, to compete in interscholastic athletics competition at any level;

(9) Require that any student who turns:

(a) Fifteen (15) years of age prior to August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades eight (8) and below;

(b) Fourteen (14) years of age prior to August 1 of the current year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades seven (7) and below; and

(c) Thirteen (13) years of age prior to August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades six (6) and below;

(10) Require each school, school district, conference, or association of schools to develop rules and limitations regarding student participation at the middle school level to include:

(a) A defined age limitation for participating students;

(b) A policy regarding the participation of students below grade six (6);

(c) A limitation on practice time prior to the season in any sport or sport activity which shall not exceed the practice time adopted for play at the high school level;

(d) A limitation on the number of school based scrimmages and regular season, school based contests in each sport or sport-activity, which shall not include post season contests and shall not exceed the allowable number of contests for that sport or sport-activity at the high school level; and

(e) A limitation on the length of the regular competitive season in each sport or sport-activity, not including any post season activities, which shall not exceed the length for that sport or sport-activity at the high school level;

(11) Conduct all meetings related to middle school athletics in accordance with KRS 61.805 through 61.850;

(12) Issue an annual report to the KBE on the status of interscholastic athletics at the middle school level, including any recommendations for changes in statute, administrative regulation, or policy;

(13) Allow a school or school district to join a conference or association that has developed rules for any particular sport or sport-activity to satisfy the requirements of this administrative

regulation; and

(14) The period of June 25 to July 9, inclusive, shall be a dead period for middle school athletics. During the dead period:

- (a) Students shall not receive coaching or training from school personnel, whether salaried or non-salaried;
- (b) School facilities, uniforms, nicknames, transportation, or equipment shall not be used;
- (c) School funds shall not be expended in support of interscholastic athletics; and
- (d) A postseason wrap-up activity, celebration, or recognition event relating to a spring sports team at a school may be held.

Section 5. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE by October 31:

- (a) Draft budget for the next two (2) fiscal years, including the current year;
- (b) End-of-year budget status report for the previous fiscal year;
- (c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;
- (d) A summary report of operations including summaries of financial, legal, and administrative actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:

- 1. Athletic appeals and their disposition, including the name of the individual, grade, school, and the action taken by KHSAA;
- 2. Eligibility rules;
- 3. Duties of school officials;
- 4. Contests and contest limitations;
- 5. Requirements for officials and coaches; and
- 6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for vote by the member schools at the next legislative opportunity; and

(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.

(2) The KHSAA shall annually submit at the next meeting of the Kentucky Board of Education following receipt and adoption by the Board of Control, audited financial statements with the KHSAA Commissioner's letter addressing exceptions or notes contained in management correspondence, if any.

Section 6. Forms. The forms incorporated by reference in this administrative regulations shall be filed:

(1) Using the paper form; or

(2) Using the electronic forms found on the Kentucky High School Athletic Association website at www.khsaa.org.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "KHSAA Constitution", 6/2017;
- (b) "KHSAA Bylaws", 6/2018[6/2017];
- (c) "KHSAA Due Process Procedure", 6/2017;
- (d) "KHSAA Board of Control and Officials Division Policies", 6/2018[6/2017];
- (e) KHSAA Form BA101- Baseball Pitching Limitation", 6/2016;
- (f) KHSAA Form GE01, "Application for Membership", 5/2017;
- (g) KHSAA Form GE04, "Athletic Participation Form, Parental and Student Consent and Release for High School Level (grades 9 - 12) Participation", 4/2015;
- (h) KHSAA Form DP02, "Request for Statutory Waiver of Bylaw 2", 6/2018;
- (i)[(h)] KHSAA Form DP06, "Application for Athletic Eligibility for Domestic Students", 6/2018[8/2017];
- (j)[(i)] KHSAA Form DP07, "Application for Athletic Eligibility for Students having J-1 or F-1 Status", 8/2017;
- (k)[(j)] KHSAA Form DP08, "Application for Non U.S. Student Athletic Eligibility for Students Not having J-1/F-1 Status", 8/2017;
- (l) KHSAA Form DP16, "Request for Waiver of 20 Day Notice", 6/2018;
- (m) KHSAA Form DP17, "Add. Info for Appeal", 6/2018;

(n) KHSAA Form DP18 "Waiver – 15 Day Exceptions", 6/2018;
~~(o)[(k)] "KHSAA Form GE14- Contract for Athletic Contests", 8/2017;[(h) KHSAA Form GE16, "Request for Statutory Waiver of Bylaw 2", 6/2016;]~~

~~(p)[(m)] "KHSAA Form GE19-Title IX Procedures Verification", 5/2011;~~

~~(q)[(n)] KHSAA Form GE20, "Heat Index Measurement and Record", 4/2014;[(o) KHSAA Form GE35, "Request for Waiver of 20 Day Notice", 4/2014;~~

~~(p) "KHSAA Form GE36- Add. Info for Appeal", 6/2016;~~

~~(q) "KHSAA Form GE69- Waiver – 15 Day Exceptions", 6/2016;]~~

(r) KHSAA Form PPE/Physical Exam, "PPE- Physical Exam History/Physician Clearance Form (Grades 6 - 12)", 4/2015;

(s) KHSAA Form PPE/Supplemental, "PPE- Physical Exam History Supplemental Form for Athletes With Special Needs (Grades 6 - 12)", 4/2015;

and
 (t) "KHSAA Form MS01- Athletic Participation Parental and Student Consent and Release for Middle School (grades 5-8) Participation", 4/2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal, Legislative and Communication Services, Department of Education, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS Jr., Ph.D., Interim Commissioner of Education
 HAL HEINER, Chair person

APPROVED BY AGENCY: August 15, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 25, 2018, at 1 p.m. in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018.

CONTACT PERSON: Todd Allen, Interim General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 156.070 requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This regulation designates the Kentucky High School Athletic Association (KHSAA) as the agent to manage high school and middle school interscholastic athletics, and incorporates by reference the bylaws, procedures and rules governing interscholastic sports.

(b) The necessity of this administrative regulation: This regulation is necessary to designate the agency to provide the day-to-day management activities of interscholastic athletics in Kentucky; to set forth the financial, planning and review processes

governing the agent; and to incorporate by reference the bylaws, procedures and rules of the agency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation designates the agency to manage interscholastic athletics, as authorized by the authorizing statute, and outlines the conditions under which this authority is granted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It designates the KHSAA as the agent to manage interscholastic athletics in the schools and districts at the high school and middle school levels, and publishes changes in bylaws, procedures and rules for affected schools and districts.

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

(a) How the amendment will change this existing administrative regulation: These amendments make changes to the documents incorporated by reference, including the bylaws to remove scrimmage restrictions in the sport of Football, during week zero, while still ensuring adherence to contact and acclimatization requirements. These changes were adopted by the annual KHSAA Delegate Assembly. Additional changes were also made to the bylaws to allow for compliance with recent legislative action as it relates to homeschool students seeking to participate in regular season events, as well as recognizing the creation of charter schools in the Commonwealth.

(b) The necessity of the amendment to this administrative regulation: Pursuant to the KHSAA Constitution, which is incorporated by reference in this regulation, the members are required to have an annual meeting to discuss and recommend any needed changes to the Constitution and Bylaws. While they are not required to make changes to the Constitution and Bylaws, changes must be made through this process. This amendment incorporates changes approved at the annual meeting of the Delegate Assembly. This amendment also is necessary to designate the KHSAA as the agent to manage interscholastic athletics at the high school and middle school level.

(c) How the amendment conforms to the content of the authorizing statutes: The statute authorizes the KBE to designate an agency to manage interscholastic athletics in the common schools. The regulation designates the KHSAA as that agent at both the high school and middle school levels, and incorporates by reference the KHSAA Handbook, which consists of the KHSAA Constitution, Bylaws, Due Process Procedure, and Board of Control Policies to provide rules and guidance to the member schools and districts governing sporting events. The amendments in the Bylaws are made annually, according to the process outlined in the Constitution, and reflect input given by member schools and districts on changes that need to be made to provide a sounder structure of governance.

(d) How the amendment will assist in the effective administration of the statutes: See (c) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 School Districts

(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: There will be little impact because of the nature of the changes to the regulation. There are requirements that continue to be placed on schools and coaching personnel, however the training required to meet these requirements will be provided at no costs to the schools or the coaching personnel.

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

(a) Initially: Minimal

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KHSAA is funded through membership dues, as well as from gate receipts and sponsorships related to the various state championships.

(7) Provide an assessment of whether an 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 establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, the Department of Education, and the Kentucky High School Athletic Association.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070 and 702 KAR 7:065.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no additional expense to the school districts or the department as a result of this administrative regulation.

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

(b) How 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 costs associated to the KHSAA in administering this program for the first year are minimal.

(d) How much will it cost to administer this program for subsequent years? The costs associated to the KHSAA in administering this program in subsequent years are minimal.

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:

LABOR CABINET

Kentucky Workers' Compensation Funding Commission (Amendment)

803 KAR 30:010. Special fund assessments.

RELATES TO: KRS 49.220[KRS 131.340], 342.0011, 342.122, 342.1221, 342.1222,[342.1223(2)(g)-] 342.1231, 342.1223, 342.340, 342.650, 30 U.S.C. 901-945, 33 U.S.C. 901-980

STATUTORY AUTHORITY: KRS 342.1223(3)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.1223(3)(f) authorizes the Kentucky Workers' Compensation Funding Commission (KWCFC) to promulgate administrative regulations. This administrative regulation provides the procedures and forms to be used to report and remit special fund assessments. KRS 342.1223(2)(g) requires the KWCFC to conduct periodic audits of all entities subject to the special fund assessments imposed by KRS 342.122. This administrative regulation identifies audit expenses and provides procedures for collection of assessment, expenses, and defines penalty and interest procedures.

Section 1. Definitions. (1) "Actual physical receipt by the KWCFC" means:

(a) Physical delivery to [Actual physical delivery to the office of] the Funding Commission office prior to January 1, 2020; or

(b) Electronic filing of the Quarterly Premiums Report, accompanied by:

1. Electronic fund transfer of an assessment due to the KWCFC account; or

2. Prior to January 1, 2020, physical[Physical] delivery of payment to the office of the Funding Commission.

(2) "Assessment Payer" is defined by KRS 342.1231(10).

(3)[(2)] "Board" means, unless otherwise specified, the Board of Directors[~~board of directors~~] of the Kentucky Workers' Compensation Funding Commission.

(4)[(3)] "Engaged in severance or processing of coal" is defined by KRS 342.0011(23)(b).

(5)[(4)] "Insurance carrier" is defined by KRS 342.0011(22).

(6)[(5)] "Insurance company" means a company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Employers Mutual Insurance Authority.

(7)[(6)] "Insurance policy", for an insurance company or group self-insurer, is defined by KRS 342.0011(26).

(8)[(7)] "KWCFC" or "Funding Commission" means the Kentucky Workers' Compensation Funding Commission.

(9)[(8)] "Premium", for each employer carrying one's[~~his~~] own risk pursuant to KRS 342.340(1), is defined by KRS 342.0011(28).

(10)[(9)] "Premium", for every group of self-insurers, is defined by KRS 342.0011(24).

(11)[(10)] "Premium", for insurance companies, is defined by KRS 342.0011(25)(c).

(12)[(11)] "Premiums received":

(a) For group self-insurers, including group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies, means all assessments levied on its members by a group or contributed to it by the members, including premiums charged off or deferred;

(b) For insurance companies, is defined by KRS 342.0011(25)(a).

(13)[(12)] "Return premiums", for insurance companies, is defined by KRS 342.0011(25)(d).

(14)[(13)] "Self-insurance year", for a group self-insurer, is defined by KRS 342.0011(27).

(15)[(14)] "Severance or processing of coal" is defined by KRS 342.0011(23)(a).

(16)[(15)] "SIC code" is defined by KRS 342.0011(29).

(17)[(16)] "Special fund assessment" means the assessment established in KRS 342.122.

Section 2. Special Fund Assessment. (1) Special fund assessment shall be imposed upon all premiums, including any premiums for coverage under the Black Lung Compensation Insurance Fund, 30 U.S.C. Sec., 901-945, for an insurance policy providing Kentucky workers' compensation coverage, except special fund assessments shall not be imposed upon premiums for the following:

(a) Excess, reinsurance, or coverage under the Black Lung Compensation Insurance Fund, 30 U.S.C. Sec. 901-945, for group or individual self-insurers;

(b) Contracts between insurance carriers and reinsurers;

(c) Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Sec. 901-980 coverage defined as USL&H Manual Premium +/- the premium applicable of all rates/factors/and fixed expenses; and

(d) Coverage solely for persons for whom a rule of liability for injury or death is provided by the laws of the United States.

(2) For an insurance policy with provisions for deductibles effective on or after January 1, 1995, the premium upon which a special fund assessment is imposed for insurance companies shall not include schedule rating modifications, debits, or credits.

(3) Insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the effective date of the policy.

(4)(a) Insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or return premiums at the rate in effect on the effective date of the policy, regardless of the date the premium

is actually received or returned.

(b) Additional premiums received for policies with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(5)(a) Group self-insurers shall report and pay special fund assessments every calendar quarter on premiums received or return premiums at the rate in effect on the effective date of the group self-insurance year for which the premium was received or returned, regardless of the date the premium is actually levied, received, or returned.

(b) A premium shall include any member assessments or contributions used to purchase excess insurance, reinsurance, or Black Lung coverage.

(6) Special fund assessment shall be imposed upon additional premiums received by group self-insurers for self-insurance years effective prior to October 26, 1987 at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(7) Group self-insurers shall take credit for the return of special fund assessments at the rate in effect on the effective date of the group self-insurance year for which premiums are returned.

(8) Group self-insurers may elect to report their premiums and have their special fund assessments computed in the same manner as insurance companies, in accordance with KRS 342.122(4).

(a) Election by an existing group self-insurer to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission.

(b) Election by newly formed group self-insurers to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission within sixty (60) days following the effective date of the group's initial self-insurance year.

(c) Failure of a group self-insurer to elect in writing to report in the same manner as an insurance company in accordance with paragraphs (a) and (b) of this subsection shall constitute an election to report and pay special fund assessments as a group self-insurer in accordance with subsections (5), (6), and (7) of this section.

(d) The election made in accordance with paragraph (a), (b), or (c) of this subsection may not be rescinded for at least ten (10) years, in accordance with the provisions of KRS 342.122(4).

(e) Group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the annual effective date of the individual member's policy year.

(f)1. Group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or return premiums at the rate in effect on the effective date of the individual member's policy year, regardless of the date the premium is actually received or returned.

2. Additional premiums received for policy years with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(9)(a) Employers self-insuring Kentucky workers' compensation liability under the provisions of KRS 342.340 shall pay special fund assessments on the premium calculated by the Commissioner of the Department[~~executive director of the Office~~] of Workers' Claims in accordance with KRS 342.0011(28).

(b) One-fourth (1/4) of the total annual calculated premium shall be reported and the special fund assessments shall be paid to the KWCFC each calendar quarter.

(10) The premium calculated by the Commissioner of the Department[~~executive director of the Office~~] of Workers' Claims for individual self-insurers shall be assessed at the rates in effect on January 1 of the calendar year for which the premium is calculated.

(11)(a) Special fund assessments shall be paid quarterly, in

accordance with KRS 342.122(2).

(b) Prior to January 1, 2020, if the assessment due date falls on a weekend (Saturday or Sunday), assessments due and payable, if not postmarked in accordance with KRS 342.122(2), shall be sent to the KWCFC in advance so as to be received by the KWCFC no later than close of business, on the first business day immediately following the weekend due date. After January 1, 2020, assessment is due and payable in accordance with KRS 342.122 (2)(b).

(12)(a) If an insurance carrier collects from an insured a special fund assessment at a rate in excess of that established by KRS 342.122 and this administrative regulation, or collects for any reason from an insured an amount in excess of that established by KRS 342.122 and this administrative regulation, the insurance carrier shall refund the excess to the insured in accordance with KRS 342.1231(7) and (8).

(b) If, after good faith efforts, the excess cannot be returned to the insured in accordance with KRS 342.1231(7) and (8), the excess shall be remitted to the KWCFC.

(c) An insurance carrier shall not retain special fund assessments in excess of those established by KRS 342.122 and this administrative regulation.

(13) The assessment payer will be notified if proof of refund to insured has not been timely provided or escheated to the KWCFC per KRS 342.1231.

(14) When documentation is received by the KWCFC providing refund to insured information:

(a) Penalty and interest will be calculated; and

(b) The assessment payer will be notified of the additional amount due.

Section 3. Penalty and Interest. (1) The KWCFC Board or its designee may waive part or all of the penalty, but not the interest, in accordance with KRS 342.1221.

(a) The designee may waive part or all of the penalty, if under \$5,000, in the absence of the KWCFC Board of Directors.

(b) If an assessment payer is not satisfied with the decision made by the designee, an appeal may be submitted within thirty (30) days from the date of mailing of the decision to the Board of Directors of the KWCFC for final ruling.

(c) If an assessment payer is not satisfied with the decision made by the KWCFC Board of Directors, an appeal may be submitted to the Kentucky Claims Commission within thirty (30) days from the date of mailing of the final ruling.

(2) The assessment payer will receive notification of past due additional assessment, penalty and interest, and expenses. When payment is received by the KWCFC:

(a) Penalty and interest will be calculated; and

(b) Notification will be sent to the assessment payer of the additional amount due.

Section 4. Refunds. (1) Insurance carriers may take credit for the return of special fund assessments on their quarterly premiums reports, if:

(a) The credit is taken by the insurance carrier within four (4) years of the date the insurance carrier returns the assessment to the employer; and

(b) The assessment is returned to the employer in addition to the returned premium.

(2)(a) Assessment payers[Taxpayers] may submit a claim in writing for a refund of special fund assessments not taken as a credit on the quarterly premiums report.

(b) The assessment payer[taxpayer] shall submit with the claim all documents required to support the claim.

(3) All refunds, including those made in accordance with subsection (2) of this section, shall be subject to audit by the Funding Commission.

Section 5. Audits; General. (1) In accordance with KRS 342.1223(2)(g), the Kentucky Workers' Compensation Funding Commission shall conduct audits independently or in cooperation with the Department of Labor or the Finance and Administration Cabinet of all entities subject to the special fund assessments

established by KRS 342.122.

(2)[(a)] Until the initial audit has been completed, all records supporting reported premiums and special fund assessments, including refunds and credits, shall be maintained by the assessment payer per KRS 342.1231(8)[taxpayer].

(b) After completion of the initial audit, supporting documentation and records shall be maintained for five (5) years from the date of the last Funding Commission audit or (5) years from the date that the premium and assessment was reported or refund or credit was taken, whichever is later.

(3) All necessary and reasonable expenses incurred by the KWCFC in conducting an audit shall be reimbursed to the KWCFC by the assessment payer audited.

(4) Expenses to be reimbursed shall include:

(a) Travel Expenses:

1. Meals;

2. Lodging;

3. Transportation;

4. Parking; and

5. Incidentals; and

(b) Labor expenses:

1. Preparation for the audit;

2. Travel;

3. Finalizing of the audit; and

4. Preparation of written reports and correspondence.

(5) KWCFC employees shall be reimbursed for all out-of-pocket expenses they incurred while conducting audits.

(6) Except for air transportation, meals and mileage, expenses shall be reimbursed at actual cost to employees.

(7) Air fare shall be reimbursed at a rate not to exceed the cost of coach class.

(8) Meals shall be reimbursed at actual cost not to exceed fifty-five (55) dollars per day.

(9) Mileage for the use of privately owned auto shall be reimbursed at the rate established in 200 KAR 2:006, Section 7(4)(a).

Section 6. Audits; Insurance Companies. (1) Upon request, insurance companies shall provide the Funding Commission with data files containing complete policy level detail information for every policy containing workers' compensation coverage in Kentucky with transactions during the audit period, [including:] on Form KWCFC-05, (Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies)[(a) Writing company's indicator;

(b) Policy number;

(c) Insured's name;

(d) Transaction code;

(e) Accounting date (YY/MM/DD);

(f) Policy effective date (YY/MM/DD);

(g) Invoice date (YY/MM/DD);

(h) Premium;

(i) Special fund assessment; and

(j) Total (premium and special fund assessment)].

(2) Insurance companies shall make available to the Funding Commission's auditors the following items:

(a) Copies of quarterly premiums reports for audit period with backup documentation;

(b) All documentation required to reconcile the sum of each four (4) calendar quarters to the respective Page 14 totals on the Annual Reports to the Kentucky Department[Office] of Insurance;

(c) A complete listing of:

1. Current filings with the Kentucky Department of Insurance;

2. [(c) A listing of] Kentucky policies containing written premium written off as a bad debt;

3. [(d) A listing of] Policies written by an association for which the insurance company is providing Kentucky workers' compensation coverage;

4. [(e) A complete list of] Sample policies requested by Funding Commission;

5. [(f) A complete list of] Deductible policies written nationwide. This list shall contain at a minimum the policy number, insured's name, and policy effective date;

~~6.[(g) A complete listing of]~~ Deductible policies written with Kentucky coverage whose policy effective date is equal to or later than 5/6/93 but not later than 12/31/93. This list shall contain either Kentucky calculated premium, deductible credit, and net deductible premium, or a list of Kentucky claims reimbursed under the deductible plan along with the associated administrative costs;

~~7.[(h) A complete listing of]~~ Deductible policies written with Kentucky coverage with policy effective dates on or after 1/1/94. This list shall contain Kentucky's standard premium, deductible credit, net deductible premium, any schedule rating credit, as well as all other identifying information allowing a quarterly recalculation and reconciliation; and

~~(d)[(i)]~~ All other information necessary to support reported premiums and special fund assessments.

(3) For insurance policies effective prior to October 26, 1987, the Funding Commission shall be furnished with:

(a) A schedule identifying the assessment rates applied to these policies;

(b) The dates upon which these rates were first entered into the policy or premium management system;

(c) The dates upon which these rates became active in the policy or premium management system; and

(d) A copy of the Kentucky Workers' Compensation Tax and Assessment Excess Collections Report as originally filed with KWCFC.

(4) The Funding Commission shall utilize one (1) or more of the following procedures in the completion of audits:

(a) Detailed examination of records by policy;

(b) Use of audit sampling techniques;

(c) Verification and reconciliation to NAIC reports; and

(d) Other procedures necessary because of the unique nature of the entity being audited.

(5) Upon the completion of an audit the Funding Commission shall not reaudit a period unless:

(a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to NAIC upon which the Funding Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 7. Audits; Group Self-insurers. (1) Upon request, group self-insurers shall provide the Funding Commission with data files containing complete policy or member level detail information for all transactions during the audit period on Form KWCFC-07 Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer[(a) Group self-insurer's indicator;

(b) Policy or member number;

(c) Insured's name;

(d) Transaction code;

(e) Accounting date (YY/MM/DD);

(f) Member's effective date (YY/MM/DD);

(g) Effective date of self-insurance year;

(h) Invoice date (YY/MM/DD);

(i) Premium;

(j) Special fund assessment; and

(k) Total (premium and assessment)].

(2) Group self-insurers shall make available to the Funding Commission's auditors the following items:

(a) Copies of quarterly premiums reports for each audit period with backup documentation;

(b) All documentation required to reconcile the sum of each four (4) calendar quarters to reports filed with the Department of~~Office of~~ Workers' Claims;

(c) A listing of members to whom coverage was extended for which premium has been written off as a bad debt, along with an explanation of how these bad debts were handled in the reports to the Department of~~Office of~~ Workers' Claims;

(d) A complete list of sample policies or agreements requested by the Funding Commission; and

(e) All other documents necessary to support reported premiums and assessments.

(3) For insurance years effective prior to October 26, 1987, the Funding Commission shall be furnished:

(a) A schedule identifying the assessment rates applied to these self-insurance years;

(b) The dates upon which these rates were first entered into the policy or premium management system; and

(c) The dates upon which these rates became active in the policy or premium management system.

(4) The Funding Commission shall utilize one (1) or more of the following procedures in the completion of audits:

(a) Detailed examination of records by policy or members' account;

(b) Detailed examination of members' agreements;

(c) Use of audit sampling techniques;

(d) Verification and reconciliation to Department of~~Office of~~ Workers' Claims' reports;

(e) Other procedures necessary because of the unique nature of the entity being audited.

(5) Upon the completion of an audit the Funding Commission shall not reaudit a period unless:

(a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to the Department of~~Office of~~ Workers' Claims upon which the Funding Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 8. Audits; Individual Self-insurers. (1) Upon request, self-insurers shall provide the Funding Commission with the following:

(a) Loss experience reports;

(b) Payroll records;~~[(c) Kentucky UI-3;~~

~~(d) Federal Form 941 "Employer's Quarterly Federal Tax Return";~~

~~(e) Federal Form 940 "Employer's Annual Federal Unemployment Tax Return"; and]~~

(c) All back up documentation request for each audit period; and

(d) Other information necessary because of the unique nature of the entity being audited.~~[(f) Other information necessary because of the unique nature of the entity being audited.]~~

(2) The Funding Commission shall utilize one (1) or more of the following procedures in completion of audits:

(a) Detailed examination of all required records;

(b) Use of audit sampling techniques; and

(c) Other procedures necessary because of the unique nature of the entity being audited.

(3) Upon completion of an audit the Funding Commission shall not re-audit a period unless:

(a) The Funding Commission receives information giving rise to an adjustment of the information previously reported to the Department of Workers' Claims upon which the Funding Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 9. Audits; Invoice, Protest and Resolution. (1) The Funding Commission shall send to the assessment payer~~[taxpayer]~~ a notice of any assessment assessed by the Funding Commission.

(2) A summarized invoice consisting of totals for "labor", "travel" and "all other" expenses shall be submitted to the assessment payer as soon as practicable after completion of the audit. An itemized invoice shall be available upon request.

(3)(a) The assessment shall be final if not protested in writing to the Funding Commission within thirty (30) days from the date of notice.

(b) The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made.

(c)1. Upon written request, the Funding Commission shall extend the time for filing the supporting statement if it is determined that the delay is necessary and unavoidable.

2. The refusal of an extension may be reviewed in the same manner as a protested assessment.

(4)[(2)] After a timely protest has been filed, the assessment

payer[taxpayer] may request a conference with the Funding Commission staff.

(a) The request shall be granted in writing stating the date and time set for the conference.

(b) The assessment payer[taxpayer] may appear in person or by representative.

(c) Further conferences may be held by mutual agreement.

(5)[(3)] For those issues not resolved during the conferences described in subsection (2) of this section, the assessment payer[taxpayer] may request a conference with the Funding Commission's Board of Directors.

(a) The request shall be granted in writing stating the date and time set for the conference.

(b) The assessment payer[taxpayer] may appear in person or by representative.

(6)[(4)] After considering the assessment payer's[taxpayer's] protest, including any matters presented at the final conference, the Funding Commission shall issue a final ruling on any matter still in controversy, which shall be mailed to the assessment payer[taxpayer]. The ruling shall state:

(a) That it is the final ruling of the Funding Commission and shall generally state the issues in controversy;

(b) The Funding Commission's position; and

(c) The procedure for appeal to the Kentucky Claims Commission[Board of Tax Appeals] in accordance with [KRS 131.340] KRS 49.220 and 802 KAR 1:010.

(7)[(5)](a) The assessment payer[taxpayer] may request in writing a final ruling any time after filing a timely protest and supporting statement.

(b) If a final ruling is requested, the Funding Commission shall issue the ruling within sixty (60) days or at the next Board of Directors meeting whichever is later, from the date the request is received by the Funding Commission [thirty (30) days from the date the request is received by the Funding Commission].

(8)[(6)] After a final ruling has been issued, the assessment payer[taxpayer] may appeal to the Kentucky Claims Commission[Board of Tax Appeals] pursuant to the provisions of KRS 49.220.[KRS 131.340].

Section 10. Reports. (1) Insurance companies, group self-insurers, and individual self-insurers shall file a Quarterly Premiums Report accompanied by the assessment due and payable for each calendar quarter.

(a) The quarterly premiums report and assessment due and payable shall be received by[in the office of] the KWCFC no later than thirty (30) days following the end of the calendar quarter.

(b) Receipt of the Quarterly Premiums Report and assessment due and payable shall be considered timely through electronic filing and payment; and prior to January 1, 2020 actual physical receipt by the KWCFC or by postmark of the U.S. Postal Service.

(2) Insurance companies shall file Form KWCFC-01 (Quarterly Premiums Report).

(3) Employers carrying their own risk shall file Form KWCFC-02 (Quarterly Premiums Report).

(4) Group self-insurers shall file Form KWCFC-03 (Quarterly Premiums Report).

(5)(a) Every insurance company, group self-insurer, and individual self-insurer providing workers compensation insurance in Kentucky shall submit to the KWCFC an Annual Audit and Collections Report for each calendar year no later than April 30th following the end of the calendar year.

(b) These reports shall be submitted to the KWCFC electronically[on electronic diskettes] and shall contain the information in the file content format in accordance with the Annual Audit and Collections Report instructions incorporated by reference in Form KWCFC-05 (Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies), Form KWCFC-06 (Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer), or Form KWCFC-07 (Annual Audit and Collections Report, Data Reporting Instructions Individual Self Insurer), as applicable.[(6)(a) Every group self-insurer providing workers compensation insurance in Kentucky shall submit to the KWCFC an Annual Audit and Collections Report for each calendar

year no later than April 30th following the end of the calendar year.

(b) These reports shall be submitted to the KWCFC and shall contain the information in the file content format in accordance with the Annual Audit and Collections Report instruction incorporated by reference in Form KWCFC-06 (Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer).

(7)(a) Every individual self-insurer providing workers compensation insurance in Kentucky shall submit to the KWCFC an Annual Audit and Collections Report for each calendar year no later than April 30th following the end of the calendar year.

(b) These reports shall be submitted to the KWCFC and shall contain the information in the file content format in accordance with the Annual Audit and Collections Report instructions incorporated by reference in Form KWCFC-07 (Annual Audit and Collections Report, Data Reporting Instructions Individual Self Insurer).]

(6)[(8)] An insurance company or group self-insurer that does not write, receive, or return any Kentucky workers' compensation insurance premium during the calendar year shall complete and return Form KWCFC-04 (Non-writer[Nonwriter] Statement) to the Kentucky Workers' Compensation Funding Commission, electronically or by mail, 42 Mill Creek Park,[42 Millcreek Park, P.O. Box 1220,] Frankfort, Kentucky 40601[40602] no later than April 30th following the end of the calendar year.

Section 11. Jeopardy Assessment. (1) The Funding Commission may issue a Jeopardy Assessment Audit in the following instances:

(a) In the event an assessment payer has hindered or evaded the audit process;

(b) Has done any other act rendering the proceedings to assess or collect assessment partly or wholly ineffective;

(c) Delayed providing information; and

(d) Provided incorrect information.

(2) A jeopardy assessment will be considered a completed audit by the KWCFC and the assessment payer will receive invoice in accordance with KRS 342.1221.

Section 12[14]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KWCFC-01 (Quarterly Premiums Report), (08/2018)[(03/2010)]";

(b) "KWCFC-02 (Quarterly Premiums Report), (08/2018)[(03/2010)]";

(c) "KWCFC-03 (Quarterly Premiums Report), (08/2018)[(03/2010)]";

(d) "KWCFC-04 (Nonwriter Statement), (08/2018)[(03/2010)]";

(e) "KWCFC-05 (Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies), (08/2018)[(03/2010)]";

(f) "KWCFC-06 (Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer), (08/2018)[(03/2010)]"; and

(g) "KWCFC-07 (Annual Audit and Collections Report, Individual Self-Insurer), (08/2018)[(03/2010)]".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Workers' Compensation Funding Commission, 42 Mill Creek Park, Frankfort, Kentucky 40601[#42 Millcreek Park, P.O. Box 1128, Frankfort, Kentucky 40602-1128], Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at the Kentucky Workers' Compensation Funding Commission Web site <http://www.kwcfc.ky.gov/>.

This is to certify that the executive director has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.1224(5).

REUBEN JONES, Executive Director
JUDY LONG, Chair, Board of Directors

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on September 27, 2018, at 1:30 p.m. Eastern Time at the Kentucky Workers' Compensation Funding Commission Conference Room, 42 Mill Creek Park, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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 PERSONS: Estee Jackson, Administrative Services Officer, Kentucky Workers' Compensation Funding Commission, 42 Mill Creek Park, Frankfort, Kentucky 40601, phone (502) 782-1708, fax (502) 573-4923, email estee.jackson@ky.gov; or Olivia Orrender, Audit Review Manager, Kentucky Workers' Compensation Funding Commission, 42 Mill Creek Park, Frankfort, Kentucky 40601, phone (502) 782-1711, email Olivia.orrrender@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Estee Jackson and Olivia Orrender

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines and provides clarification to the statutory requirements of the Kentucky Workers' Compensation Funding Commission per KRS 342.1223.

(b) The necessity of this administrative regulation: With this review the Funding Commission has deleted language relating to old policy and procedures, as well as, updated language to follow legislation enacted in 2018.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Each section provides information to assessment payers to include the procedures for collection, audit, penalty and interest, etc. per KRS 342.1223.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow the Funding Commission to be more effective by locating all relevant guidance in one user friendly reg. With this regulation amendment assessment payers are provided a clearer understanding of current policies and procedures to meet the statutory requirements put forth in KRS Chapter 342.

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

(a) How the amendment will change this existing administrative regulation: New language has been inserted pursuant to legislation passed in 2018 to clarify reporting and auditing requirements.

(b) The necessity of the amendment to this administrative regulation: Inserted language updates existing regulation to align with enacted legislation and provides direction to assessment payers on current policies.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 342 puts forth requirements to the Funding Commission to audit entities who pay a special fund assessment. This regulation further defines to assessment payers the standards for reporting, collection, and audit procedures.

(d) How the amendment will assist in the effective administration of the statutes: Assessment payers will have a clearer understanding of the Funding Commissions statutory authority and auditing directive.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All insurance Companies, Group self-insured and self-insured individuals providing workers' compensation insurance in the state of Kentucky that are required

to pay the special fund assessment as required in KRS 342.122.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No new actions are required of assessment payers, who will now more easily understand the Funding Commissions' regulatory process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No new costs are being applied to assessment payers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Assessment payers will have a better understanding and find it easier to comply with the Funding Commissions statutory authority and auditing directive.

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

(a) Initially: This administrative regulation will not add any further cost to the administrative body.

(b) On a continuing basis: This administrative regulation will not add any further cost to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will not add any further cost to the administrative body.

(7) Provide an assessment of whether an 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 add any further cost to the administrative body.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Language to define audit expenses that shall be reimbursed by the assessment payer audited per KRS 342.1231 has been inserted into this regulation. This expense language was previously in 803 KAR 30:020 which has been repealed. Legislation enacted in 2018 states expenses are now subject to penalty and interest which is defined within this regulation.

(9) TIERING: Is tiering applied? Yes, 803 KAR 30:010 includes tiering with respect to the types of assessment payers subject to assessment as defined in KRS 342.122.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Workers' Compensation Funding Commission (KWFCF)

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 49.220, 342.0011, 342.122, 342.1221, 342.1222, 342.1231, 342.1223, 342.340, 342.650, 30 U.S.C. 901-945, 33 U.S.C. 901-980

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will not affect expenditures for the KWFCF, but may increase revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of additional revenue to be generated by this administrative regulation is uncertain because penalty and interest will not accrue if assessment payers are not penalized.

(b) How 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 amount of additional revenue to be generated by this administrative regulation is uncertain because penalty and interest

will not accrue if assessment payers are not penalized.

(c) How much will it cost to administer this program for the first year? 803 KAR 30:010 does not establish a program which requires cost to administer.

(d) How much will it 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. 803 KAR 30:010 does not establish a program which requires cost to administer.

Revenues (+/-): Increase

Expenditures (+/-): Neutral

Other Explanation: This administrative regulation expands on directives in HB 388 which was passed by the general assembly in 2018.

LABOR CABINET

Kentucky Occupational Safety and Health Review Commission (Amendment)

803 KAR 50:010. Hearings; procedure, disposition.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 13B.020(3)(e)2a, 338.071, 338.081, 338.141

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Occupational Safety and Health Review Commission is authorized by KRS 338.071 and 338.081 to hear and rule on appeals from citations, notifications, and variances and promulgate administrative regulations with respect to the procedural aspect of its hearings. According to KRS 13B.020(3)(e)2a, these occupational safety and health hearings are conducted under the authority of KRS 338.071(4), 338.081, and 338.141(3) rather than the hearing procedures in KRS Chapter 13B. This administrative regulation establishes procedures for these hearings and their proper disposition.

Section 1. Definitions. (1) "Act" means the Occupational Safety and Health Act of 1972, KRS Chapter 338.

(2) "Affected employee" or "employee" means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of the employee's assigned duties.

(3) "Authorized employee representative" means a labor organization which has a collective bargaining relationship with a cited employer and which represents affected employees.

(4) "Citation" means a written communication issued by the commissioner to an employer pursuant to KRS 338.141.

(5) "Commission" means the Kentucky Occupational Safety and Health Review Commission.

(6) "Commissioner" means the commissioner of the Department of Workplace Standards, Labor Cabinet.

(7) "Day" means a calendar day.

(8) "Executive director" means the executive director of the commission.

(9) "Hearing officer" means a hearing officer appointed by the commission pursuant to KRS 338.071(5) and 338.081.

(10) "Natural person" means an employer whose business is organized as a proprietorship or an affected employee who is not represented by a labor organization.

(11) "Proceeding" means any proceeding before the commission or before a hearing officer.

(12) "Representative" means an attorney authorized by a party or intervenor to represent him in a proceeding.

(13) "Working day" means all days except Saturdays, Sundays, or federal or state holidays.

Section 2. Meetings. (1) Regular meetings of the commission shall be held in its offices, Frankfort, Kentucky, on the first Tuesday of each month at 10:00 a.m., unless changed to another date, place, or time by commission action.

(2) Special meetings shall be held at the times and places as the call directs.

(3) The commission shall be considered as in continuous session for the performance of administrative duties.

Section 3. Assignment of Hearing; Filings. (1) Pursuant to KRS 338.081, cases coming before the commission may be assigned to a hearing officer within the discretion of the commission for a hearing and a finding of facts, conclusions of law, and recommended order. Cases may be withdrawn by agreement, dismissed for cause, or otherwise disposed of before hearing in the discretion and judgment of the commission. Further, the commission may, upon its own motion or on motion of a party, if granted, hold hearings as provided under KRS 338.071, in which case provisions of this administrative regulation relating to hearing officers and hearings shall apply if applicable.

(2) A recommended order of adjudication by the hearing officer or the initial order of the review commission, if dismissed or disposed of as provided in subsection (1) of this section or if the commission sits for a hearing, shall become the final order of the commission under the provisions of KRS 338.091, appealable to the Franklin Circuit Court forty (40) days from date of issue, unless called for further review pursuant to Section 48 of this administrative regulation. If reviewed by the commission, an order of the commission determinative of issues before it shall become a final order as defined in KRS 338.091(1) upon date of issue.

(3) Prior to the assignment of a case to a hearing officer, all papers shall be filed with the executive director at the commission offices, #4 Millcreek Park, Frankfort, Kentucky 40601. Subsequent to the assignment of the case to a hearing officer, and before the hearing officer issues a decision, all papers shall be filed with the hearing officer at the address given in the notice informing of the assignment. Subsequent to a decision of the hearing officer, all papers shall be filed with the executive director.

(4) Unless otherwise ordered, all filing may be accomplished by first-class mail.

(5) Filing is effective when mailed.

Section 4. Scope of Rules; Applicability of Kentucky Rules of Civil Procedure. (1) The rules established by this administrative regulation shall govern all proceedings before the commission and its hearing officers.

(2) In the absence of a specific provision, procedure shall be in accordance with the Kentucky Rules of Civil Procedure.

Section 5. Words Denoting Number or Gender. (1) Words importing the singular number may extend and be applied to the plural and vice versa.

(2) Words importing masculine gender may be applied to feminine and vice versa.

Section 6. Computation of Time. (1) In computing a period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or federal or state holiday, in which event the period runs until the end of the next day not a Saturday, Sunday, or federal or state holiday. If the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and federal or state holidays shall be excluded in the computation.

(2) If service of a pleading or document is by mail pursuant to Section 3 of this administrative regulation, three (3) days shall be added to the time allowed by these rules for the filing of a responsive pleading.

Section 7. Extensions of Time. Requests for extensions of time for the filing of a pleading or document shall be received in advance of the date on which the pleading or document is due to be filed.

Section 8. Record Address. The initial pleading filed by a person shall contain the person's name, address, and telephone number. A change in this information shall be communicated promptly to the hearing officer or the commission, as the case may be, and to all other parties and intervenors. A party or intervenor

who fails to furnish the information shall have waived the right to notice and service under these rules.

Section 9. Service and Notice. (1) A copy of all [At the Time of filing] pleadings or other documents [a copy thereof] shall be served by the filing party or intervenor on every other party or intervenor at the time of filing. Every paper relating to discovery required to be served on a party shall also be served on all parties and intervenors. Except the original complaint, or an amended complaint if filed prior to service of the original complaint, shall be served in accordance with Section 20 of this administrative regulation.

(2) Service upon a party or intervenor who has appeared through an attorney shall be made only upon the attorney.

(3) Unless otherwise ordered, service may be accomplished by postage pre-paid first class mail at the last known address, by electronic transmission, or by personal delivery. Service is effective when mailed (if by mail), at the time of receipt (if by electronic transmission), or when personally delivered (if by personal delivery). Documents sent by overnight delivery service shall be deemed personal delivery. Service of documents by electronic transmission shall only be permitted if all parties consent to that method of service in writing. The certificate of service of the electronic transmission shall state that such consent has been given and the method of transmission.

(4) Proof of service shall be accompanied [accomplished] by a written statement of service which states the date and manner of service. The statement shall be filed with the pleading or document.

(5) If service is accomplished by posting, proof of posting shall be filed not later than the first working day following the posting.

(6) Service and notice to employees represented by an authorized employee representative shall be accomplished by serving the authorized employee representative [its attorney] in the manner prescribed in subsection (3) of this section. If the authorized employee representative has appeared in a proceeding on behalf of the employees it represents, service shall be made upon the attorney for the authorized employee representative.

(7) If there are affected employees who are not represented by an authorized employee representative, the employer shall immediately upon receipt of notice of contest or request for extension or modification of the abatement period post, where the citation is required to be posted by 803 KAR 2:125, Section 1(1), a copy of the notice of contest and a notice informing the affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall comply with this paragraph:

(Name of employer)

Your employer has been cited by the Commissioner of the Department of Workplace Standards for violation of the Occupational Safety and Health Act of 1972. The citation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the Occupational Safety and Health Review Commission in its rules of procedure. Notice of intent to participate shall be sent to:

Kentucky Occupational Safety and Health Review Commission
#4 Millcreek Park
Frankfort, Kentucky 40601

All papers relevant to this matter may be inspected at: (Place shall be reasonably convenient to employees, preferably at or near work place.)

(8) If appropriate, the second sentence of the notice required by subsection (7) of this section shall be deleted and the following sentence shall be substituted: The reasonableness of the period prescribed by the Commissioner of the Department of Workplace Standards for abatement of the violation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission.

(9) The [attorney for the] authorized employee representative, if any, shall be served with the notice required by subsections (7) and (8) of this section and with a copy of the notice of contest.

(10) A copy of the notice of the hearing to be held before the hearing officer shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of the hearing at or near the place where the citation is required to be posted by subsection (7) of this section.

(11) A copy of the notice of the hearing to be held before the hearing officer shall be served by the employer on [the attorney for] the authorized employee representative or affected employees in the manner prescribed in subsection (3) of this section, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date the notice is received by the employer.

(12) If a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support shall be provided to the employer for posting in the manner prescribed in subsection (7) of this section.

(13) An authorized employee representative who files a notice of contest shall serve any other authorized employee representative whose members are affected employees.

(14) If posting is required by this section, posting shall be maintained until the commencement of the hearing or until earlier disposition.

Section 10. Consolidation. Cases may be consolidated on the motion of a party, on the hearing officer's own motion, or on the commission's own motion if there are common parties, common questions of law or fact, or both, or in other circumstances as justice and the administration of the Act require.

Section 11. Severance. Upon its own motion, or upon motion of a party or intervenor, the commission or the hearing officer may, for good cause, order a proceeding severed with respect to some or all issues or parties.

Section 12. Protection of Trade Secrets and Other Confidential Information. (1) Upon application by any person, in a proceeding where trade secrets or other matters may be divulged, the confidentiality of which is protected by law, the hearing officer shall issue orders as may be appropriate to protect the confidentiality of those matters.

(2) Interlocutory appeal from an adverse ruling under this section shall be granted as a matter of right.

Section 13. Employer or Employee Contests. (1) If a notice of contest is filed by an employer contesting a citation or notification issued pursuant to KRS 338.031(1), 338.141(3), or 338.153, an employee or an authorized employee representative may elect party status by a request for intervention at any time before commencement of the hearing or, if no hearing is held, before notice of an executed settlement agreement has been served according to Section 51(3) of this administrative regulation.

(2) If a notice of contest is filed by an employee or by an authorized employee representative contesting a citation or notification issued pursuant to KRS 338.031(1), 338.141(3), or 338.153, the employer may elect party status at any time before commencement of the hearing or, if no hearing is held, before notice of an executed settlement agreement has been served according to Section 51(3) of this administrative regulation.

Section 14. Intervention. (1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing, or if there is a settlement or dismissal, before issuance of a recommended order.

(2) The petition shall state the interest of the petitioner in the proceeding and show that participation of the petitioner will assist in the determination of the issues in question and that the intervention will not unnecessarily delay the proceeding.

(3) The commission or the hearing officer may grant a petition for intervention to the extent and upon those terms as the commission or the hearing officer shall determine.

(4) The caption of all cases where intervention is allowed shall reflect the intervention by adding, to the caption after the name of

the respondent, the name of the intervenor followed by the designation intervenor.

Section 15. Representatives of Parties and Intervenors. (1) Except for natural persons who may represent themselves, a party or intervenor shall appear through an attorney.

(2) A representative of a party or intervenor shall control all matters respecting the interest of the party or intervenor in the proceeding.

(3) Affected employees who are represented by an authorized employee representative may appear only through an attorney for the authorized employee representative.

(4) Affected employees who are not represented by an authorized employee representative may elect party status by filing a request for intervention.

(5) Withdrawal of appearance of a representative may be affected[effected] by filing a written notice of withdrawal and by serving a copy of the notice on all parties and intervenors.

Section 16. Variance Contests. (1) An employer, employee or authorized employee representative who receives notification of an adverse ruling to an application for a variance made pursuant to KRS 338.153 may, within fifteen (15) working days of issuance of the ruling, file a notice of contest with the commissioner. The commissioner shall transmit the notice, together with the complete record in the matter as compiled before the commissioner, to the commission within seven (7) days of receipt, under authority of KRS 338.071(4).

(2) The commission may on its own order or on motion of a party, if granted, consider the matter on the record or may require further hearing or filings of information in the matter.

(3) All pertinent provisions, relating to contests of citations, if applicable, shall apply.

Section 17. Request for Extension or Modification of Abatement. (1) A party adversely affected by a ruling of the commissioner on an application for extension or modification of an abatement period may file an appeal from the notification with the commissioner, if an appeal is filed within fifteen (15) working days from receipt of the notice. The appeal shall be limited to the commissioner's ruling affecting the party's application for extension or modification of the abatement period.

(2) The commissioner shall transmit the appeal to the commission within seven (7) days after its receipt, together with all pertinent and relevant records considered by the commissioner in making the ruling.

(3) The commissioner shall file a response to the appeal within ten (10) days of receipt of notice of the appeal.

(4) The commission may on its own order or on motion of a party, if granted, consider the matter on the record or may require further hearing, pleading, or information in the matter.

Section 18. Form. (1) Except as provided in this section, there are no specific requirements as to the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with Section 19 of this administrative regulation which shall include the commission's docket number and a clear and plain statement of the relief that is sought, together with the grounds for the requested relief.

(2) Pleadings and other documents (other than exhibits) shall be typewritten, double spaced.

(3) Pleadings shall be signed by the party filing or by the party's representative. Signing constitutes a representation that the signer has read the document or pleading; that to the best of the signer's knowledge, information, and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The commission may refuse for filing any pleading or document which does not comply with the requirements of subsections (1), (2), and (3) of this section.

(5) All pleadings shall be filed in duplicate unless otherwise indicated.

(6) A pleading shall be assumed to be correct as submitted unless a reply or denial is received within ten (10) days of receipt

of the pleading.

Section 19. Captions. (1) Cases initiated by a notice of contest shall be titled: Commissioner of the Department of Workplace Standards, Complainant v. (Name of Contestant), Respondent.

(2) Cases₂ initiated from an adverse ruling of the commissioner of the Department of Workplace Standards relative to a variance or by a request for extension or modification of the abatement period shall be titled: (Name of Petitioner), Petitioner v. Commissioner of the Department of Workplace Standards, Respondent.

(3) The titles listed in subsections (1) and (2) of this section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

(4) The initial page of any pleading or document (other than exhibits) shall show, at the upper right of the page opposite the title, the docket number assigned by the commission.

Section 20. Notices of Contest of Citations. (1) Any employer, employee or authorized employee representative may contest any citation issued pursuant to KRS 338.141.

(2) If a notice of contest is received by the commissioner, the original and one (1) copy of the notification of contest shall be transmitted to the commission together with copies of all relevant documents, within seven (7) days of receipt of notice by the commissioner.

(3) Complaint.

(a) The commissioner shall file a complaint with the commission no later than twenty (20) days after receiving the notice of contest.

(b) The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity:

1. The basis for jurisdiction;

2. The time, location, place, and circumstances of each alleged violation; and

3. The considerations upon which the period for abatement and the proposed penalty on each alleged violation is based.

(c) If the commissioner seeks in the complaint to amend the citation or proposed penalty, the commissioner shall state the reasons for amendment and shall state with particularity the change sought.

(d) The commissioner shall ensure that a copy of the complaint is personally served on the employer as follows:

1. An employer who is an individual within the Commonwealth. Service shall be made upon the individual within the Commonwealth, other than an unmarried infant or person of unsound mind, by delivering a copy of the complaint to the person or, if acceptance is refused, by offering personal delivery to the person, or by delivering a copy of the complaint to an agent authorized by appointment or by law to receive service of process for the individual.

2. An employer who is an 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 known to the commissioner or, if none, by serving either the person's father or mother within the Commonwealth or, if none, by serving the person within the Commonwealth 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.

3. An employer which is a partnership or unincorporated association. Service shall be made upon a partnership or unincorporated association subject to suit under a common name by serving a partner or managing agent of the partnership, or an officer of managing agent of the association, or an agent authorized by appointment or by law to receive service on its behalf.

4. An employer which is a 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.

5. An employer which is the Commonwealth or an agency thereof. Service shall be made upon the Commonwealth or agency

thereof by serving the attorney general or any assistant attorney general.

6. An employer which is a county, city, public boards or other such bodies. Service shall be made upon a county by serving the county judge or, if he is absent from the county, the county attorney. Service shall be made upon a city by serving the chief executive officer thereof or an official attorney thereof. Service on any public board or other such body, except state agencies, shall be made by serving a member thereof.

7. An employer which is an individual out of this state. Service may be made upon an individual out of this Commonwealth, other than an unmarried infant, a person of unsound mind or a prisoner, by certified mail or by personal delivery by someone who is over 18 years of age as prescribed in subparagraph (e) below.

8. A nonresident employer. Service may be made upon a nonresident individual who transacts business through an office or agency in this Commonwealth, 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.

(e). Manner of service. The commissioner shall arrange for an authorized person to perform personal delivery or serve the complaint through certified or registered mail.

1. Personal Delivery. The commissioner shall arrange for an authorized person to perform service. Proof of service shall be by affidavit of the person making such service stating the time, place, and the individual who accepted or refused a copy of the complaint on behalf of the employer.

2. Certified or Registered Mail. The commissioner shall send a copy of the complaint to the employer by United States certified or registered mail, return receipt requested with instructions to the delivering postal employee to deliver to the addressee and show the address where delivered and the date of delivery. The return receipt shall be proof of the time, place, and manner of service by registered or certified mail.

3. Service of the complaint is effective upon receipt by the employer. The commissioner must file proof of service with the commission promptly after service, and, in any event, within the time during which the employer must respond to the complaint.

(4) Answer.

(a) Within fifteen (15) days after service of the complaint, the party against whom the complaint was issued shall file an answer with the commission.

(b) The answer shall contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied is admitted.

(c) Failure to file an answer may constitute a default and dismissal of the employer's notice of contest pursuant to Section 23. Prior to the dismissal of a notice of contest for failing to file an answer, the commissioner shall enter an order requiring the employer to show cause as to why the commission should not declare the employer to be in default. The commission shall serve its order pursuant to Section 9. The order shall provide at least seven (7) days from the date of service for the employer to respond. The commission may dismiss the notice of contest if the employer fails to comply with the show cause.

Section 21. Statement of Position. At any time prior to the commencement of the hearing before the hearing officer, a person entitled to appear as a party, or a person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

Section 22. Response to Motions. A party or intervenor upon whom a motion is served shall have ten (10) days from service of the motion to file a response.

Section 23. Failure to File. Failure to file any pleading pursuant to these rules when due may, in the discretion of the commission or the hearing officer, constitute a waiver of right to further participation in the proceedings.

Section 24. Withdrawal of Notice of Contest. At any stage of a

proceeding, a party may withdraw his or her notice of contest, subject to the approval of the commission.

Section 25. Prehearing Conference. (1) At any time before a hearing, the commission or the hearing officer, on their own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings.

(2) The commission or the hearing officer may issue a prehearing order which includes the agreements reached by the parties. The order shall be served on all parties and shall be a part of the record.

Section 26. General Provisions Concerning Discovery; Methods; Service of Discovery Papers; Scope of Discovery; Protective Orders; Sanctions; Supplementation of Responses. (1) In conformity with these rules, any party may, without leave of the commission or hearing officer, obtain discovery through requests for admissions, interrogatories, and requests for production or inspection as set forth in Section 27. Discovery is not available through dispositions under Section 28 without leave of the commission or hearing officer.

(2) Every paper relating to discovery requested to be serviced on a party shall be served on all parties pursuant to Section 9 of this administrative regulation. Request for production or inspection, requests for admission and responses thereto, interrogatories and the answers thereto, and discovery depositions shall be served upon other counsel or parties, but shall not be filed with the commission or hearing officer. If the interrogatories, requests, answers, responses, or depositions are to be used at the hearing or are necessary to a prehearing motion which might result in a final order on any claim, the portions used shall be filed with the hearing officer or commission at the outset of the hearing or at the filing of the motion insofar as their use can be reasonably anticipated.

(3) The information or response sought through discovery may concern any matter that is not privileged and is relevant to the subject matter involved in the pending case. It is not a ground for objection that the information or response sought will be inadmissible at the hearing, if the information or response appears reasonably calculated to lead to the discovery of admissible evidence, regardless of which party has the burden of proof.

(4) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the hearing officer or commission may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) That the discovery not be had.

(b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place.

(c) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery.

(d) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters.

(e) That discovery be conducted with no one present except persons designated by the commission or hearing officer.

(f) That a disposition after being sealed be opened only by order of the commission or hearing officer.

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

(h) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the commission or hearing officer.

(5) A party may apply for an order compelling discovery if another party refuses or obstructs discovery. An evasive or incomplete answer is to be treated as failure to answer. If a hearing officer enters an order compelling discovery and there is failure to comply with that order, the hearing officer or commission may enter appropriate orders that are just, including the following sanctions:

(a) An order that designated facts shall be taken to be established for purposes of the case in accordance with the claim of the party obtaining that order.

(b) An order refusing to permit the disobedient party to support or oppose designated claims or defenses, or prohibiting it from introducing matters in evidence.

(c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed; and

(d) An order dismissing the proceeding or any part thereof, or rendering an order by default against the disobedient party.

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

(a) A party is under a duty to seasonably supplement the response with respect to any questions directly addressed to:

1. The identity and locations of persons having knowledge of discoverable matters; and

2. 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 to seasonably amend a prior response if the party obtains information upon the basis of which:

1. The party knows that the response was incorrect when made; or

2. 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 commission or hearing officer, agreement of the parties, or at any time prior to the hearing through new request for supplementation of prior responses. [Requests for Admissions. (1) At any time after the filing of responsive pleadings, a party may request of any other party admissions of facts to be made under oath. Each admission requested shall be stated separately. The matter shall be admitted unless, within fifteen (15) days after service of the request or within a shorter or longer time as the commission or the hearing officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission a specific written response.

(2) Copies of all requests and responses shall be served on all parties in accordance with Section 9 of this administrative regulation and filed with the commission within the time allotted and shall be a part of the record.]

Section 27. Requests for Admissions, Interrogatories, Production of Documents and Things. (1) Requests for Admissions.

(a) At any time after the filing of responsive pleadings, a party may request of any other party written requests for admissions, for the purposes of the pending action only, of the genuineness and authenticity of any document described in or attached to the requests, or of the truth of any specified matter of facts to be made under oath. Each matter of which an admission is requested shall be separately set forth. The number of requested admissions shall not exceed twenty-five (25), including subparts, without an order of the commission or hearing officer. The party seeking more than twenty-five (25) requested admissions, including subparts, shall have the burden of persuasion to establish that the complexity of the case or the number of citation items necessitates a greater number of requested admissions.

(b) Each admission requested shall be stated separately. The matter shall be admitted unless, within thirty (30) days after service of the request or within a shorter or longer time as the commission or the hearing officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission a written response specifically admitting or denying the matter involved in whole or in part, or asserting that it cannot be truthfully admitted or denied and setting forth in detail the reasons why this is so, or an objection, stating in detail the reasons therefor. The response shall be made under oath or affirmation and signed by

the party or the party's representative.

(c) Any matter admitted under this section is conclusively established unless the commission or hearing officer on motion permits withdrawal or amendment of the admission. The commission or hearing officer may permit withdrawal or amendment if the presentation of the merits of the case will be subverted thereby and the party who obtained the admission fails to satisfy the commission or hearing officer that withdrawal or amendment will prejudice that party in presenting his or her case or defense on the merits.

(2) Interrogatories.

(a) At any time after the filing of responsive pleadings, a party may serve interrogatories upon any other party. The number of interrogatories shall not exceed twenty-five (25) questions, including subparts, without an order of the commission or hearing officer. The party seeking to serve more than twenty-five (25) questions, including subparts, shall have the burden of persuasion to establish that the complexity of the case or the number of citation items necessitates a greater number of interrogatories. The following shall not be included in the maximum allowed: interrogatories requesting the name and address of the person answering; the names and addresses of the witnesses; and whether the person answering is willing to supplement his or her answers if information subsequently becomes available.

(b) Each interrogatory shall be answered separately and fully in writing under oath or affirmation, 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 by the party or the party's counsel. The party upon whom the interrogatories have been served shall serve a copy of answers or objections upon all parties within thirty (30) days after service of the interrogatories. The hearing officer may allow a shorter or longer time.

(c) An interrogatory 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.

(3) Production of documents and things.

(a) At any time after the filing of responsive pleadings, a party may serve on any other party a request to:

1. Produce or permit the party making the request, or a person acting on his or her behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things which are in the possession, custody or control of the party upon whom the request is served.

2. Permit entry upon the designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operations thereon.

(b) The request shall set forth items to be inspected either by individual item or 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 related acts. The party upon whom the request is made shall serve a written response within thirty (30) days after the service of the request. The hearing officer may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. [Discovery Depositions and Interrogatories. (1) Except by special order of the commission or the hearing officer, discovery depositions of parties, intervenors, or witnesses and interrogatories directed to parties, intervenors, or witnesses shall not be allowed.

(2) If the commission or the hearing officer grants an application for the conduct of discovery proceedings, the order shall set forth appropriate time limits governing the discovery.]

Section 28. Discovery Depositions. (1) Except by special order of the commission or the hearing officer, discovery depositions of parties, intervenors, or witnesses shall not be allowed.

(2) A party wishing to take a discovery deposition must file a written application with the commission or hearing officer and shall

serve the application on all other parties and intervenors not less than fourteen (14) days prior to the time when it is desired to take the discovery deposition. The application shall state the reasons why the deposition should be taken and shall contain:

(a) The name and address of the deponent;
(b) The scope of questioning expected to be asked of the deponent;

(c) The time and place proposed for the taking of the deposition; and

(d) The name and address of the officer before whom it is desired that the deposition be taken.

(3) If the commission or the hearing officer grants an application for the conduct of discovery depositions, the order shall set forth appropriate scope and time limits for the discovery.

(4) The procedure for taking the deposition shall be governed by Section 40, Subsection (3) of this administrative regulation: except a discovery deposition transcript shall not be delivered to the executive director as set forth therein. The officer before whom the deposition is taken must meet the requirements of Section 40, Subsection (2) of this administrative regulation. [Failure to Comply With Orders for Discovery. If a party or intervenor fails to comply with an order of the commission or the hearing officer to permit discovery that complies with Section 27 of this administrative regulation, the commission or the hearing officer may issue appropriate orders.]

Section 29. Issuance of Subpoenas; Petitions to Revoke or Modify Subpoenas; Right to Inspect or Copy Data. (1) A member of the commission shall, on the application of a party directed to the commission, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence or documents in the witness's possession or under the witness's control. Applications for subpoenas, if filed subsequent to the assignment of the case to a hearing officer, may be filed with the hearing officer. A hearing officer shall grant the application on behalf of any member of the commission. Applications for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(2) A person served with a subpoena, whether ad testificandum or duces tecum, shall within five (5) days after the date of service of the subpoena upon him move in writing to revoke or modify the subpoena if he does not intend to comply. Motions to revoke or modify shall be served on the party at whose request the subpoena was issued. The hearing officer or the commission, as the case may be, shall revoke or modify the subpoena if, in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid. The hearing officer or the commission, as the case may be, shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed in response, and the ruling on the motion shall become a part of the record.

(3) Persons compelled to submit data or evidence at a public proceeding may retain or, on payments of lawfully prescribed costs, procure copies of transcripts of the data or evidence submitted by them.

(4) Upon the failure of any person to comply with a subpoena issued upon the request of a party, the party seeking to enforce the challenged subpoena shall initiate proceedings in the Franklin Circuit Court to [or] appropriate circuit court to enforce the subpoena if, in its judgment enforcement would be consistent with law and with policies of the Act.

Section 30. Notice of Hearing. (1) Notice of the time, place, and nature of a hearing shall be given to the parties and intervenors at least ten (10) days in advance of the hearing, except as otherwise provided in Section 52 of this administrative regulation.

(2) Copy of notice of hearing shall be served by the employer on affected employees or the affected employees' representative as provided in Section 9(9) and (10) of this administrative regulation, if no information has been received by the employer as to the employee intervention in the case before the commission. Notice of hearing shall be given by the commission to any party or intervenor.

(3) The hearing officer shall secure or cause to be secured a location for the hearing and secure a reporter for the taking of proof at any hearing.

Section 31. Postponement of Hearing. (1) Postponement of a hearing ordinarily shall not be allowed.

(2) Except in the case of an extreme emergency or in unusual circumstances, a request shall not be considered unless received in writing at least three (3) days in advance of the time set for the hearing.

(3) Postponement of hearing not in excess of thirty (30) days may be granted in the discretion of the hearing officer. One (1) additional postponement not in excess of thirty (30) days may be granted by the hearing officer in extreme emergency or under unusual circumstances. An additional postponement shall not be granted without commission approval.

Section 32. Failure to Appear. (1) Subject to the provisions of subsection (3) of this section, the failure of a party to appear at a hearing shall be a waiver of all rights except the rights to be served with a copy of the decision of the hearing officer and to request commission review pursuant to Section 48 of this administrative regulation.

(2) Requests for reinstatement shall be made, in the absence of extraordinary circumstances, within five (5) days after the scheduled hearing date.

(3) The commission or the hearing officer upon a showing of good cause may excuse the failure to appear. If excused, the hearing shall be rescheduled.

Section 33. Payment of Witness Fees and Mileage; Fees of Persons Taking Depositions. Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

Section 34. Reporter's Fees. Reporter's fees shall be borne by the commission, except as provided in Section 33 of this administrative regulation.

Section 35. Transcript of Testimony. Hearings shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the hearing officer before whom the matter was heard. The hearing officer shall promptly serve notice upon each of the parties and intervenors of the filing. Participants desiring copies of transcripts may obtain them from the official reporter after paying the transcript fees.

Section 36. Duties and Powers of Hearing Officers. The hearing officer shall conduct a fair and impartial hearing to assure that the facts are fully elicited and to adjudicate all issues and avoid delay. The hearing officer shall have authority with respect to cases assigned to him, between the time he is designated and the time he issues his decision, subject to this administrative regulation, to:

(1) Administer oaths and affirmations;
 (2) Issue authorized subpoenas;
 (3) Rule upon petitions to revoke subpoenas;
 (4) Rule upon offers of proof and receive relevant evidence; [;]
 (5) Take or cause depositions to be taken if the needs of justice would be served;

(6) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

(7) Hold conferences for the settlement or simplification of the issues;

(8) Dispose of procedural requests or similar matters including options[motions] referred to the hearing officer by the commission and motions to amend pleadings; to dismiss complaints or portions of them; and to order hearings reopened or, upon motion, consolidated prior to issuance of his decision;

(9) Call and examine witnesses and to introduce into the record documentary or other evidence;

(10) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support of their positions;

(11) Adjourn the hearing as the needs of justice and good administration require; and

(12) Take any other action necessary and authorized by this administrative regulation.

Section 37. Disqualification of Hearing Officer. (1) A hearing officer may withdraw from a proceeding if [whenever] disqualification is warranted.

(2) A party may request the hearing officer at any time, following his designation and before the filing of his decision, to withdraw on grounds of personal bias or disqualification by filing with him promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(3) If, in the opinion of the hearing officer the affidavit referred to in subsection (2) of this section is filed with due diligence and is sufficient on its face, the hearing officer shall forthwith disqualify himself and withdraw from the proceeding.

(4) If the hearing officer does not disqualify himself and withdraw from the proceedings, he shall so rule upon the record, stating the grounds for his ruling, and shall proceed with the hearing; or, if the hearing has closed, he shall proceed with the issuance of his decision in accordance with Section 47 of this administrative regulation.

Section 38. Examination of Witnesses. Witnesses shall be examined orally under oath. Opposing parties shall have the right to cross-examine any witness whose testimony is introduced by [an] adverse party.

Section 39. Affidavits. An affidavit may be admitted as evidence in lieu of oral testimony if the matters contained in the affidavit are otherwise admissible and the parties agree to its admission.

Section 40. Deposition in Lieu of Oral Testimony; Application; Procedures; Form; Rulings. (1)(a) An application to take the deposition of a witness in lieu of oral testimony shall be in writing and shall state the reasons a deposition should be taken. The application shall contain:

1. The name and address of the witness;
2. The matters the witness is expected to testify about;
3. The time and place proposed for the taking of the deposition; and

4. The name and address of the officer before whom it is desired that the deposition be taken. The officer shall meet the requirements of subsection (2) of this section.

(b) The application shall be filed with the commission or the hearing officer, as the case may be, and shall be served on all other parties and intervenors not less than seven (7) days (when the deposition is to be taken elsewhere) prior to the time when it is desired that the deposition be taken.

(c) If good cause has been shown, the commission or the hearing officer shall make and serve on the parties and intervenors an order which specifies the name of the witness whose deposition is to be taken and the time, place, and designation of the officer before whom the witness is to testify. The officer may or may not be the officer specified in the application.

(2) The deposition may be taken before an officer authorized to administer oaths by the laws of Kentucky or of the place where the examination is held. If the examination is held in a foreign country, it may be taken before a secretary of embassy or legation, consul

general, consul, vice consul, or consular agent of the United States.

(3) At the time and place specified in the order, the officer designated to take the deposition shall permit the witness to be examined and cross-examined under oath by the[all] parties appearing, and the testimony of the witness shall be reduced to typewriting by the officer or under his direction. All objections to questions or evidence shall be waived, unless made at the examination. The officer shall not have power to rule upon any objection, but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him; that the deposition is a true record of the testimony and exhibits given by the witness; and that the officer is not of counsel or attorney to any of the parties nor interested in the proceeding. If the deposition is not signed by the witness because he is ill, dead, cannot be found, refuses to sign it, or will be unavailable to sign the typed deposition and it is so stated by agreement, the act[fact] shall be included in the certificate of the officer and the deposition may be used as fully as though signed. The officer shall immediately deliver an original of the transcript, together with his certificate, in person or by certified mail to the Executive Director, Kentucky Occupational Safety and Health Review Commission, #4 Millcreek Park, Frankfort, Kentucky 40601.

(4) The hearing officer shall rule upon the admissibility of the deposition or any part of it.

(5) Errors or irregularities in compliance with the provisions of this section shall be waived unless a motion to suppress the deposition or some part of it is made with reasonable promptness after the defect is, or with due diligence might have been, discovered.

(6) If the parties so stipulate in writing, 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 as other depositions.

Section 41. Exhibits. (1) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

(2) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless excluded by the hearing officer pursuant to Section 42 of this administrative regulation.

(3) Unless the hearing officer finds it impractical, a copy of each exhibit shall be given to the other parties and intervenors.

(4) All exhibits offered but denied admission into evidence shall be identified as in subsection (1) of this section and shall be placed in a separate file designated for rejected exhibits.

Section 42. Rules of Evidence. Hearings before the commission and its hearing officers insofar as practicable shall be governed by the Kentucky Rules of Evidence.

Section 43. Burden of Proof. (1) In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the commissioner.

(2) In proceedings commenced by a request for extension or modification of the abatement period, the burden of establishing the necessity for the extension or modification shall rest with the petitioner.

(3) In all proceedings commenced by appealing from an adverse ruling on a variance application, the burden of proving the inequity of the ruling of the commission[commissioner] of the Department of Workplace Standards shall rest on the petitioner-complainant[complainant].

Section 44. Objections. (1) An objection with respect to the conduct of the hearing, including an objection to the introduction of evidence or a ruling of the hearing officer, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. An objection shall not be waived by further participation in the hearing.

(2) If evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record of the proceeding.

Section 45. Interlocutory Appeals; Special; as of Right. (1) Rulings by the hearing officer shall not be appealed directly to the commission except by its special permission.

(2) Request to the commission for special permission to appeal from a ruling shall be filed in writing within five (5) days following receipt of the ruling and shall state briefly the grounds relied on.

(3) Interlocutory appeal from a ruling of the hearing officer shall be allowed as of right if the hearing officer certifies that:

(a) The ruling involves an important question of law concerning which there is substantial ground for difference of opinion; and

(b) An immediate appeal from the ruling will materially expedite the proceedings. An appeal shall also be allowed in the circumstances set forth in Section 12 of this administrative regulation.

(4) Neither the filing of a petition for interlocutory appeal nor the granting thereof as provided in subsections (2) and (3) of this section shall stay the proceedings before the hearing officer unless a stay is specifically ordered by the commission.

Section 46. Filing of Briefs and Proposed Findings with the Hearing Officer; Oral Argument at the Hearing. (1) Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the hearing officer. The hearing officer may fix a reasonable period of time for the filing, but the initial period shall not exceed thirty (30) days from the receipt by the party of the transcript of the hearing or the date the hearing officer designates by order of his receipt. The complainant shall have fifteen (15) days to file, the respondent ten (10) days and the complainant five (5) days for reply, unless a shorter period is agreed on by all parties. Intervenor shall have until the 25th day of the thirty (30) day period in which to file briefs.

(2) A brief shall be filed within the time fixed and the hearing officer or the commission may refuse to consider any brief filed after the deadline. Application for extension of time to file briefs shall be made to the hearing officer or commission before whom the hearing was held.

(3) Briefs shall be accompanied with notice showing service upon all other parties; in addition to the original filed, three (3) copies of each document shall be furnished to the commission.

Section 47. Decisions of Hearing Officers. (1) The decision of the hearing officer shall include findings of fact, conclusions of law, and a recommended order disposing of all issues before the hearing officer.

(2) The hearing officer shall sign the decision and forward to the executive director. The executive director shall then date and issue the decision, sending a copy to all parties of record and to each commission member. Upon issuance of the recommended order, jurisdiction shall rest solely in the commission, and all motions, petitions, and other pleadings filed subsequent to its issuance shall be addressed to the commission.

(3) The recommended order of the hearing officer may be called for further review by any commission member or by the commission as a whole at any time within a forty (40) day period. If the recommended order is not ordered for further review, it shall become the final order of the commission forty (40) days after date of issuance. If a recommended order is called for review by a commission member~~commissioner~~ or the commission on its own order, parties shall be advised in order that briefs may be submitted if desired. The commission shall set the briefing time.

Section 48. Discretionary Review; Petition. (1) A party aggrieved by the decision of a hearing officer may submit a petition for discretionary review.

(2) The petition shall be received by the commission at its offices in Frankfort, Kentucky on or before the 25th day following

receipt by the commission of the hearing officer's decision.

(3) A petition shall contain a concise statement of each portion of the decision and order to which exception is taken and may be accompanied by a brief of points and authorities relied upon. The original and three (3) copies shall be filed with the commission.

(4) Statements in opposition to petitions for discretionary review may be filed at any time during the review period, if received by the commission on or before the 35th day from date of [the] issuance of the recommended order. The statement shall contain a concise statement on each portion of the petition for discretionary review to which it is addressed.

(5) The commission while reviewing a case may request briefs on any point, and shall set the time for filing.

(6) The original and three (3) copies of all briefs or statements provided for under this section and Section 47 of this administrative regulation shall be furnished for use of the commission.

(7) Failure to act on any petition for discretionary review in the review period shall be a denial of the petition.

Section 49. Stay of Final Order. (1) A party aggrieved by a final order of the commission may, while the matter is within the jurisdiction of the commission, file a motion for a stay.

(2) The motion shall state the reasons a stay is sought and the length of the stay requested.

(3) The commission may order a stay for the period requested or for a longer or shorter period as it finds appropriate.

Section 50. Oral Argument Before the Commission. (1) Oral argument before the commission ordinarily shall not be allowed.

(2) If the commission desires to hear oral argument with respect to any matter, it shall advise all parties to the proceeding of the date, hour, place, time allotted, and scope of [the] argument at least ten (10) days prior to the date set.

Section 51. Settlement or Dismissals. (1) Settlement is encouraged at any stage of the proceedings if a settlement is consistent with the provisions and objectives of the Act.

(2) Settlement agreements submitted by the parties shall be accompanied by an appropriate proposed order. The settlement agreement shall detail the basis for settlement, either by order or a stipulated agreement properly signed by all parties.

(3) If parties to settlement agree upon a proposal, it shall be served upon represented and unrepresented affected employees in the manner set forth in Section 9 of this administrative regulation. Proof of service shall accompany the proposed settlement when submitted to the commission or the hearing officer showing the notice to employees or authorized employee representative ten (10) days before submission to the hearing officer or the commission.

(4) In an action on a citation on motion of either party for dismissal, the motion shall state the reason for dismissal and show posting for ten (10) days as required for settlement agreements by subsection (3) of this section. If dismissal is moved by the respondent, respondent shall also show abatement of cited violation and payment of any penalty, if applicable.

Section 52. Expedited Proceeding. (1) Upon application of a party or intervenor, or upon a commissioner's own motion, a commission member may order an expedited proceeding.

(2) If an expedited proceeding is ordered, the executive director shall notify all parties and intervenors.

(3) The hearing officer assigned in an expedited proceeding shall make necessary rulings, with respect to time for filing of pleadings and with respect to all other matters, without reference to times required by this administrative regulation, shall order daily transcripts of the hearing, and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

Section 53. Standards of Conduct. Persons appearing in a proceeding shall conform to the standards of ethical conduct required in the courts of the Commonwealth of Kentucky.

Section 54. Ex Parte Communication. (1) There shall not be ex

parte communication, with respect to the merits of any case not concluded, between the commission, including a member, officer, employee, or agent of the commission who is employed in the decisional process, and a party or intervenor.

(2) If an ex parte communication occurs, the commission or the hearing officer may make orders or take action as fairness requires. Upon notice and hearing, the commission may take disciplinary action as is appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

Section 55. Restrictions as to Participation by Investigative or Prosecuting Officers. In a proceeding notice[noticed] pursuant to this administrative regulation, the commissioner shall not participate or advise with respect to the report of the hearing officer or the commission decision.

Section 56. Inspection and Reproduction of Documents. (1) Subject to the provisions of law restricting public disclosure of information, a person may, at the offices of the commission, inspect and copy any document filed in a proceeding.

(2) Costs shall be borne by the requesting person.

Section 57. Restrictions with Respect to Former Employees.

(1) A former employee of the commission or the commissioner (including a member of the commission or the executive director) shall not appear before the commission as an attorney for a party in a proceeding or other matter, formal or informal, in which the former employee participated personally and substantially during the period of employment.

(2) A former employee of the commission or the commissioner (including a member of the commission or the executive director) shall not appear before the commission as an attorney for a party in a proceeding or other matter, formal or informal, for which the former employee was personally responsible during the period of employment, unless one (1) year has elapsed since the termination of the employment.

Section 58. Amendments to Rules. The commission may at any time upon its own motion or initiative, or upon written suggestion of an interested person stating reasonable grounds in support, amend or revoke any of the rules contained in this administrative regulation, in compliance with KRS Chapter 13A.

Section 59. Special Circumstances, Waiver of Rules. In special circumstances not contemplated by this administrative regulation, or for good cause shown, the commission may, upon application by a party or intervenor, or on its own motion, after three (3) days notice to all parties and intervenors, waive any rule or issue orders as justice or the administration of the Act Requires.

Section 60. Penalties. All penalties assessed by the commission are civil.

JEREMY J. SYLVESTER, Executive Director

APPROVED BY AGENCY: July 20, 2018

FILED WITH LRC: July 20, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on September 24, 2018 at 10:30 a.m. Eastern Standard Time at the Kentucky Occupational Safety and Health Review Commission, #4 Mill Creek Park, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 amendment to the 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 amended administrative regulation. Written comments shall be accepted until September 30, 2018, at 11:59

p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed amended administrative regulation to the contact person.

CONTACT PERSON: Jeremy Sylvester, Executive Director, Kentucky Occupational Safety and Health Review Commission, #4 Mill Creek Park, Frankfort, Kentucky 40601, phone (502)573-6892; fax (502) 573-4619, email Jeremy.Sylvester@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the legal procedures that parties to a contested occupational safety and health citation must follow to litigate the case before the Kentucky Occupational Health Review Commission and its hearing officers. The Kentucky Labor Cabinet, the enforcer of the Kentucky Occupational Safety and Health Act, is always the complainant, the prosecutor of the citation. A cited employer, a private business, a public entity or a state or local governmental entity, is always the respondent. An employer or an authorized employee representative (a labor organization) may elect party status. A person may move to intervene in the case and will be admitted if he can show his participation will assist in the determination of the issues. This procedural regulation provides procedural rights and due process of law to the litigants. This procedural regulation is exempted from KRS Chapter 13B by KRS 13B.020(3)(e)2a.

(b) The necessity of this administrative regulation: KRS 338.071(4) authorizes the Kentucky Occupational Safety and Health Review commission to "hear and rule on appeals from citations." KRS 338.071(4) also authorizes the review commission to "adopt and promulgate rules and regulations with respect to the procedural aspect of its hearings." This procedural regulation creates a legal framework which enables the review commission to perform its statutory duty to hear and rule on appeals from citations. This administrative regulation enables the parties, before the commission and its hearing officers, to litigate the citation contest cases to protect their rights according to law. The regulation essentially serves the same purpose as the Kentucky rules of civil procedure, but adopted for administrative trials before the review commission. This regulation, at section 42, says "Hearings before the commission and its hearing officers insofar as practicable shall be governed by the rules of evidence applicable to the courts of the Commonwealth of Kentucky."

(c) How the administrative regulation conforms to the content of the authorizing statute: KRS 338.071(4) grants the review commission the authority to promulgate rules and regulations for the procedural aspect of its hearings. This regulation provides that procedural framework.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: In order for the review commission to perform its statutory function to hear and rule on appeals from citations and to hold hearings under the authority of KRS 338.141(3), the commission must have a procedural framework; this regulation provides that procedural framework to hold administrative hearings. Hearings are held before the hearing officer who issues a recommended order. The review commission acts as an administrative review board when it grants discretionary review of a hearing officer's recommended order. Final review commission decisions may be appealed to the Franklin County Circuit Court. KRS 338.091(1).

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

(a) How the amendment will change the existing administrative regulation: The amendment to Section 9 regarding notice and service of pleadings and other filings provides that service of the complaint by the Labor Cabinet will be governed by Section 20. Section 9 also been amended to eliminate any wording suggesting that an authorized employee representative (labor union) must always be served through its "attorney." Under existing rules, an artificial entity has to appear in a proceeding through an attorney. Labor Unions, however, are required to receive notice of notices of contests, hearing dates, and proposed settlements regardless of

whether the Labor Union has chosen to intervene in a proceeding. The amendment clarifies that an employer does not have to serve an "attorney" for the Labor Union unless the Labor Union has intervened. Both Sections 9 and 15 of the regulation are amended to make clear that a Labor Union can only intervene through an attorney. Finally, Section 9 has been amended to allow for the parties to consent to electronic service of discovery and other filings on each other. Section 20 is amended to require the Labor Cabinet to serve the employer with a complaint in a manner similar to how complaints are served in Kentucky civil actions. This amendment codifies the review commission's current policies regarding service of complaints and explicitly provides for the methods of service allowed by the Kentucky Rules of Civil Procedure. In addition, the amendment warns of the review commission's discretion to dismiss an employer's notice of contest if it fails to file a timely answer to the complaint. The amendment, however, states that the review commission shall issue an order to show cause to the employer before dismissal of the notice of contest. Show cause orders are already issued under current review commission policy. Sections 26 through 28 of the regulation concerning pre-hearing discovery are amended to mimic a significant portion of the federal occupational safety and health review commission's rules. The current regulation only allows parties to propound unlimited requests for admissions and to obtain documents and things from each other using administrative subpoenas. Discovery depositions and interrogatories are only allowed with permission of the review commission or its hearing officers. The amendment allows the parties to seek information from each other using interrogatories, requests for admissions, and requests for documents without leave of the commission or its hearing officers. Unless parties demonstrate to the commission or hearing officer that more are necessary, parties are limited to 25 requests for admissions and 25 interrogatories. The amendments still limit discovery depositions to those approved by the review commission or its hearing officers, but provide guidance on how to conduct discovery depositions if approved. The amendment issues more direction compared to the existing regulation concerning the scope of discovery, protective orders, sanctions, service of discovery, and supplementation of discovery responses.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow for a more modern and efficient pre-hearing discovery process. Existing pre-hearing discovery rules, which have not been substantially amended in over 46 years, only allow for unlimited requests for admission and issuance of subpoenas as the means to obtain information necessary to narrow the issues in dispute for a hearing or settlement. Requests for admission only require a party to either admit or deny a factual statement without explanation for that party's response. Parties may therefore need to ask several requests for admissions to obtain the information that they seek. The review commission has addressed interlocutory motions by the Labor Cabinet asking the review commission to put numerical limits on requests for admissions. In those cases, employers propounded hundreds of requests for admissions. Requiring a subpoena to obtain relevant documents from a party also adds an unnecessary step to obtain relevant information to which parties are entitled. In refashioning the pre-hearing discovery rules, the amendment borrows from the federal occupational safety and health review commission to create an improved and more modern discovery system. The amendment to the notice and service sections of the regulation were necessary to codify existing review commission policy governing service of a complaint by the Labor Cabinet and issuance of show cause orders after an employer fails to file a timely answer. The notice provisions are also updated to allow for service of discovery papers and other filings through electronic transmission, such as e-mail. This long overdue update merely accepts that the U.S. mail system has become an outdated mode of communication and that many litigants prefer communicating through electronic means. Kentucky courts and the federal occupational safety and health review commission have already allowed for electronic service of the discovery papers and other filings. Last, the amendment is needed to address confusion arising from the review commission's last rule revision in 2012

about how to serve labor unions who have not intervened in a proceeding, but are still required to receive certain notices. The regulation has always required that employers give authorized employee representatives (labor unions) notice of an employer's notice of contest, hearing dates and any proposed settlement. The 2012 amendment addressed UA-64, a KBA opinion providing that artificial entities could not participate in a proceeding unless represented by legal counsel. In making the revision, the review commission's 2012 amendment inadvertently stated that the employer must always serve a labor union with required notices through its attorney, regardless of whether the labor union has intervened in the action or has an attorney.

(c) How the amendment to the administrative regulation conforms to the content of the authorizing statute: The amendments do not alter the review commission's statutory duty to hear and rule on appeals from citations, to hold hearings and provide discretionary review of recommended orders issued by hearing officers. Moreover, KRS 338.071 grants the review commission with plenary authority to adopt and promulgate the rules and regulations with respect to the procedural aspect of its proceedings.

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes: The amendments concerning discovery should provide better efficient exchange of information between the parties so that they may narrow the issues in dispute. Consequently, settlement discussions should prove more fruitful, and, if settlement fails, the scope of hearings should be more limited. Other amendments also provide more clarification and guidance concerning existing review commission policies regarding service of administrative complaints, the issuance of show cause orders and dismissals for failing to file an answer, and how labor unions are to be served with required notices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendments will apply to all individuals, businesses, organizations, or state and local governments which have been cited by the Kentucky Labor Cabinet for alleged violations of the Kentucky Occupational Safety and Health Act.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation amendment: (a) All affected entities must comply with the review commission's procedural regulations if they wish to appeal a citation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no additional costs to affected entities as a result of having to comply with these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? These entities will benefit from the legal representation they receive from their attorney. The amendment concerning pre-hearing discovery should foster a more efficient exchange of information between the affected entities and the Kentucky Labor Cabinet. Other changes offer more protections for the affected entities by officially codifying current review commission policies concerning service of complaints and issuance of show cause orders prior to dismissal for failing to file an answer. Affected entities will also enjoy the convenience of electronic service under these amendments and be provided with clarification on serving required notices on labor unions that have not intervened.

(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: this agency receives its funding from the Workers Compensation Funding Commission.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees. This administrative regulation will not establish any fees. This administrative regulation will not increase any fees; there are no fees associated with this regulation.

(9) TIERING: Is tiering applied? No tiering is required or possible. Each regulated entity affected by this amended administrative regulation shall be affected in the same manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Any division of state or local government that receives an occupational safety and health citation from the Kentucky Labor Cabinet, the enforcer of the act, will be impacted if it elects to file a notice of contest to the citation. When an employer files a notice of contest according to RS 338.141(3), the review commission "shall afford an opportunity for a hearing." The hearing process is controlled by this regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the regulation. KRS 338.071 (4) authorizes the review commission to hear and rule on appeals from citations. This same statute also authorizes the review commission to promulgate this procedural regulation, 803 KAR 50:010, KRS 338.141(3) states that the review commission shall afford the opportunity for a hearing if a notice of contest is filed by an employer. Pursuant to 803 KAR 50:010, Section 58, the review commission may upon its own initiative amend its procedural regulation.

3. Estimate the effect of these proposed amendments to the administrative regulation on the expenditures and revenues of a state or local governmental 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 these proposed amendments to the administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation and the instant, proposed amendment will generate no revenue for any year.

(b) How much revenue will these proposed amendments to the administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation and the instant proposed amendment will generate no revenue for any year.

(c) How much will it cost to administer this program for the first year? There is no administrative cost associated with these proposed amendments.

(d) How much will it cost to administer this program for subsequent years? There is no administrative cost associated with these proposed amendments for the first year or for any year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: These proposed amendments create no fiscal impact.

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Code Enforcement (Amendment)

815 KAR 4:030. Elevator[contractor] licensing [requirements].

RELATES TO: KRS 198B.4003, 198B.4009, 198B.4011,

198B.4013, 198B.4023, 198B.4025, 198B.4027, 198B.4033

STATUTORY AUTHORITY: KRS 198B.4009, 198B.4011, 198B.4013, 198B.4023[,-198B.4025]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 through[te] 198B.540. KRS 198B.4009(1) requires elevator contractors and elevator mechanics to be licensed[,-and] KRS 198B.4011 provides the eligibility requirements [to be met] for issuance of an elevator contractor's license. KRS 198B.4013 provides the eligibility requirements for issuance of an elevator mechanic's license and an accessibility and residential elevator mechanic's license. KRS 198B.4023 authorizes the department to promulgate administrative regulations establishing the requirements for inactive license and reactivation procedures. KRS 198B.4025 establishes the continuing education requirements for elevator license[licensee] renewals. KRS 198B.4027 provides the minimum insurance requirements for elevator contractor licensees. [KRS 198B.4009(3) authorizes fees for the elevator licensure program to implement KRS 198B.400 through 198B.540.] This administrative regulation establishes the licensure requirements for elevator contractors, elevator mechanics, and accessibility and residential elevator mechanics.

Section 1. General Requirements. (1) Elevator contractor.

(a) Supervision. The elevator contractor shall provide general supervision[supervise generally], and be primarily responsible for, all elevator work performed by the mechanics, employees, and subcontractors of the licensee.

(b)[(2)] Change of licensee's information[Company license]. A licensee who is an employee of a company and whose license represents the company shall notify the department, in writing, if the licensee ceases to represent the company or if the name of the company changes[,-requesting a change of information on that license and paying the change of information fee established in Section 6(5) of this administrative regulation].

(2) Elevator mechanic.

(a) Supervision. The elevator mechanic shall provide general supervision for all helpers or apprentices assigned to the elevator mechanic in carrying out the installation, construction, alteration, replacement, maintenance, removal, or dismantling of any elevator or fixed guideway system.

(b) Limitation on applicability. A licensed elevator mechanic may perform work on accessibility and residential elevators without obtaining an accessibility and residential elevator license.

(3) Accessibility and residential elevator mechanic.

(a) Supervision. The accessibility and residential elevator mechanic shall provide general supervision for all helpers or apprentices assigned to the accessibility and residential elevator mechanic in carrying out the installation, construction, alteration, replacement, maintenance, removal, or dismantling of any accessibility lift or private residential elevator.

(b) Limitation on applicability. A licensed accessibility and residential elevator mechanic shall not hold out himself or herself as complying with all the elevator mechanic experience and examination requirements.

Section 2. Initial Application Requirements. (1) Filing the application.

(a) Elevator contractor. An applicant seeking an elevator contractor license shall submit to the department:

1. A completed[,-signed, and notarized] Elevator Contractor License Application on Form EV-3;

2. An initial license application fee of \$240 for a twelve (12) month license. The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month:[a- The initial license fee may be prorated.

b. If prorated, the initial license fee shall not be prorated for less than seven (7) months or more than eighteen (18) months;]

3. Proof of applicant's experience as required by KRS 198B.4011 and this administrative regulation;

4. A passport-sized color photograph of the applicant taken within the past six (6) months, except for an applicant that is a partnership, corporation, or other business entity; and

5. Proof of insurance as required by KRS 198B.4027; and

6. ~~[(b)]~~ If the elevator contractor applicant is an employee representing a company, the applicant shall state the company name on the application form. The company may provide the insurance certificates and shall be subject to this administrative regulation.

(b) Elevator mechanic and accessibility and residential elevator mechanic. An applicant seeking an elevator mechanic license or an accessibility and residential elevator mechanic license shall submit to the department:

1. A completed Elevator Mechanic License Application on Form EV-4;

2. An initial license application fee of ninety-six (96) dollars for a twelve (12) month license. The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month;

3. Proof of the applicant's experience as required by KRS 198B.4013 and this administrative regulation; and

4. A passport-sized color photograph of the applicant taken within the past six (6) months.

(2) Termination of an application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is received by the department.

(b) At the end of one (1) year, the application shall be void.

Section 3. Reciprocity. (1) Out of state credentials.

(a) To be eligible for reciprocity, an applicant shall have a current license, certification, or registration in another state whose standards are substantially equal to those of this Commonwealth as established in KRS Chapter 198B and 815 KAR Chapter 4.

(b) The license, certificate, or registration shall be equivalent to the Kentucky license requested.

(2) Application.

(a) A reciprocal elevator license applicant shall submit the appropriate application and fee:

1. For an elevator contractor applicant, Form EV-3 and \$240;

2. For an elevator mechanic applicant or an accessibility and residential elevator mechanic applicant, Form EV-4 and ninety-six (96) dollars.

(b) If applying for both licenses, an application fee shall be submitted for each license with each application form.

(3) Experience.

(a) Elevator contractor. A reciprocal elevator contractor applicant shall meet the experience requirement in subsection (1) of Section 5 of this administrative regulation.

(b) Elevator mechanic and accessibility and residential elevator mechanic. A reciprocal elevator mechanic or an accessibility and residential elevator mechanic shall meet the experience required by KRS 198B.4013(2).

Section 4. Examination Requirements. An applicant for an elevator mechanic license or an accessibility and residential elevator mechanic license shall take and pass the examination administered in compliance with this section.

(1) Examination criteria.

(a) Elevator Mechanic. For an application pursuant to KRS 198B.4013(2)(a), the examination shall test the applicant's knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of elevators, elevator systems, and fixed guideway systems.

(b) Accessibility and Residential elevator mechanic. For an application pursuant to KRS 198B.4013(2)(b), the examination shall test the applicant's knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of accessibility lifts and private residential elevators.

(2) The department or its designee shall develop, administer,

and score the examinations in subsection (1)(a) and (b) of this section.

(3) Reasonable accommodations shall be made to provide accessibility to disabled applicants, upon request.

(4) Except as established in subsection (8) of this section, an applicant shall pass with a score of at least seventy (70) percent on the examinations in subsection (1)(a) or (b) in this section.

(5)(a) A request to sit for an examination shall be made directly to the testing facility approved by the department.

(b) A list of facilities and contact information shall be provided by the department to applicants upon request.

(6) The cost shall not exceed \$100 for either the Kentucky Elevator Mechanic Examination or for the Kentucky Accessibility and Residential Elevator Mechanic Examination.

(7) A passing score on an approved elevator examination shall be valid for a period of three (3) years.

(8) Upon application by a testing agency, a national code group, or by an applicant for licensure, the department shall recognize another examination as equivalent to the examinations administered by the department or department's designee if the person or group submitting the examination demonstrates that the examinations cover the same material and require the same level of knowledge as the department's examinations. ~~Inactive License Status. (1)(a) A licensee may request that a license be placed in inactive status.~~

(b) A licensee shall not perform elevator contracting work while the license is inactive.

(2) An elevator contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.4027 or provide proof to the Department of Housing, Buildings and Construction of compliance with workers' compensation laws.

(3) A certified elevator inspector may be licensed as an elevator contractor, but shall place the elevator contractor license in inactive status while having an active elevator inspector certification.

(4) Performing elevator contracting work while holding an inactive license shall be grounds for revocation or suspension of all elevator licenses and certifications held by the licensee.

Section 5. ~~[(4)]~~ Experience requirements. ~~[An applicant for licensure shall meet the experience requirements of this section.]~~

(1) Minimum experience.

(a) Elevator contractor. An elevator contractor applicant shall have:

(a) a minimum of three (3) years of verifiable experience as an elevator mechanic; ~~or~~

(b) Elevator mechanic and accessibility and residential elevator mechanic. An elevator mechanic applicant or an accessibility and residential elevator mechanic applicant shall meet the experience required by KRS 198B.4013(2) ~~[A current license, certification, or registration as an elevator contractor in another state whose standards are substantially equal to those of this Commonwealth as established in KRS Chapter 198B and 815 KAR Chapter 4].~~

(2) Records of experience. An applicant's experience shall be listed on the application form or included with submission of application form to the department.

(a) Proof of listed experience shall be provided by:

1. A W-2 form; or

2. An affidavit by an elevator contractor who directed and supervised the applicant. ~~[W-2s].~~

(b) Additional proof of experience ~~shall~~ ~~[may]~~ be requested by the department ~~[prior to or after licensing,]~~ if the department has reason to believe that the experience shown is insufficient, falsified, or nonexistent.

Section 6. Inactive License Status. (1) A licensee may request that a license be placed in inactive status.

(2) An elevator contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.4027.

(3) A certified elevator inspector may be licensed as an elevator contractor, elevator mechanic, or accessibility and residential elevator mechanic, but shall place the license in inactive status while having an active elevator inspector certification.

(4) A licensee shall not perform elevator work while the license is inactive. Performing elevator work while holding an inactive license shall be grounds for revocation or suspension of all elevator licenses and certifications held by the licensee.

Section 7.[5.] Renewal and Reactivation Requirements and Procedures. (1) Filing for renewal. Licenses shall be renewed each year. To renew a license, a licensee[an elevator contractor] shall submit to the department:

(a) A completed, applicable form:

1. For elevator contractors, the[signed and notarized] Elevator Contractor License[Renewal] Application on Form EV-3[Form EV-7]; or

2. For elevator mechanics and accessibility and residential elevator mechanics, the Elevator Mechanic License Application on Form EV-4;

(b) A renewal fee made payable to the Kentucky State Treasurer of:

1. \$240 for an elevator contractor[made payable to the Kentucky State Treasurer]; or

2. Ninety-six (96) dollars for an elevator mechanic or an accessibility and residential elevator mechanic; and

(c) Proof of attendance and completion of[eight (8) hours of annual] continuing education prior to the application for renewal in accordance with 815 KAR 2:010[KRS 198B.4025; and

(d) Completed continuing provider evaluation forms for each continuing education class attended].

(2) Each application for license renewal shall be submitted by each licensee with a United States postmark dated no later than the last day of the licensee's birth month.

(3) A renewal application submitted late, but with a United States postmark dated no more than sixty (60) days after the last day of the licensee's birth month, shall be accepted, but a restoration fee, in accordance with Section 6(1) of this administrative regulation, shall be added to the annual renewal fee.

(4) Failure to renew within sixty (60) days after the last day of the licensee's birth month shall terminate the license[, and the applicant shall comply with all requirements for a new license pursuant to Section 2 of this administrative regulation for reinstatement. A reinstatement fee, in accordance with Section 6(2) of this administrative regulation, shall be added to the annual renewal fee].

(5) To reactivate an inactive license, the inactive licensee shall:

(a) Pay the annual renewal fee;

(b) Pay the reactivation fee pursuant to Section 6(2) of this administrative regulation; and

(c) Comply with the continuing education requirements established in 815 KAR 2:010; and

(d) For Elevator Contractors, provide current proof of insurance required by KRS 198B.4027.[Inactive elevator contractor status and renewal requirements.

(a) To place the elevator contractor's license in inactive status, an elevator contractor shall pay annually an inactive status fee of \$120.

(b) An inactive elevator contractor shall not:

1. Secure an elevator permit;

2. Advertise; or

3. Represent himself as an elevator contractor currently authorized to contract elevator work in the commonwealth.

(6) Continuing education requirements shall not be required for renewal, if the initial license was issued within twelve (12) months of renewal.

(7) The application for renewal or reactivation of a licensed elevator contractor shall be denied for incompleteness if the applicant fails to:

(a) Pay the fees required for renewal, reactivation, and restoration, if applicable;

(b) Comply with elevator contractor continuing education requirements;

(c) provide the current insurance certificates required by KRS 198B.4027; or

(d) Submit the renewal application as required by this section.

(8) To reactivate an elevator contractor license, the inactive

elevator contractor shall pay the annual renewal fee, the additional \$120 reactivation fee, and comply with the continuing education requirements established in 815 KAR 4:050.]

Section 8.[6.] Special Service Fees. In addition to other fees required by this administrative regulation, the following fees shall also be applied:

(1) Restoration fee. The fee for renewal of an expired license[licenses] shall be:

(a) Fifty (50) dollars for an elevator contractor; or

(b) twenty-five (25) dollars for an elevator mechanic or accessibility and residential elevator mechanic.

(2) Reinstatement fee. The fee for reinstatement of a terminated license shall be:

(a) \$100 for an elevator contractor; or

(b) Twenty-five (25) dollars for an elevator mechanic or accessibility and residential elevator mechanic.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be

(a) \$120 for an elevator contractor; or

(b) Forty-eight (48) dollars for an elevator mechanic or accessibility and residential elevator mechanic.

(4) Duplicate license fee. A verified lost or destroyed license shall be replaced upon payment of a ten (10) dollar fee.[(5) Change of information fee.

(a) The fee for the change of information required by Section 1(2) of this administrative regulation shall be fifteen (15) dollars.

(b) If a change of information request is simultaneous with license renewal, this fee shall not be applicable.]

Section 9.[7.] Revocation or Suspension of Licenses. A license issued pursuant to this administrative regulation may be suspended or revoked by the department for any of the reasons established in KRS 198B.4033.

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

(a) "Elevator Contractor License Application", Form EV-3, August 2018[September 2013]; and

(b) "Elevator Mechanic License Application", Form EV-4, August 2018["Elevator License Renewal Application" Form EV-7, June 2013].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Codes Enforcement, Elevator Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel,

Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startsman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startsman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensure, renewal, and reactivation requirements for elevator contractors, elevator mechanics, and accessibility and residential elevator mechanics.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assist the Elevator Section in carrying out its duty to implement KRS 198B.400 to 198B.540, regulate and monitor the elevator industry in the Commonwealth, and readily identify licensed individuals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 to 198B.540. KRS 198B.4009(1) requires elevator contractors and elevator mechanics to be licensed. KRS 198B.4011 provides the eligibility requirements to be met for issuance of an elevator contractor's license. KRS 198B.4013 provides the eligibility requirements to be met for issuance of an elevator mechanic's license and an accessibility and residential elevator mechanic's license. KRS 198B.4023 authorizes the department to promulgate administrative regulations establishing the requirements for inactive license and reactivation procedures. KRS 198B.4025 establishes the continuing education requirements for elevator license renewals. KRS 198B.4027 provides the minimum insurance requirements for elevator contractor licensees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the standards the department will apply to those seeking to obtain and maintain elevator licenses.

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

(a) How the amendment will change this existing administrative regulation: This amendment combines the administrative regulation for elevator contractor's license requirements with the administrative regulation for elevator mechanic's license requirements. The amendment also eliminates superfluous language from the administrative regulation, and corrects grammatical errors. The number of years that a passing examination score is valid is extended from two (2) years to three (3) years. The amendment eliminates the annual fees required to maintain an inactive license for an elevator contractor, an elevator mechanic, or an accessibility and residential elevator mechanic.

(b) The necessity of the amendment to this administrative regulation: Combining the administrative regulations reduces the need for duplicative language in sections that pertain to all elevator licensees. Eliminating superfluous language and correcting grammatical errors removes the likelihood of public confusion and generally simplifies the regulation. Extending the time that a passing score on an examination remains valid from two (2) to three (3) years. Eliminating the annual fee to maintain an inactive elevator contractor license, elevator mechanic license, and an accessibility and residential elevator license removes an unnecessary fee for the licensees.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is authorized by KRS 198B.4009(3), which grants the department authority to regulate the Commonwealth's elevator industry.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will eliminate fees and unnecessary language that may confuse the public. This amendment will also make it more efficient for elevator licensee applicants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed individuals engaged in the

elevator and accessibility lift trade within the Commonwealth, those applicants seeking elevator licensure in the Commonwealth, and Department of Housing, Buildings and Construction personnel.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3). In fact, those licensees that place their license in inactive status will no longer have to pay a yearly fee – reducing the licensee's overall cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): 815 KAR 4.030 will be easier to understand. Applicants' passing score on an examination will be effective longer, allowing the applicants more freedom to choose when they take the examinations. This amendment also eliminates an unnecessary annual fee.

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

(a) Initially: There are no anticipated initial additional costs to administer this regulatory amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this regulatory amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the agency. Any agency costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all elevator contractors, elevator mechanics, and accessibility and residential elevator mechanic licensees will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Elevator Section will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The amendment is authorized by KRS 198B.4009.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not anticipated to generate additional revenue for the state or local government for the first year. The Department's revenue is anticipated to decrease by \$9,180 with the elimination of the fees charged to licensees whose licenses

have been placed in inactive status.

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

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

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

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

Revenues (+/-): -\$9,180

Expenditures (+/-): Neutral

Other Explanation: None

**PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(Amendment)**

815 KAR 7:070. The Kentucky Certified Building Inspector Program.

RELATES TO: KRS 198B.010(6), 198B.040(3), 198B.050(3)(c), (6), 198B.060, 198B.090, 198B.095

STATUTORY AUTHORITY: KRS 198B.050(5), 198B.090(1)(a), (b), 198B.095(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.090(1)(a) requires the department[office] to create and administer a building inspector's certification program and a plans and specifications inspector's certification program with sufficient testing procedures[which is designed to ensure uniform statewide enforcement of applicable state building codes]. KRS 198B.050(5) requires the department[board] to promulgate administrative regulations necessary to implement the Uniform State Building Code. KRS 198B.095(1) authorizes the department[board] to promulgate an administrative regulation to establish a building inspector training program. This administrative regulation establishes the testing, training, [and] continuing education, and enforcement responsibilities[requirements] for qualifying persons to become inspectors for the enforcement of the Kentucky Building Code and[,] the Kentucky Residential Code[, and to identify the level of their responsibilities for this enforcement].

Section 1. Definitions. (1) "Enrolled" means an applicant has complied with the requirements established in Section 4(1) of this administrative regulation.

(2) "General supervision" means that the supervising authority oversees the work performed overall but is not required to be on-site at all times during plan reviews and inspections.

(3) "ICC test module" means a test module, from the International Code Council, that is used to meet the module testing requirements established in Section 7 of this administrative regulation.

(4) "Limited certificate" means a document establishing that a person:

(a) Has passed the test for competency in one (1) or more NCPCCI or ICC test modules; and

(b) Is qualified to engage in the type of limited inspections listed on the certificate which represents the level of competency for which the person was tested.

(5) "NCPCCI test module" means a test module, from the National Certification Program for Construction Code Inspectors, developed by the national code enforcement organizations for the purpose of providing nationally-recognized evidence of competency and professionalism in construction code enforcement and used to meet the module testing requirements established in Section 7 of this administrative regulation.

(6) "Trainee" means a person who is enrolled in the building inspector program of the department, but has not completed the NCPCCI or ICC test modules necessary to be a certified building inspector.

Section 2. Inspection Operations. (1)(a) Each governmental entity engaged in a building inspection program shall have at least one (1) certified building inspector with the level of credentials required for buildings covered by the governmental entity's program.

(b) The certified building inspector shall be responsible for all:

1. Construction Document approvals;

2. Inspections; and

3. Issuance of certificates of occupancy.

(2) A trainee may be used in a building inspection program. If used:

(a) The trainee shall operate under the general supervision of a certified building inspector.

(b) A trainee shall not issue:

1. Permits;

2. Construction document approval letters;

3. Inspection compliance letters; or

4. Certificates of occupancy.

(c) A trainee holding a current limited certificate shall exercise only the duties authorized by that certificate.

(3)(a) A person making inspections as authorized by this administrative regulation shall not overrule, supplant, or order corrections or alterations that conflict with the approved construction documents.

(b) If an inspector believes construction documents are incorrect or the construction is in violation of the Kentucky Building Code or the Kentucky Residential Code, the inspector shall immediately refer the matter to the certified building inspector responsible for approval of the construction documents for resolution.

(4)(a) A local building inspector shall not perform the inspections or plan reviews on buildings assigned to the department by KRS 198B.060(4) unless the local governmental entity petitioned and was approved for expanded jurisdiction in accordance with 815 KAR 7:110.

(b) A local building inspector shall only perform inspections or plan reviews as outlined in the expanded jurisdiction agreement with the department.

(5) A person making inspections pursuant to a limited certificate shall be supervised by a certified building inspector with a level I certification or higher.

(6) A person making inspections as a trainee without a certificate shall be supervised by a person with a level of certification equal to or higher than that which the trainee is pursuing.

Section 3. Application for Training and Certification. (1) An applicant seeking to become a trainee or a candidate for certification shall submit to the department:

(a) A completed Initial Application Form, DHBC BC/CP 1;

(b) A fifty (50) dollar application fee; and

(c) Written proof that the applicant has:

1. Graduated from high school or earned a general education diploma; and

a. Two (2) years experience in a responsible, directly-related construction position, such as a foreman, which required the ability to effectively read and interpret building plans and specifications; or

2. Two (2) years experience in an architect's or engineer's office performing building design or drafting duties;

3. Graduated from a college or university with an associate degree in a design, building technology, or construction-related subject; or

4. Graduated from a college or university with a bachelor's degree in architecture, engineering, fire science, or building technology.

(2) A person shall not engage in inspection activities for the enforcement of the Kentucky Building Code or the Kentucky

Residential Code unless that person receives certification from the department.

Section 4. Training and Testing Requirements. A candidate seeking to become a certified building inspector and all trainees shall:

(1) Attend orientation training provided by or approved by the department; and

(2) Submit proof of completing a minimum of twelve (12) hours of continuing education training annually. Proof may be submitted by:

(a) A completed Continuing Education Verification, Form DHBC BC/CE 1; or

(b) A certificate of completion provided by a pre-approved training provider.

Section 5. Certification Requirements, Responsibilities, and Jurisdiction for Certified Inspectors. (1) One (1) and two (2) family dwelling inspector.

(a) A person shall be classified as a one (1) and two (2) family dwelling inspector if the person passed the following:

1. NCPCCI test modules:

a. Test 1A Building One- and Two-Family Dwelling; and
b. Test 4A Mechanical One- and Two-Family Dwelling; or

2. ICC test modules:

a. Test B1 Residential Building Inspector; and
b. Test M1 Residential Mechanical Inspector; and

(b) Complied with the requirements of this administrative regulation.

(c) A one (1) and two (2) family dwelling inspector shall be qualified to perform all functions related to the enforcement of the Kentucky Residential Code. A one (1) and two (2) family dwelling inspector shall be qualified to do the following for the construction of one (1) and two (2) family dwellings and townhouses:

1. Issue permits;

2. Review and approve construction documents;

3. Conduct on-site inspections; and

4. Issue compliance letters and certificates of occupancy

(2) Building inspector, level I.

(a) A person shall be classified as a building inspector, level I, if the person has passed the following:

1. NCPCCI test modules:

a. Test 1A Building One- and Two-Family Dwelling;

b. Test 4A Mechanical One- and Two-Family Dwelling;

c. Test 1B Building General; and

d. Test 3B Fire Protection General; or

2. ICC test modules:

a. Test B1 Residential Building Inspector;

b. Test B2 Commercial Building Inspector; and

c. Test M1 Residential Mechanical Inspector; and

(b) Complied with the requirements of this administrative regulation.

(c) A building inspector, level I, shall be qualified to perform all functions related to the enforcement of the Kentucky Building Code and the Kentucky Residential Code. A building inspector, level I, shall be qualified to do the following for buildings of the occupancy, type, and size assigned to local governments by KRS 198B.060(2):

1. Issue permits;

2. Review and approve construction documents;

3. Conduct on-site inspections; and

4. Issue compliance letters and certificates of occupancy

(3) Building inspector, level II.

(a) A person shall be classified as a building inspector, level II, if the person has passed the following:

1. NCPCCI test modules:

a. Test 1A Building One- and Two-Family Dwelling;

b. Test 4A Mechanical One- and Two-Family Dwelling;

c. Test 1B Building General;

d. Test 3B Fire Protection General; and

e. Test 4B Mechanical General; or

2. ICC test modules:

a. Test B1 Residential Building Inspector;

b. Test B2 Commercial Building Inspector;

c. Test M1 Residential Mechanical Inspector; and

d. Test M2 Commercial Mechanical Inspector; and

(b) Complied with the requirements of this administrative regulation.

(c) 1. A building inspector, level II, shall be qualified to perform the same functions as a building inspector, level I, as set out in subsection (2)(b) of this administrative regulation; and

2. A building inspector, level II, shall be qualified to conduct on-site inspections of all buildings which were assigned to the department pursuant to KRS 198B.060(4).

(4) Building inspector, level III.

(a) A person shall be classified as a building inspector, level III, if the person has passed the following:

1. NCPCCI test modules:

a. Test 1A Building One- and Two-Family Dwelling;

b. Test 4A Mechanical One- and Two-Family Dwelling;

c. Test 1B Building General;

d. Test 3B Fire Protection General;

e. Test 4B Mechanical General;

f. Test 1C Building Plan Review;

g. Test 3C Fire Protection Plan Review; and

h. Test 4C Mechanical Plan Review; or

2. ICC test modules:

a. Test B1 Residential Building Inspector;

b. Test B3 Building Plans Examiner;

c. Test M1 Residential Mechanical Inspector; and

d. Test M3 Mechanical Plans Examiner; and

(b) Complied with the requirements of this administrative regulation.

(c) A building inspector, level III, shall be qualified to perform all functions related to the enforcement of the Kentucky Building Code and the Kentucky Residential Code. A building inspector, level III, shall be qualified to do the following for all buildings regardless of size or occupancy type:

1. Issue permits;

2. Review and approve construction documents;

3. Conduct on-site inspections; and

4. Issue compliance letters and certificates of occupancy

(5) Mechanical inspector, one (1) and two (2) family dwellings.

(a) A person shall be classified as a mechanical inspector of one (1) and two (2) family dwellings if the person has passed the following:

1. NCPCCI Test 4A Mechanical One- and Two-Family Dwelling test module; or

2. ICC Test M1 Residential Mechanical Inspector test module; and

(b) Complied with the requirements of this administrative regulation.

(c) A mechanical inspector of one (1) and two (2) family dwellings shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the Kentucky Residential Code including conducting inspections of one (1) and two (2) family dwelling mechanical installations for compliance.

(6) Mechanical inspector general (other than one (1) and two (2) family dwellings).

(a) A person shall be classified as a mechanical inspector general if the person has passed the following:

1. NCPCCI Test 4B Mechanical General test module; or

2. ICC Test M2 Commercial Mechanical Inspector test module; and

(b) Complied with the requirements of this administrative regulation.

(c) A mechanical inspector general shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the Mechanical Code including management of mechanical code enforcement activity, supervision of mechanical inspectors or plans examination, performing plans examination for compliance, and conducting inspections of structures for compliance.

(7) Mechanical inspector and plan reviewer.

(a) A person shall be classified as a mechanical inspector and plan reviewer if the person has passed the following:

1. NCPCCI test modules:

- a. Test 4A Mechanical One- and Two-Family Dwelling;
- b. Test 4B Mechanical General; and
- c. Test 4C Mechanical Plan Review; or

2. ICC test modules:

- a. Test M1 Residential Mechanical Inspector; and
- b. Test M3 Mechanical Plans Examiner; and

(b) Complied with the requirements of this administrative regulation.

(c) A mechanical inspector and plan reviewer shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the Kentucky Residential Code and the Mechanical Code including management of mechanical code enforcement activity, supervision of mechanical inspectors or plans examination, performing plans examination for compliance and conducting inspections of structures for compliance.

(8) Upon application by a testing agency, a national code group, or by an applicant for certification, the department may recognize other examinations as equivalent to the listed NCPCCI or ICC examinations. The person or group submitting the examination shall demonstrate that the examinations cover the same codes and require the same level of knowledge as the NCPCCI or ICC examinations.

Section 6. Inactive Certification. (1) A certified inspector or an inspector holding a limited certificate may request that the certification be placed in an inactive status by notifying the department in writing.

(2) A certified inspector whose certification is inactive shall not:

- (a) Perform an inspection while the certification is inactive; and
- (b) Be required to obtain annual continuing education during the inactive status.

Section 7. Renewal, Reactivation, and Reinstatement. (1) Renewal.

(a) A certified inspector, trainee, or an inspector holding a limited certificate, shall submit to the department not later than the last day of the certified inspector or trainee's birth month:

- 1. An annual renewal fee of fifty (50) dollars; and
- 2. Proof of completion of the continuing education requirements pursuant to 815 KAR 2:010.

(b) A late fee of fifty (50) dollars shall be assessed if renewal is not postmarked by the last day of the certified inspector or trainee's birth month.

(c) Certification shall terminate if a certified inspector or trainee fails to renew ninety (90) days after the last day of that person's birth month.

(2) Reactivation. A certified inspector or inspector holding a limited certificate whose certification is inactive may reactivate the certification by submitting to the department:

(a) Proof of completion of continuing education pursuant to 815 KAR 2:010 within twelve (12) months prior to the request for reactivation; and

(b) Payment for one-half (1/2) the fee for an active certification in addition to the renewal fee in subsection (1)(a)1 of this section.

(3) Reinstatement. (a) A certified building inspector whose certification has been terminated may be reinstated no more than three (3) years of the date of termination by submitting to the department:

- 1. A reinstatement fee equal of fifty (50) dollars; and
- 2. The renewal fee in subsection (1)(a)1 of this section.

(b) Reinstatement after the three (3) year period shall require the applicant to successfully complete the examinations corresponding to the certification level sought for reinstatement.

Section 8. Suspension and Revocation of Certification. (1) Complaints concerning a certified inspector shall be submitted to the department in writing for review.

(2) Subject to a hearing conducted in accordance with KRS Chapter 13B, the commissioner may suspend or revoke a certified inspector's certification if he or she determines after a thorough investigation of the evidence that the certified inspector is:

- (a) Not enforcing the Kentucky Building Code;
- (b) Not enforcing the Kentucky Residential Code;

- (c) Improperly enforcing the Kentucky Building Code;
- (d) Improperly enforcing the Kentucky Residential Code; or
- (e) Violating his or her responsibilities as an inspector.

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

(a) "Initial Application Form", DHBC-BC/CP 1, August 2018; and

(b) "Continuing Education Verification Form", DHBC-BC/CE 1, August 2018;

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>. [Section 1. Definitions. (1) "Certified building inspector" is defined by KRS 198B.010(6).]

(2) "Enrolled" means an applicant has complied with the requirements established in Section 4(1) of this administrative regulation.

(3) "ICC test module" means a test module, from the International Code Council, that is used to meet the module testing requirements established in Section 7 of this administrative regulation.

(4) "Limited certificate" means a document establishing that a person:

- (a) Has passed the test for competency in one (1) or more NCPCCI or ICC test modules; and
- (b) Is qualified to engage in the type of limited inspections listed on the certificate which represents the level of competency for which the person was tested.

(5) "NCPCCI test module" means a test module, from the National Certification Program for Construction Code Inspectors, developed by the national code enforcement organizations for the purpose of providing nationally recognized evidence of competency and professionalism in construction code enforcement and used to meet the module testing requirements established in Section 7 of this administrative regulation.

(6) "Trainee" means a person who is enrolled in the building inspector program of the department, but has not completed the NCPCCI or ICC test modules necessary to be a Kentucky certified building inspector.

Section 2. Inspection Operations. (1) Each governmental entity engaged in a building inspection program shall have, in responsible charge of all construction document approvals, inspections and issuance of certificates of occupancy, at least one (1) Kentucky certified building inspector with the level of credentials required for the buildings covered by the program.

(2) A trainee may be utilized in a building inspection program. If a trainee is utilized in a building inspection program, the trainee shall operate under the general supervision of a Kentucky certified building inspector.

(a) A trainee shall not issue a permit, construction document approval letter, inspection compliance letter, or certificate of occupancy.

(b) A trainee holding a current limited certificate shall exercise only the duties authorized by that certificate.

(c) A limited certificate shall not be available to persons who apply after March 22, 2001.

Section 3. Training and Testing Requirements to Become Certified. A candidate seeking certification shall comply with the provisions of this section.

(1) A candidate seeking to become certified pursuant to this administrative regulation and all trainees shall be required to attend orientation training, provided or approved by the department pursuant to subsection (2)(d) of this section. The training sessions shall be given quarterly.

(2) Continuing education.

(a) Continuing education programs shall be conducted by:

- 1. The department;
- 2. The Code Administrators Association of Kentucky (CAAK); or

3. A provider that is approved by the department pursuant to paragraph (d) of this subsection.

(b) The board may fund a continuing education program through the Building Inspectors' Financial Incentive Training Program Fund.

(c) A candidate seeking certification or a trainee seeking to continue as a trainee shall:

1. Complete a minimum of twelve (12) hours of continuing education training annually; and

2. Submit verification of completion on either:

a. Continuing Education Verification Form, DHBC BC/CE-1; or

b. A certificate of completion provided by a pre-approved training provider.

(d) 1. A provider shall submit a completed Continuing Education Course Approval Request Form, DHBC-BC/CE-2 to the department no less than thirty (30) days prior to the date the educational program will be offered.

2. The program shall be recognized as approved training for the Kentucky Certified Building Inspector Program if the program:

a. Relates to the general business skills or the technical skills required of a certified inspector;

b. Contains sufficient educational content to improve the quality of a certified inspector's performance; and

c. Includes a course evaluation.

3. The written request shall include the following:

a. The total number of continuing education hours;

b. Course syllabus;

c. A detailed outline of the contents of the course;

d. Name and address of the vendor;

e. Name, address, and qualifications of each instructor;

f. Program agenda with written description of class material which clearly identifies that the educational content relates to the general business skills or the technical skills required of a certified inspector which would improve the quality of the certified inspector's performance; and

g. Location and keeper of class attendance verification list, which shall be available for at least twelve (12) months after completion of the educational program. The department shall be electronically advised of attendees and course completions.

(3) The commissioner shall waive the time requirements established in this administrative regulation for hardships shown or if circumstances warrant a waiver due to changes in testing procedures, standards, or dates.

Section 4. Application for Training and Certification. (1) To become a trainee or a candidate for certification, a person shall submit:

(a) A completed Initial Application Form, DHBC BC/CP-1;

(b) A fifty (50) dollar application fee; and

(c) Written proof that the applicant has met the requirements established in subsection (2) of this section.

(2) An applicant shall have:

(a) 1. Graduated from high school or earned a general education diploma; and

2. a. Three (3) years experience in a responsible, directly-related construction position, such as a foreman, which required the ability to effectively read and interpret building plans and specifications; or

b. Three (3) years experience in an architect's or engineer's office performing building design or drafting duties;

(b) Graduated from a college or university with an associate degree in a design, building technology or construction-related subject; or

(c) Graduated from a college or university with a bachelor's degree in architecture, engineering, fire science, or building technology.

(3) A person shall not engage in inspection activities for the enforcement of the Kentucky Building Code or the Kentucky Residential Code, 815 KAR 7:125, unless that person is currently enrolled with the department and has otherwise complied with the requirements of this administrative regulation.

Section 5. Renewal and Reinstatement. (1) A certified

inspector or trainee, including an inspector holding a limited certificate, shall pay an annual renewal fee of fifty (50) dollars not later than the last day of the certified inspector or trainee's birth month annually.

(a) A late fee of fifty (50) dollars shall be assessed if renewal is not postmarked by the last day of the certified inspector or trainee's birth month.

(b) If a certified inspector or trainee fails to renew ninety (90) days after the last day of that person's birth month, certification shall terminate.

(2)(a) A reinstatement fee for a terminated certification shall be equal to the renewal fee and shall be paid in addition to the renewal fee.

(b) A terminated certification may be reinstated if application is made within three (3) years from the date of termination and shall not require examination for reinstatement.

Section 6. Inactive License Certification. (1) A certified inspector or an inspector holding a limited certificate may request that the certification be placed in an inactive status and shall:

(a) Not perform an inspection while the certification is inactive;

(b) Pay an inactive fee of one-half (1/2) of the renewal fee annually on or before the last day of the certified inspector's birth month; and

(c) Not be required to obtain yearly continuing education during the inactive status. Within twelve (12) months prior to a request for re-activation, twelve (12) hours of continuing education shall be obtained.

(2) Upon a request to reactivate an inactive certification, an inspector shall pay one-half (1/2) the fee for an active certification.

Section 7. Certification Requirements, Responsibilities, and Jurisdiction for Inspectors.

(1) One (1) and two (2) family dwelling inspector.

(a) A person shall be classified as a one (1) and two (2) family dwelling inspector if the person has:

1. Been tested for competency under the Kentucky Residential Code, by passing the following:

a. NCPCCI test modules:

(i) Test 1A Building One- and Two-Family Dwelling; and

(ii) Test 4A Mechanical One- and Two-Family Dwelling; or

b. ICC test modules:

(i) Test B1 Residential Building Inspector; and

(ii) Test M1 Residential Mechanical Inspector; and

2. Complied with the requirements of this administrative regulation.

(b) A one (1) and two (2) family dwelling inspector shall be qualified to perform all functions related to the enforcement of the Kentucky Residential Code, including issuing permits, reviewing and approving construction documents, conducting on-site inspections, and issuing compliance letters and certificates of occupancy for the construction of one (1) and two (2) family dwellings and townhouses.

(2) Building inspector, level I:

(a) A person shall be classified as a building inspector, level I, if the person has:

1. Been tested for competency under the Kentucky Residential Code and the Kentucky Building Code, by passing the following:

a. NCPCCI test modules:

(i) Test 1A Building One- and Two-Family Dwelling;

(ii) Test 4A Mechanical One- and Two-Family Dwelling;

(iii) Test 1B Building General; and

(iv) Test 3B Fire Protection General; or

b. ICC test modules:

(i) Test B1 Residential Building Inspector;

(ii) Test B2 Commercial Building Inspector; and

(iii) Test M1 Residential Mechanical Inspector; and

2. Complied with the requirements of this administrative regulation.

(b) A building inspector, level I, shall be qualified to perform all functions related to the enforcement of the Kentucky Building Code and the Kentucky Residential Code, including issuing permits, reviewing and approving construction documents, conducting on-

site inspections, and issuing compliance letters and certificates of occupancy for all buildings of the occupancy type and size assigned to local governments by KRS 198B.060(2).

(3) Building inspector, level II.

(a) A person shall be classified as a building inspector, level II, if the person has:

1. Been tested for competency under the Kentucky Residential Code and the Kentucky Building Code, by passing the following:

a. NCPCCI test modules:

- (i) Test 1A Building One- and Two-Family Dwelling;
- (ii) Test 4A Mechanical One- and Two-Family Dwelling;
- (iii) Test 1B Building General;
- (iv) Test 3B Fire Protection General; and
- (v) Test 4B Mechanical General; or

b. ICC test modules:

- (i) Test B1 Residential Building Inspector;
- (ii) Test B2 Commercial Building Inspector;
- (iii) Test M1 Residential Mechanical Inspector; and
- (iv) Test M2 Commercial Mechanical Inspector; and

2. Complied with the requirements of this administrative regulation.

(b) A building inspector, level II, shall be qualified to perform functions related to the enforcement of the Kentucky Building Code and Kentucky Residential Code for all buildings of the occupancy type and size assigned to local government under KRS 198B.060(2) including issuing permits, reviewing and approving construction documents, conducting on-site inspections, and issuing compliance letters and certificates of occupancy.

(c) A building inspector, level II, shall be qualified to conduct on-site inspections of all buildings which were assigned to the department pursuant to KRS 198B.060(4).

(4) Building inspector, level III.

(a) A person shall be classified as a building inspector, level III, if the person has:

1. Been tested for competency under the Kentucky Residential Code, Mechanical Code and the Kentucky Building Code, by passing the following:

a. NCPCCI test modules:

- (i) Test 1A Building One- and Two-Family Dwelling;
- (ii) Test 4A Mechanical One- and Two-Family Dwelling;
- (iii) Test 1B Building General;
- (iv) Test 3B Fire Protection General;
- (v) Test 4B Mechanical General;
- (vi) Test 1C Building Plan Review;
- (vii) Test 3C Fire Protection Plan Review; and
- (viii) Test 4C Mechanical Plan Review; or

b. ICC test modules:

- (i) Test B1 Residential Building Inspector;
- (ii) Test B3 Building Plans Examiner;
- (iii) Test M1 Residential Mechanical Inspector; and
- (iv) Test M3 Mechanical Plans Examiner; and

2. Complied with the requirements of this administrative regulation.

(b) A building inspector, level III, shall be qualified to perform all functions relating to the enforcement of the Kentucky Building Code and Kentucky Residential Code, including issuing permits, reviewing and approving construction documents conducting, on-site inspections and issuing compliance letters and certificates of occupancy for all buildings, regardless of size or occupancy type. A local inspector shall not be authorized to perform these functions on buildings assigned to the department by KRS 198B.060(4), except by petition to and approval of more inspection responsibility by the department pursuant to 815 KAR 7:140.

(5) Mechanical inspector, one (1) and two (2) family dwellings.

(a) A person shall be classified as a mechanical inspector of one (1) and two (2) family dwellings if the person has:

1. Been tested for competency under the Kentucky Residential Code by passing the:

a. NCPCCI Test 4A Mechanical One- and Two-Family Dwelling test module; or

b. ICC Test M1 Residential Mechanical Inspector test module; and

2. Complied with the requirements of this administrative

regulation.

(b) A mechanical inspector of one (1) and two (2) family dwellings shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the Kentucky Residential Code including conducting inspections of one (1) and two (2) family dwelling mechanical installations for compliance.

(6) Mechanical inspector general (other than one (1) and two (2) family dwellings).

(a) A person shall be classified as a mechanical inspector general if the person has:

1. Been tested for competency under the Mechanical Code, by passing:

a. NCPCCI Test 4B Mechanical General test module; or

b. ICC Test M2 Commercial Mechanical Inspector test module; and

2. Complied with the requirements of this administrative regulation.

(b) A mechanical inspector general shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the Mechanical Code including management of mechanical code enforcement activity, supervision of mechanical inspectors or plans examination, performing plans examination for compliance and conducting inspections of structures for compliance.

(7) Mechanical inspector and plan reviewer.

(a) A person shall be classified as a mechanical inspector and plan reviewer if the person has:

1. Been tested for competency under the Kentucky Residential Code and the Mechanical Code, by passing the following:

a. NCPCCI test modules:

- (i) Test 4A Mechanical One- and Two-Family Dwelling;
- (ii) Test 4B Mechanical General; and
- (iii) Test 4C Mechanical Plan Review; or

b. ICC test modules:

- (i) Test M1 Residential Mechanical Inspector; and
- (ii) Test M3 Mechanical Plans Examiner; and

2. Complied with the requirements of this administrative regulation.

(b) A mechanical inspector and plan reviewer shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the Kentucky Residential Code and the Mechanical Code including management of mechanical code enforcement activity, supervision of mechanical inspectors or plans examination, performing plans examination for compliance and conducting inspections of structures for compliance.

(8) Trainees and limited certificates.

(a) A person making inspections pursuant to a limited certificate shall be supervised by a Kentucky certified building inspector with a level I certification or higher.

(b) A person making inspections as a trainee without a certificate shall be supervised by a person with a level of certification equal to or higher than that which the trainee is pursuing.

(c) A trainee or a person with a limited certificate shall not issue permits, construction document approval letters, compliance letters or certificates of occupancy, or make any official or final determinations relating to the Kentucky Building Code.

(9) A person making inspections as authorized by this administrative regulation shall not overrule, supplant, or order corrections or alterations which conflict with the approved construction documents. If an inspector believes that the construction documents are wrong or that the construction is in violation of the code, the inspector shall immediately refer the matter to the certified building inspector responsible for approval of the construction documents for resolution.

(10) Upon application by a testing agency, a national code group, or by an applicant for certification, the department may recognize other examinations as equivalent to the listed NCPCCI or ICC examinations. The person or group submitting the examination shall demonstrate that the examinations cover the same codes and require the same level of knowledge as the NCPCCI or ICC examinations.

Section 8. Suspension and Revocation of Certification. (1)

~~Formal written complaints concerning an inspector shall be submitted to the Department of Housing, Buildings, and Construction for review and authorized disciplinary action.~~

~~(2) Action shall not be taken against a building inspector governed pursuant to this administrative regulation until a hearing has been held upon request or waived in accordance with KRS Chapter 13B, and the commissioner determines based on investigation and evidence that the inspector is:~~

- ~~(a) Not enforcing the Kentucky Building Code;~~
- ~~(b) Not enforcing the Kentucky Residential Code;~~
- ~~(c) Improperly enforcing the code; or~~
- ~~(d) Violating his or her responsibilities as an inspector.~~

~~Section 9. Grandfather Clause. (1) A person who was certified as a building inspector, level I, II, or III, or who held a limited certificate on or before December 15, 1997 shall:~~

~~(a) Not be required to take additional test modules to renew the certification, if the person has maintained continuous certification since December 15, 1997; and~~

~~(b) Complete the continuing education requirements as established in Section 3 of this administrative regulation prior to renewal of the certificate.~~

~~(2) A person who was certified as of March 22, 2001, but who seeks to achieve a higher level of certification, shall comply with the testing modules required by this administrative regulation.~~

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

~~(a) "Continuing Education Verification Form", DHBC-BC/CE 4, October 2009;~~

~~(b) Initial Application Form", DHBC-BC/CP 1, October 2009; and~~

~~(c) "Certified Building Inspector Continuing Education Course Approval Request", DHBC-BC/CE 2, 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

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the testing, training, and continuing education requirements for qualifying persons to become and remain inspectors for the enforcement of the Kentucky Building Code and

the Kentucky Residential Code, and to identify the level of the building inspector's responsibilities for this enforcement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements needed for an individual to become a certified building inspector in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.090(1)(a) requires the department to create and administer a building inspector's certification program and a plans and specifications inspector's certification program with sufficient testing procedures. KRS 198B.050(5) requires the department to promulgate administrative regulations necessary to implement the Uniform State Building Code. KRS 198B.095(1) authorizes the department to promulgate an administrative regulation to establish a building inspector training program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for the testing and experience needed to become a certified building inspector, assisting the Department in carrying out its obligations under KRS Chapter 198B.

(2) If 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 eliminates the annual renewal fee for certified building inspectors who have placed their certification in inactive status. The amendment also clarifies that all certified building inspectors are required to obtain twelve (12) hours of continuing education annually. The amendment reorganizes the administrative regulation to be more consistent with other license and certification application processes of the department.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to eliminate an unnecessary annual inactive fee, and to clarify that all certified inspectors have a continuing education requirement. The amendment is necessary to reorganize the administrative regulation to make it more user friendly.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the requirements in KRS 198B.090(1)(a) that the department create and administer a building inspector's certification program and a plans and specifications inspector's certification program with sufficient testing procedures.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will alleviate the need for inactive certified inspectors to pay an annual fee. The reorganization of the administrative regulation makes it easier to understand.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Housing, Buildings and Construction, local government's building inspection programs, and all certified building inspectors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The certified building inspectors who have an inactive license will no longer have to pay an annual renewal fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated additional cost associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local governments and building inspection programs will benefit from the clarification of confusing terms and requirements.

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

(a) Initially: There are no anticipated additional initial costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the Department. Any Department costs resulting from these administrative amendments will be met with existing funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not necessitate an increase in fees or funding. In fact, this amendment decreases fees by eliminating the annual inactive renewal fee.

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation applies equally to all local governments with an expanded jurisdiction and all current and potential certified building inspectors.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction and local jurisdiction inspection and plan review programs will be affected.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.050(5), KRS 198B.090(1)(a) and (b), and KRS 198B.095(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 amendment is not anticipated to generate additional revenue for the state or local government for the first year. The revenue for the Department is expected to decrease by \$1,000.

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

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

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

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

Revenues (+/-): -\$1,000
Expenditures (+/-): Neutral
Other Explanation: None

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Heating, Ventilation and Air Conditioning (Amendment)

815 KAR 8:010. Licensing requirements for master [heating, ventilation, and air conditioning (HVAC)] contractors and journeyman HVAC mechanics[contractor licensing requirements].

RELATES TO: KRS 198B.650, 198B.654, 198B.656,

198B.658, 198B.659, 198B.660, 198B.664, 198B.668, 198B.672, 198B.676

STATUTORY AUTHORITY: KRS 198B.654(1), 198B.658, 198B.660(1), (2), 198B.664(1), (3), 198B.676(1)[, 198B.684]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the department[Board of Heating, Ventilation and Air Conditioning Contractors] to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 through[te] 198B.689. KRS 198B.658 requires the department[board] to establish qualifications for licensure and certification. KRS 198B.660(1) and (2) require the department[board] to establish examination requirements. KRS 198B.664 requires the department[board] to establish requirements for license renewal and inactive licenses. [KRS 198B.684 authorizes the board to promulgate an administrative regulation with standards for continuing education for licensees and certificate holders.] KRS 198B.676(1) requires the department[board] to establish fees by administrative regulation. This administrative regulation establishes the licensure requirements for master HVAC contractors and journeyman HVAC mechanics.

Section 1. General Requirements. (1) Master HVAC Contractor.

(a)[Continuing education.

(a) Each master HVAC contractor licensee shall complete eight (8) hours of continuing education prior to renewal of the license.

(b) Continuing education shall be conducted in accordance with 815 KAR 8:050.

(2) Supervision. The master HVAC contractor shall supervise and be primarily responsible for all HVAC work performed by the employees and subcontractors of the licensee or the company that the licensee represents, whichever is applicable.

(b)[(3)] Company license.[(a)] A licensee who is an employee of a company and whose license represents the company [shall notify the board, in writing], if the licensee ceases to represent the company or if the name of the company changes, shall:

1. Notify the department in writing; and

2. Request a change of information[(b) A licensee providing the notice established in paragraph (a) of this subsection shall request a change of information on that license.

(c) A licensee requesting a change of information as established in paragraph (b) of this subsection shall pay the change of information fee established in Section 7(5) of this administrative regulation].

(c) Death of a master HVAC contractor.

1. If the master HVAC contractor representing a company dies, the company shall notify the department within ten (10) days of the master HVAC contractor's death.

2. The 180 day interim period described in KRS 198B.667 shall begin on the date the master HVAC contractor dies.

3. The company shall not be required to renew the deceased's master HVAC contractor license, if the license renewal date falls within the 180 day interim period.

4. The company shall not use the deceased master HVAC contractor license after the expiration date of the interim period.

5. The company shall notify the department when the company has a replacement master HVAC contractor to represent the company on or before the expiration date of the interim period.

(2) Journeyman HVAC mechanic.

(a) Supervision. The journeyman shall:

1. Be physically on site;

2. Personally observe and be responsible for each apprentice assigned to the journeyman in carrying out the installation, alteration, and repair of HVAC systems; and

3. Otherwise operate under the general direction and supervision of the master HVAC contractor.

Section 2. Initial Application Requirements. (1) Filing the application.

(a) Master HVAC contractor application. An applicant seeking a master HVAC contractor license shall submit to the department[board]:

1. A completed [and notarized] Master HVAC Contractor

License Application on Form HVAC 1;

2. An initial license application fee of \$250 for a twelve (12) month license. ~~The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month;~~

3. ~~Proof of satisfactory completion of the examination required by Section 4 of this administrative regulation;~~

4. ~~Proof of the applicant's experience as required~~ established by KRS 198B.658(1)(c) and this administrative regulation; and

4.5. ~~A passport-sized, color photograph of the applicant taken within the past six (6) months; and~~

6. ~~Proof of insurance as required by KRS 198B.668.~~

5. ~~(b)~~ If the master HVAC contractor applicant is an employee representing a company, the applicant shall state the company name on the application form. The company may provide the insurance certificates and shall be subject to this administrative regulation.

(b) Journeyman HVAC mechanic application. An applicant seeking a journeyman HVAC mechanic license shall submit to the department:

1. A completed Journeyman HVAC Mechanic License Application on Form HVAC 2;

2. An initial license application fee of fifty (50) dollars for a twelve (12) month license; and

3. Proof of the applicant's experience as established by KRS 198B.658(2)(c).

(c) Initial license fees may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month

(d) Master HVAC contractor applicants and journeyman HVAC mechanic applicants shall provide to the department proof of satisfactory completion of the respective examination required by Section 4 of this administrative regulation.

(e) Master HVAC contractor applicants and journeyman HVAC mechanic applicants shall provide to the department a passport-sized, color photograph of the applicant taken within the past six (6) months.

(2) Termination of application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted to the department.

(b) At the end of one (1) year, the application shall be void.

Section 3. An applicant for reciprocity shall:

(1) Comply with the requirements established in the reciprocity agreement between Kentucky and the state in which the applicant is licensed;

(2)(a) For a Master HVAC Contractor license, an applicant shall comply with Section 2(1)(a) of this administrative regulation.

(b) For a Journeyman HVAC mechanic license, an applicant shall comply with Section 2(1)(b) of this administrative regulation.

(c) If applying for both licenses, an application fee shall be submitted for each license with each application form ~~Section 3. Inactive License Status. (1)(a) A licensee may request that a license be placed in inactive status.~~

~~(b) A licensee shall not perform HVAC work while the license is inactive.~~

~~(2) A master HVAC contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.668 or provide proof to the Department of Housing, Buildings and Construction of compliance with workers' compensation laws.~~

~~(3) A certified HVAC inspector may be licensed as a master HVAC contractor, but shall place the license in inactive status while having an active HVAC inspector certification.~~

~~(4) Performing HVAC work while holding an inactive license shall be grounds for revocation or suspension of all HVAC licenses and certifications held by the licensee.~~

Section 4. Examinations ~~Examination~~ Requirements. An applicant shall take and pass the examination administered in compliance with this section. (1) The HVAC examinations shall be developed, administered, and scored by the department or its designee.

(2) Master HVAC Contractor examination requirements. The examination shall ~~be a two (2) part examination and shall~~ test the applicant's knowledge of:

(a) Codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of all types of HVAC systems; and

(b) Law and regulation relating to HVAC business.

(3) Journeyman HVAC mechanics examination requirements.

(a) The examination shall test the applicant's knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, and repair, remodeling, or alteration of all types of HVAC systems.

(b) A journeyman HVAC mechanic applicant may apply the passage of a master HVAC contractor's examination for the journeyman HVAC mechanic's examination requirement. The applicant may use the same master HVAC contractor's examination score to satisfy the master HVAC contractor's examination requirement as long as the examination score is valid pursuant to subsection (7) of this section ~~(2) Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request.~~

~~(4)(3) Except as provided in subsection (8) of this section, an applicant shall pass with a complete with a passing score of at least seventy (70) percent on the examination known as the Kentucky Master HVAC Contractor Examination, which is developed, administered, and scored by the~~ ~~board~~ ~~or its designee.~~

~~(5)(4) (a) A request to sit for the examination shall be made directly to the testing facilities approved by the~~ ~~department~~ ~~board.~~

~~(b) A list of facilities and contact information shall be provided by the department to applicants upon request. (5) The examination fee shall not exceed \$160 for the Kentucky Master HVAC Contractor Examination.~~

~~(6) The examination shall be provided as set forth in KRS 198B.660.~~

~~(7) A passing score on the examination shall be valid for a period of three (3)~~ ~~two (2)~~ ~~years.~~

~~(8) Upon application by a testing agency, a national code group, or by an applicant for licensure, the department shall recognize another examination as equivalent to the examinations administered by the~~ ~~department~~ ~~board~~ ~~if the person or group submitting the examination demonstrates that the examination covers the same material and requires the same level of knowledge as the~~ ~~department's~~ ~~board's~~ ~~examination.~~

~~(9) Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request.~~

Section 5. Experience Requirements. ~~An applicant for licensure shall meet the requirements of this section.~~ (1) ~~Minimum experience. An applicant shall have the experience required by KRS 198B.658(1)(c).~~

~~(2) Records of experience. An applicant's experience shall be listed on the application form.~~

~~(a) Proof of listed experience shall be provided by:~~

~~1. A W-2 form;~~

~~2. An affidavit by a master HVAC contractor who directed and supervised the applicant;~~

~~3. A copy of a current master HVAC contractor license, journeyman HVAC mechanic license, or equivalent, held by the applicant in a state other than Kentucky, if the state requires licensure or the equivalent;~~

~~4. Verifiable documentation demonstrating the nature and extent of HVAC contracting work performed in a state other than Kentucky, if the state does not require licensure or the equivalent; or~~

~~5. Department of Defense Form DD 214.~~

~~(b) Additional proof of experience shall be requested by the~~ ~~department~~ ~~board~~ ~~prior to or after licensing, if the~~ ~~department~~ ~~board~~ ~~has reason to believe that the experience shown is insufficient or nonexistent.~~

~~(2)(3) One (1) year of HVAC experience shall consist~~

VOLUME 45, NUMBER 3 – SEPTEMBER 1, 2018

minimally of 1,500 hours of HVAC work in a contiguous twelve (12) month period.

Section 6. Inactive License Status. (1) A licensee may request that a license be placed in inactive status.

(2) A master HVAC contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.668.

(3) A license that is in inactive status shall be exempt from annual renewal.

(4) A certified HVAC inspector may be licensed as a master HVAC contractor or licensed as a journeyman HVAC mechanic, but shall place the license in inactive status while having an active HVAC inspector certification.

(5) Performing HVAC work while holding an inactive license shall be grounds for revocation or suspension of all HVAC licenses and certifications held by the licensee.

Section 7.[6-] Renewal, Restoration, Reinstatement, and Reactivation Requirements and Procedures. (1) Filing for renewal. A master HVAC contractor and a journeyman HVAC mechanic shall submit to the department:

(a) A completed renewal application[card];

(b)1. A renewal fee of \$250 made payable to the Kentucky State Treasurer for a master HVAC contractor; or

2. A renewal fee of fifty (50) dollars made payable to the Kentucky State Treasurer for a journeyman HVAC mechanic; and

(c) Proof of annual continuing education attendance in accordance with 815 KAR 2:010[Section 4 of this administrative regulation]; and

(d) Proof of insurance as required by KRS 198B.668 for a master HVAC contractor.

(2)(a) Except for a license placed in inactive status[in accordance with subsection (6) of this section and Section 7(2) of this administrative regulation], application for license renewal shall be filed [by each licensee] no later than the last day of the licensee's birth month.

(b) A license shall be renewed each year.

(c) A license that is not timely renewed shall immediately expire.

(3)(a) The renewal fee shall be paid prior to renewal.

(b) The department shall send a renewal application [card] to each licensee each year to be returned with the required fee.

(4) A renewal application[card] filed late, but no more than sixty (60) days after the expiration of the license, shall be accepted, but a restoration fee, as established in Section 8(1)[7(4)] of this administrative regulation, shall be added to the renewal fee.

(5)(a) A former licensee whose license has terminated as established in KRS 198B.664(3) may have his or her license reinstated if the licensee satisfies the application requirements for renewal as established in subsection 1 of this section[Section 6(4) of this administrative regulation] and submits a reinstatement fee as established in Section 8(6)[7(6)] of this administrative regulation no later than three (3) years from the date the former license was terminated.

(b) A former licensee seeking licensure under this administrative regulation, but whose terminated license was not timely reinstated as established in paragraph (a) of this subsection, shall be required to satisfy all requirements applicable to new applicants for initial licensure as established in this administrative regulation.

(6)[(a) A license that is in inactive status shall be exempt from annual renewal.

(b)] An inactive license shall be reactivated upon payment of the annual renewal fee, the reactivation fee, and upon compliance with the continuing education requirements established in 815 KAR 2:010[815 KAR 8:050].

(7) If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro rata basis.

(8) The application for renewal, restoration, reinstatement, or reactivation[of a licensed master HVAC contractor] shall be denied if the applicant fails to:

(a) Pay any applicable department fee;

(b) Comply with the continuing education requirements established in 815 KAR 1:0 0[Section 1(4) of this administrative regulation]; or

(c) Provide the current insurance certificate required by KRS 198B.668, if a master HVAC contractor.

(9) A licensee who has not previously provided a passport-sized color photograph shall provide one (1) with the licensee's next application for renewal.

Section 8.[7-] Special Service Fees. In addition to the other fees required by this administrative regulation, the special fees established in this section shall also be applied. (1) Restoration fee.

(a) The fee for restoration of an expired master HVAC contractor license shall be \$125.

(b) The fee for restoration of an expired journeyman HVAC mechanic license shall be twenty-five (25) dollars.

(2) Inactive status fee. [(a) A licensee may place the license in inactive status.] The fee to place a license into inactive status shall be twenty (20) dollars. [(b) Inactive status shall be maintained upon annual payment of the inactive status fee by the last day of the licensee's birth month.

(c) Inactive status shall be maintained in accordance with this subsection until the licensee requests reactivation in accordance with Section 6(6)(b) of this administrative regulation.

(d) An inactive license that is not maintained in accordance with this subsection or reactivated in accordance with Section 6(6)(b) of this administrative regulation shall immediately terminate.]

(3) Reactivation fee. The fee for reactivation of an inactive license shall be twenty (20) dollars.

(4)[Duplicate license fee. A lost or destroyed license shall be replaced upon payment of a twenty (20) dollar fee.

(5) Change of information fee. The fee for the change of information required by Section 1(3) of this administrative regulation shall be twenty (20) dollars. If a change of information request is simultaneous with license renewal, this fee shall not be applicable.

(6)] Reinstatement fee.

(a) Master HVAC contractor. The fee for reinstatement of a terminated master HVAC contractor license shall be \$250 for each twelve (12) month period, or additional fraction thereof, following the date the license was terminated, not to exceed \$750.

(b) Journeyman HVAC mechanic. The fee for reinstatement of a terminated journeyman HVAC mechanic license shall be fifty (50) dollars for each twelve (12) month period, or additional fraction thereof, following the date the license was terminated, not to exceed \$150.

Section 9.[8-] Revocation or Suspension of License. A license issued pursuant to this administrative regulation shall be subject to suspension or revocation by the department[board] for any of the reasons stated in KRS 198B.672.

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

(a) "[Form—HVAC-1,]Master HVAC Contractor License Application", Form HVAC 1, August 2018; and

(b) Journeyman HVAC Mechanic License Application", Form HVAC 2, August 2018[July 2014, is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, HVAC Division, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

September 26, 2018, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the qualifications for licensure and certification as a master HVAC contractor and a journeyman HVAC mechanic, the requirements for renewing and reactivating an HVAC license, and the standards for continuing education for licensees and certificate holders.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assist the Division of Heating, Ventilation, and Air Conditioning in carrying out its duty to monitor and inspect heating, ventilation, and air conditioning activity in the Commonwealth and readily identify licensed individuals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.654(1) requires the department to "promulgate administrative regulations to administer, coordinate, and enforce the provisions of KRS 198B.650 to 198B.689; conduct examinations; maintain a list of all licensees and certificate holders; keep minutes of meetings and a record of its proceedings; and register and keep records of all apprentices."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the standards applicable to those seeking to obtain and maintain HVAC licenses and certificates, and how the HVAC examinations will be administered.

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

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

Combines the administrative regulation for master HVAC Contractor's license requirements with the administrative regulation for journeyman HVAC mechanic's license requirements.

Adds a section that details how an applicant must apply through reciprocity – eliminating the need for another administrative regulation on this topic.

Eliminates superfluous language from the administrative regulation;

Eliminates the artificial price cap applicable to the Master HVAC Contractor's examination fee and the journeyman HVAC mechanic's examination fee;

Extends, from two to three years, the time that a passing score on the examinations remains valid; 815 KAR 8:010(4)(7)

Eliminate all references to "renewal application cards";

Removes the annual fee required to maintain an inactive license; and

Establishes the processes for the interim period when a master HVAC contractor passes away.

The administrative regulation was further amended to fix

grammatical errors and improve its logical flow.

(b) The necessity of the amendment to this administrative regulation: This amendment reduces the need for duplicative language across regulations for master HVAC contractor and journeyman HVAC mechanic licenses, eliminating superfluous language and reducing the likelihood of public confusion by simplifying the regulation, without altering the net effect. Extending the time that a passing score on an examination remains valid from two to three years, allows an applicant to prepare to take the Journeyman HVAC Mechanic Examination and the Kentucky Master HVAC Contractor Examination on the same day. Repealing the annual fee to maintain an inactive master HVAC contractor license eliminates an unnecessary fee for the licensees. The amendment is also necessary to establish the processes for the interim period when a master HVAC contractor passes away in compliance with House Bill 100 of the 2018 Regular Session of the General Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is authorized by KRS 198B.654(1).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will eliminate fees and unnecessary language that may confuse the public. This amendment will also make it more efficient for HVAC applicants to prepare for their examinations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed individuals engaged in the heating, ventilation, and air conditioning trade within the Commonwealth, as well as those applicants seeking HVAC licensure and certification in the Commonwealth will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3). In fact, those licensees that place their license in inactive status will no longer have to pay a yearly fee – reducing the licensee's overall cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): 815 KAR 8.010 will be easier to understand. Applicant's passing score on an examination will be effective longer, allowing the applicants more freedom to choose when they take the examinations. The amendments also eliminate an unnecessary annual fee.

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

(a) Initially: There are no anticipated initial additional costs to administer this regulatory amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this regulatory amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the agency. Any agency costs resulting from this administrative amendment will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all heating, ventilation, and air conditioning operations will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Heating, Ventilation and Air Conditioning will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 198B.654.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not anticipated to generate additional revenue for the state or local government for subsequent years. The Department's revenue is anticipated to decrease by \$12,040 with the elimination of fees charged for inactive license status.

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

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

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

Revenues (+/-): -\$12,040

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Heating, Ventilation and Air Conditioning (Amendment)

815 KAR 8:030. ~~Apprentice[heating, ventilation, and air conditioning -[HVAC]] mechanic registration and certification requirements.~~

RELATES TO: KRS 198B.650, 198B.656, 198B.658, 198B.662, 198B.664

STATUTORY AUTHORITY: KRS 198B.654(1), 198B.658(4)[~~198B.658(3)(a)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the ~~department[Board of Heating, Ventilation and Air Conditioning Contractors]~~ to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 through 198B.689. KRS 198B.658(4) requires the department to establish an apprentice heating, ventilation, and air conditioning mechanic's certificate and the process to register as an apprentice[requiring unlicensed persons engaged in heating, ventilation and air conditioning (HVAC) to be registered]. This administrative regulation establishes the requirements for registration and certification of HVAC apprentices.

Section 1. Registration of Apprentices. (1) An apprentice

heating, ventilation, and air conditioning mechanic, as defined by KRS 198B.650(2), may register[Except for those HVAC apprentices registered with the Division of Employment Standards, Department of Labor, all apprentices defined by KRS 198B.650, shall be registered] with the department[board] by complying with this administrative regulation.

(2) Each individual who registers with the ~~department[board]~~ shall be issued an HVAC certificate of apprenticeship[pursuant to KRS 198B.658(3) and this administrative regulation].

(3)[~~The HVAC Apprentice Registration form shall be updated by the apprentice and submitted to the board to update change of address or change of employer.~~

(4)[~~The HVAC certificate of apprenticeship[registration] shall authorize an individual to work in the HVAC trade under:~~

(a) The direct supervision of at least one (1) journeyman HVAC mechanic; and

(b) The general supervision of a master HVAC contractor. [(5) ~~The registration application shall include the license number and signature of the supervising master contractor.~~]

Section 2. Application for Registration. (1) Initial application for Apprentice certificate of apprenticeship[Registration]. Registration shall be accomplished by submitting to the department:

(a) A completed HVAC Apprentice Registration Form, Form HVAC 3;

(b) A passport size photograph that is taken not more than sixty (60) days prior to submittal; and

(c) The signature and license number of the supervising master HVAC contractor on the registration application[~~filing a completed HVAC Apprentice Registration Form, Form HVAC 3, with the board including a passport-sized photograph. The photograph shall be taken not more than sixty (60) days prior to submitting the HVAC Apprentice Registration Form.~~]

(2) Change of information. The HVAC Apprentice Registration Form, Form HVAC 3, shall be updated by the apprentice and submitted to the department to update change of address or change of employer.

(3)[~~Section 3. Minimum Number of Hours of Experience. (1) 3,000 verifiable work hours shall be the minimum number of work hours accepted as the required two (2) years of experience for an HVAC journeyman mechanic license pursuant to 815 KAR 8:020.~~

(2) The apprentice shall retain personal records of employment hours to verify the experience required for a journeyman HVAC mechanic license.

Section 3.[4.] Incorporation by Reference. (1) "HVAC Apprentice Registration Form", Form HVAC 3, August 2018[2014], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the of Housing, Buildings and Construction, Division of Heating, Ventilation, and Air Conditioning[HVAC], 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412[5405], Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public

hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the qualifications and procedure for registration as an HVAC apprentice.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to assist the Division of Heating, Ventilation, and Air Conditioning in carrying out its duty to monitor and inspect heating, ventilation, and air conditioning activity in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.65(1) requires the Department to "promulgate administrative regulations to administer, coordinate, and enforce the provisions of KRS 198B.650 to 198B.689; conduct examinations; maintain a list of all licensees and certificate holders; keep minutes of meetings and a record of its proceedings; and register and keep records of all apprentices."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedure to register with the Department as a HVAC apprentice.

(2) If 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 statutory authority to accurately reflect the statute that authorizes the regulation. To remain consistent with the statute, this amendment clarifies that registration with the Department as a HVAC apprentice is permissive, not mandatory. This amendment also restructure the administrative regulation to make the administrative regulation easier to read and understand.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify that registration with the Department as a HVAC apprentice is permissive, not mandatory.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is authorized by KRS 198B.654(1), which grants the Department's authority to regulate the Commonwealth's HVAC industry.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will eliminate unnecessary language that may confuse the public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All HVAC apprentices, individuals engaged in the heating, ventilation, and air conditioning trade within the Commonwealth, and Department personnel.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified

in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): 815 KAR 8.030 will be easier to understand. This amendment clarifies that an individual may register as an apprentice with the Department, but it is not necessary.

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

(a) Initially: There are no anticipated additional initial costs to administer this regulatory amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this regulatory amendment on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the Department. Any agency costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all HVAC apprentice applicants and certificate holders will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Heating, Ventilation and Air Conditioning.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 198B.654 and 198B.658.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment in the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment 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 Housing, Buildings and Construction
Division of Plumbing, Boiler Section
(Amendment)

815 KAR 15:080. Boiler and pressure vessel licenses~~[Licensing for boiler and pressure vessel contractors, owner facilities, owner's piping inspectors, and independent inspection agencies].~~

RELATES TO: KRS 236.097, 236.210

STATUTORY AUTHORITY: KRS 236.030, 236.097, 236.210[(3)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 236.030 requires the commissioner to promulgate administrative regulations that establish reasonable standards for the safe construction, installation, inspection, and repair of boilers, pressure vessels, and associated pressure piping in Kentucky. KRS 236.210 requires~~[authorizes]~~ the commissioner~~[, through the Board of Boiler and Pressure Vessel Rules]~~ to establish reasonable fees for the licensing of all~~[new]~~ boiler and pressure vessel contractors. ~~[KRS 236.030 authorizes the commissioner, through the Board of Boiler and Pressure Vessel Rules, to fix reasonable standards for the safe construction, installation, and repair of boilers, pressure vessels, and associated pressure piping in Kentucky.]~~ KRS 236.097 establishes~~[requires]~~ criteria and fees for the issuance of owner facility, owner's piping inspector, and independent inspection agency licenses, and authorizes~~[requires]~~ the department to develop the applications required for the issuance and renewal of these licenses. This administrative regulation establishes the fees, standards, and forms incident to the licensing of boiler and pressure vessel contractors, owner facilities, owner's piping inspectors, and independent inspection agencies.

Section 1. Boiler and Pressure Vessel Contractors. (1) Application.~~[A boiler and pressure vessel contractor required by KRS 236.210 to be licensed shall comply with the requirements of this section.]~~

(2) An applicant for an initial~~[a]~~ boiler and pressure vessel contractor license shall submit to the department~~[Boiler Inspection Section]~~:

(a) Proof that the applicant is eighteen (18) years of age or older;

(b) A completed~~[, signed, and notarized]~~ Boiler and Pressure Vessel Contractor License Application on Form PLB-BPV-1;

(c) A passport-sized, color photograph of the applicant taken within the past six (6) months; and

(d) A nonrefundable license fee of \$250 payable to the Kentucky State Treasurer. If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro rata basis. The initial license fee shall not be prorated for less than seven (7) months.

(2) Examination.~~[(3)]~~(a) An applicant for a boiler and pressure vessel contractor license shall take and pass the examination required by KRS 236.210 before an initial license may be issued under this section.

(b) The applicant shall successfully complete the examination with a passing score of at least seventy (70) percent.

(c) A passing score on the examination shall be valid for a period of three (3) years~~[ten (10) years].~~~~[(4)]~~(a) A boiler and pressure vessel contractor license shall expire on the last day of the licensee's birth month unless renewed in accordance with subsection (6) of this section.

(b) If an initial license is for a period of less than twelve (12) months, the initial application and testing fee shall be reduced on a pro rata basis.

(c) The initial license fee shall not be prorated for less than seven (7) months.

(3)~~[(5)]~~ Termination of an application.

(a) The initial application shall remain pending until all requirements are met, for a period of up to one (1) year after the date the application is submitted to the department~~[, in order to afford the applicant additional time to satisfy the requirements of~~

~~subsections (2) and (3) of this section.]~~

(b) At the end of one (1) year, the application shall be void.

(4)~~[(6)]~~ License Renewal.

(a) A boiler and pressure vessel contractor license shall expire annually on the last day of the licensee's birth month unless renewed in accordance with this subsection.~~[Renewal of a license issued under this section shall be renewed on or before the expiration date of the license.]~~

(b) An applicant for renewal of a boiler and pressure vessel contractor license shall submit to the department on or before the expiration of the license~~[Boiler Inspection Section]~~:

1. A completed~~[, signed, and notarized]~~ Boiler and Pressure Vessel Contractor License~~[Renewal]~~ Application on Form PLB-BPV-1~~[Form PLB-BPV-2]~~; and

2. A nonrefundable annual renewal fee of \$175 payable to the Kentucky State Treasurer.

(5) Representation.

(a)~~[(7)]~~ A boiler or pressure vessel contractor shall provide general supervision to and be primarily responsible for all work performed by the licensee's employees.

(b) A company or individual may engage in the business of installing, erecting, or repairing boilers, pressure vessels, or pressure piping within the Commonwealth if one person connected with such a company or individual responsible for the boiler, pressure vessel, or pressure piping work is a boiler and pressure vessel contractor.

(c) Any boiler and pressure vessel contractor, responsible for the boiler, pressure vessel, or pressure piping work for a company or individual engaged in the boiler, pressure vessel, or pressure piping business, shall notify the department at any time he or she commences or severs his or her connection with the company or individual.

(d) A boiler and pressure vessel contractor shall only represent one (1) company or individual at a time.~~[(8) A boiler or pressure vessel contractor who is an employee of a company and whose license represents the company shall, within thirty (30) days of the occurrence, provide written notice to the department of:~~

(a) The termination of the licensee's employment by or representation of the company; or

(b) Any change in the name of the company].

Section 2. Owner Facilities. (1) Application.~~[An owner facility seeking to be licensed pursuant to KRS 236.210(1) shall comply with the requirements of this section.]~~

(2) An applicant for an owner facility license shall submit to the department~~[Boiler Inspection Section]~~:

(a) A completed~~[, signed, and notarized]~~ Owner Facility License Application on Form PLB-BPV-2~~[Form PLB-BPV-3]~~; and

(b) The fee required by KRS 236.097(1)(d), payable to the Kentucky State Treasurer~~[,]~~.

(c) Proof of employee or contractor who holds a license under KRS 236.210; and

(d) Proof that the facility has general liability insurance through a company permitted to transact insurance in Kentucky.

(2) License Renewal.

(a)~~[(3)]~~ An owner facility license shall expire after a period of two (2) years, on the last day of the month in which the license was initially issued, unless renewed in accordance with this subsection~~[(4) of this section]~~.

(b)~~[(4) License Renewal.]~~(a) An applicant for renewal of an owner facility license issued in accordance with this section shall, by no later than sixty (60) days prior to the expiration of the license, submit to the department~~[Boiler Inspection Section]~~:

1.~~[(a)]~~ A completed~~[, signed, and notarized]~~ Owner Facility License~~[Renewal]~~ Application on Form PLB-BPV-2~~[Form PLB-BPV-4]~~; and

2.~~[(b)]~~ The fee required by KRS 236.097(1)(f), payable to the Kentucky State Treasurer.

(3) Inspection prohibition.~~[(5) An owner facility licensed under this section shall be permitted to conduct that owner facility's own site piping inspections, other than for boiler external piping, in lieu of an inspection by the department, in accordance with KRS 236.097 and this administrative regulation.]~~

VOLUME 45, NUMBER 3 – SEPTEMBER 1, 2018

(6)] An owner facility shall not conduct, or allow to be conducted, any piping inspections under the owner facility's license unless the inspector performing the inspection is licensed pursuant to ~~either~~ Section 3 or Section 4 of this administrative regulation.

Section 3. Owner's Piping Inspectors. (1) ~~Application.~~~~[An owner's piping inspector required to be licensed pursuant to KRS 236.210(2) shall comply with the requirements of this section.~~

(2)] An applicant for an initial owner's piping inspector license shall submit to the ~~department~~~~[Boiler Inspection Section]~~:

(a) Proof that the applicant is eighteen (18) years of age or older;

(b) A completed~~[, signed, and notarized]~~ Owner's Piping Inspector License Application on Form PLB-BPV-3~~[Form PLB-BPV-5]~~;

(c) A passport-sized, color photograph of the applicant taken within the past six (6) months; and

(d) The nonrefundable fee required by KRS 236.097(2)(c), payable to the Kentucky State Treasurer. If an initial license is for a period of less than twenty-four (24) months, the initial license fee shall be prorated in accordance with KRS 236.097(2)(d).

~~(2)](3)(a) An owner's piping inspector license shall expire on the last day of the licensee's birth month in the second year following the issue date unless renewed in accordance with subsection (4) of this section.~~

~~(b) If an initial license is for a period of less than twenty-four (24) months, the initial license fee shall be prorated in accordance with KRS 236.097(2)(d).~~

~~(4)] License renewal.~~

~~(a) An owner's piping inspector license shall expire on the last day of the licensee's birth month in the second year following the issue date.~~

~~(b) An applicant for renewal of an owner's piping inspector license [issued in accordance with this section] shall, on or before the expiration of the license, submit to the department [Boiler Inspection Section]:~~

~~1. [(a)] A completed [, signed, and notarized] Owner's Piping Inspector License [Renewal] Application on Form PLB-BPV-3 [Form PLB-BPV-6]; and~~

~~2. [(b)] The fee required by KRS 236.097(2)(f), payable to the Kentucky State Treasurer.~~

Section 4. Independent Inspection Agencies. (1) ~~Application.~~~~[An independent inspection agency required to be licensed pursuant to KRS 236.210(3) shall comply with the requirements of this section.~~

(2)] An applicant for an initial independent inspection agency license shall submit to the ~~department~~~~[Boiler Inspection Section]~~:

(a) A completed~~[, signed, and notarized]~~ Independent Inspection Agency License Application on Form PLB-BPV-4~~[Form PLB-BPV-7]~~; and

(b) The fee required by KRS 236.097(3)(b), payable to the Kentucky State Treasurer.

~~(2)](3) An independent inspection agency license shall expire after a period of two (2) years, on the last day of the month in which the license was initially issued, unless renewed in accordance with subsection (4) of this section.~~

~~(4)] License renewal.~~

~~(a) An independent inspection agency license shall expire after a period of two (2) years, on the last day of the month in which the license was initially issued.~~

~~(b) An applicant for renewal of an independent inspection agency license [issued in accordance with this section] shall, on or before the expiration of the license, submit to the department [Boiler Inspection Section]:~~

~~1. [(a)] A completed [, signed, and notarized] Independent Inspection Agency License [Renewal] Application on Form PLB-BPV-4 [Form PLB-BPV-8]; and~~

~~2. [(b)] The fee required by KRS 236.097(3)(e), payable to the Kentucky State Treasurer.~~

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

(a) Form PLB-BPV-1, "Boiler and Pressure Vessel Contractor License Application", ~~August 2018~~~~[December 2014]~~;

(b) Form PLB-BPV-2, ~~"Boiler and Pressure Vessel Contractor Renewal Application", December 2014;~~

~~(c) Form PLB-BPV-3, "Owner Facility License Application", August 2018 [December 2014];~~

~~(c) Form PLB-BPV-3 [(d) Form PLB-BPV-4, "Owner Facility Renewal Application", December 2014;~~

~~(e) Form PLB-BPV-5, "Owner's Piping Inspector License Application", August 2018 [December 2014]; and~~

~~(d) Form PLB-BPV-4 [(f) Form PLB-BPV-6, "Owner's Piping Inspector Renewal Application", December 2014;~~

~~(g) Form PLB-BPV-7, "Independent Inspection Agency License Application", August 2018 [December 2014; and~~

~~(h) Form PLB-BPV-8, Independent Inspection Agency Renewal Application", December 2014].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the ~~Department~~~~[Office]~~ of Housing, Buildings and Construction, Boiler Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>.

STEVEN A. MILBY, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2018 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees, standards, and forms incident to the licensing of boiler and pressure vessel contractors, owner facilities, owner's piping inspectors, and independent inspection agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the application and fee requirements for applicants for a boiler and pressure vessel contractor license, an owner facilities license, owner's piping inspector license, and an independent inspection agency license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 236.030 requires the commissioner to promulgate administrative regulations that establish reasonable standards for the safe construction, installation, inspection, and repair of boilers, pressure vessels, and associated pressure piping in Kentucky. KRS 236.097 establishes criteria and fees for the issuance of owner facility, owner's piping inspector, and independent inspection agency licenses, and

authorizes the department to develop the applications required for the issuance and renewal of these licenses. KRS 236.210 requires the commissioner to promulgate administrative regulation for reasonable fees for a boiler and pressure vessel license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the statutorily mandated application and fee requirements for applicants for a boiler and pressure vessel contractor license, an owner facilities license, owner's piping inspector license, and an independent inspection agency license.

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

(a) How the amendment will change this existing administrative regulation: This amendment corrects grammatical errors and reorganizes the administrative regulation for ease of use. This amendment clarifies the requirement that a boiler and pressure vessel contractor can only represent one company. The notary requirement on the forms has been removed, and the forms that are incorporated by reference have been updated so they are more user friendly.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct errors in the administrative regulation and update the forms that are incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment helps establish the fees, standards, and forms incident to the licensing of boiler and pressure vessel contractors, owner facilities, owner's piping inspectors, and independent inspection agencies.

(d) How the amendment will assist in the effective administration of the statutes: This amendment makes the administrative regulation easier to understand, and updates the forms to make the forms more user friendly.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in the boiler and pressure vessel industry, and Department of Housing, Buildings and Construction personnel will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This amendment creates no new requirements for the individuals in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities in question (3) will encounter no additional costs based on the new administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will help the entities in question (3) read and understand the administrative regulation and the forms.

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

(a) Initially: There are no anticipated additional initial costs to administer this administrative regulation.

(b) On a continuing basis: There are no anticipated additional costs to administer 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: Any Department costs of implementation and enforcement will be met with existing Department funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied because all individuals in the boiler and pressure vessel industry and Department personnel will be subject to the amended regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing, Boiler Section will be affected.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized and required by KRS 236.030, 236.097, and 236.210.

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

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction

Division of Plumbing

(Amendment)

815 KAR 20:030. Plumbing licenses~~[License application; qualifications for examination, examination requirements, expiration, renewal, revival, or reinstatement of licenses].~~

RELATES TO: KRS 318.010, 318.020, 318.030, 318.040, 318.050, 318.054, 318.060, 318.080

STATUTORY AUTHORITY: KRS 318.040(1)(d), (2), (3), 318.050, 318.054(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.040(1)(d) authorizes the commissioner[~~of the Kentucky Department of Housing, Buildings and Construction~~] to promulgate administrative regulations establishing qualifications for a master plumber's license and a[~~or~~] journeyman plumber's license. KRS 318.040(2) and (3) require the department to promulgate administrative regulations establishing examination requirements. KRS 318.050 requires the department to establish reasonable application fees for licensure as a master plumber or journeyman plumber. KRS 318.054(3) requires the department to establish reasonable renewal fees for master plumbers and[~~or~~] journeyman plumbers. This administrative regulation establishes the application,[and] examination, and renewal requirements for

master plumbers and journeyman plumbers[and the application and renewal fees].

Section 1. License Requirements. (1) Master plumber. An applicant seeking a master plumber license shall meet the following requirements:

(a) The applicant shall have:

1. A valid journeyman plumber's license for a minimum of two (2) years within the past five (5) years immediately preceding application, and be actively employed in plumbing under the supervision of a licensed master plumber for a minimum of two (2) years; or

2. An engineer license in Kentucky sufficiently experienced in mechanical engineering. The sufficiency of experience shall be determined based upon the number and complexity of the applicant's past mechanical engineer projects; and

(b) Apply for and successfully complete the master plumber examination pursuant to Section 2 of this administrative regulation with a passing score of eighty (80) percent, with a minimum of seventy five (75) percent obtained for each portion of the examination.

(2) Journeyman plumber. An applicant seeking a journeyman plumber license shall meet the following requirements:

(a) At least two (2) consecutive years of experience as an apprentice plumber demonstrated by the submission of:

1. A W-2 form;

2. An affidavit from a Kentucky licensed master plumber; or

3. A plumbing license issued by another state; or

(b) Complete a department approved course and at least one (1) year of experience as an apprentice plumber; and

(c) Apply for and successfully complete the journeyman plumber examination pursuant to Section 2 of this administrative regulation with a passing score of seventy five (75) percent, with a minimum of seventy (70) percent obtained for each portion of the examination.

(3) License fees.

(a) The master plumber license fee shall be \$250.

(b) The journeyman plumber license fee shall be sixty (60) dollars.

(c) The initial license fee for a master plumber or a journeyman plumber may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month.

Section 2. Examinations. (1) Examination applications.

(a) Master plumber examination application. An applicant for examination for a master plumber's license shall submit to the department:

1. A completed Application for License as a Master Plumber, Form PLB-1;

2. An examination fee of \$150; and

3. A passport-sized color photograph of the applicant taken within the past six (6) months.

(b) Journeyman plumber examination application. An applicant for examination for a journeyman plumber license shall submit to the department:

1. A completed Application for License as a Journeyman Plumber, Form PLB-2;

2. An examination fee of fifty (50) dollars; and

3. A passport-sized color photograph of the applicant taken within the past six (6) months.

(2) Examination design.

(a) The examination requirements shall be designed by the State Plumbing Examining Committee.

(b) The examination requirements shall be more complex for the master plumber's license examination than the journeyman plumber's license examination.

(c) The master plumber examination shall include:

1. Answering written questions pertaining to basic principles of plumbing and KRS Chapter 318 and 815 KAR Chapter 20; and

2. Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes, and vents and the plumbing fixtures connected thereto.

a. The proper sizing of main stacks shall be given more importance than other piping.

b. Deductions shall be required for oversized piping and for undersized piping.

(d) The journeyman plumber examination shall include:

1. Answering written questions pertaining to basic principles of plumbing and KRS Chapter 318 and 815 KAR Chapter 20;

2. Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes, and vents and the plumbing fixtures connected thereto.

a. The proper sizing of main stacks shall be given more importance than other piping.

b. Deductions shall be required for oversized piping and for undersized piping; and

3. Completing a practical section in which the applicant shall demonstrate the ability to properly install plumbing by engaging in certain activities such as making proper connections of various plumbing materials.

(3) Examination materials.

(a) An applicant for a journeyman plumber's license examination shall furnish the plumbing materials required for the practical examination.

(b) The department shall notify the applicant at least one (1) week prior to the date of examination as to what plumbing materials are needed.

(4) Examination schedule.

(a) Regular examination of applicants for a master plumber's license or a journeyman plumber's license shall be conducted yearly during the months of February, May, August, and November.

(b) A special examination may be conducted during other times of a year as the department directs.

(c) Notice of the time and place of examination shall be given by the department at least one (1) week prior to the date of examination to each person who has an approved application on file.

(5) Examination retakes.

(a) An applicant who fails to attend or successfully complete an examination for which he or she has been scheduled may request to reschedule or retake the examination within one (1) year from the date of the applicant's first notice of examination as established in subsection (2) paragraph (c) of this section. An applicant shall not resubmit the requirements in subsection 1 of this section.

(b) An applicant for a journeyman plumber's license who passes the written portion, the drawing portion, or the practical portion of the examination, but not all portions, may apply to retake the portion that he or she failed within one (1) year from the date of the applicant's first notice of examination.

(c) An applicant for a journeyman plumber's license who failed to achieve a passing score on the retaken portion of the examination may apply to retake the failed portion of the examination if the reexamination is completed within one (1) year from the date of the applicant's first notice of examination.

(d)1. An application for a master plumber's or journeyman plumber's license shall be void if the applicant fails to successfully complete his or her examination within one (1) year from the date of the applicant's first notice of examination.

2. An applicant whose application has become void pursuant to this subsection may reapply as if the applicant was a first-time applicant.

(e) An applicant must pay the full examination fee for a retake of any portion of the examination, regardless of whether the applicant is taking less than the whole examination.

Section 3. License Renewals. (1) Filing for renewal. A master plumber and a journeyman plumber shall submit to the department:

(a) The applicable renewal fee made payable to the Kentucky State Treasurer of:

1. \$250 for a master plumber; or

2. Sixty (60) dollars for a journeyman plumber;

(b) Proof of completing the continuing education requirements established in 815 KAR 2:010; and

(c) Proof of insurance as required by KRS 318.030 for a

master plumber.

(2) Inactive license renewals.

(a) To place a plumbing license in inactive status:

1. A master plumber shall pay an initial inactive fee of \$125;

2. A journeyman plumber shall pay an initial inactive fee of thirty (30) dollars.

(b) 1. An inactive master plumber shall not secure a plumbing permit, advertise, represent himself or herself as a qualified master plumber, or otherwise engage in the work of a master plumber.

2. An inactive journeyman plumber shall not represent himself or herself as a qualified journeyman plumber or otherwise engage in the work of a journeyman plumber.

(c) To reactivate a plumbing license, the inactive licensed plumber shall:

1. Pay an additional reactivation fee:

a. \$125 for a master plumber; or

b. Thirty (30) dollars for a journeyman plumber;

2. Provide proof of insurance as required by KRS 318.030 for a master plumber; and

3. Comply with the continuing education requirements established in 815 KAR 2:010.

Section 4. Change of information. (1) A master plumber or journeyman plumber shall notify the department of any change to the name of the plumber's business and its address, employer, and the employer's address each time a change of employment is made.

(2) Death of a master plumber.

(a) If the master plumber representing a company dies, the company shall notify the department within ten (10) days of the master plumber's death.

(b) The 180 day interim period described in KRS 318.054 shall begin on the date the master plumber dies.

(c) The company shall not be required to renew the deceased's master plumber license, if the license renewal date falls within the 180 day interim period.

(d) The company shall not use the deceased master plumber's license after the expiration date of the interim period.

(e) The company shall notify the department when the company has a replacement master plumber to represent the company on or before the expiration date of the interim period.

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

(a) "Application for License as a Master Plumber", Form PLB-1, June 2018; and

(b) "Application for License as a Journeyman Plumber", Form PLB-2, June 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Plumbing, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>. [Applications for Examination for Master or Journeyman Plumber's Licenses. (1) An application for examination for a master or journeyman plumber's license shall be submitted to the department of Housing, Buildings and Construction on:

(a) Form PLB-1, Application for License as a Master Plumber; or

(b) Form PLB-2, Application for License as a Journeyman Plumber.

(2) The application shall:

(a) Be properly signed and notarized;

(b) Be accompanied by an examination fee of:

1. \$150 to take the master plumber's examination; or

2. Fifty (50) dollars to take the journeyman plumber's examination; and

(c) Include a passport-sized, color photograph of the applicant taken within the past six (6) months.

(3) The application fee shall be submitted with the application.

(4) The application fee shall be paid by United States coin and currency, post office or express money order, bank draft, or

certified check payable to the Kentucky State Treasurer.

(5) After passing the examination, an applicant for a master plumber's license shall remit a license fee of \$250.

(6) After passing the examination, an applicant for a journeyman's license shall remit a license fee of sixty (60) dollars.

Section 2. Examinations for Master or Journeyman Plumber's Licenses. (1) Examination of applicants.

(a) Regular examination of applicants for a master or journeyman plumber's license shall be conducted during the months of February, May, August, and November of each year.

(b) A special examination may be conducted at other times as the Department of Housing, Buildings and Construction directs.

(2) Time and place of examination. Notice of the time and place of examination shall be given by United States mail at least one (1) week prior to the date of examination to each person who has an approved application on file.

(3) An applicant who fails to attend or successfully complete an examination for which he or she has been scheduled may request to reschedule or retake the examination within one (1) year from the date of the applicant's first notice of examination as established in subsection (2) of this section. The requirements established in paragraphs (a) through (d) of this subsection shall apply to a rescheduled examination.

(a) The applicant shall complete and submit a new application form and examination fee as required by Section 1 of this administrative regulation. An applicant proceeding pursuant to this section shall not be required to resubmit:

1. The photograph required by Section 1(2)(c) of this administrative regulation; or

2. Proof of compliance with Sections 4 or 5 of this administrative regulation.

(b) An applicant for a journeyman plumber's license who has achieved a passing score on only the written or practical portion of the examination, but not both portions, may apply to retake the portion that he or she failed during the initial examination if the reexamination is completed within one (1) year from the date of the applicant's first notice of examination as established in subsection (2) of this section.

(c) An applicant for a journeyman plumber's license who has failed to achieve a passing score on the retaken portion of the examination may apply to retake the entire examination if the reexamination is completed within one (1) year from the date of the applicant's first notice of examination as established in subsection (2) of this section.

(d) The application of an applicant for a master or journeyman plumber's license who fails to successfully complete his or her examination within one (1) year from the date of the applicant's first notice of examination as established in subsection (2) of this section shall be void.

1. An applicant whose application has become void pursuant to this subsection may reapply.

2. Reapplication shall be accomplished by complying with this administrative regulation as if the applicant were a first-time applicant.

(4) Materials required for journeyman plumbers' examinations. An applicant for a journeyman plumber's license shall furnish the materials required for the practical examination, which are established in the List of Required Examination Materials that is included as part of the application.

(5) The testing requirements shall be designed by the State Plumbing Examining Committee and shall be more complex for the master's examination than the journeyman's examination.

Section 3. Renewals of Master and Journeyman Plumber's Licenses. (1) Renewal fees. The annual license renewal fee shall be:

(a) \$250 for a master plumber; and

(b) Sixty (60) dollars for a journeyman plumber.

(2) Continuing education. The continuing education requirements established in 815 KAR 20:032 shall be met.

(3) Inactive master renewal.

(a) To place or keep a master plumber's license in inactive status, the master plumber shall pay annually an inactive fee of

\$125.

(b) An inactive master plumber shall not secure a plumbing permit, advertise, represent himself or herself as a qualified master plumber, or otherwise engage in the work of a master plumber.

(c) To reactivate a master plumber's license, the inactive master plumber shall first pay an additional \$125 and comply with the continuing education requirements established in 815 KAR 20:032.

(4) Inactive journeyman renewal.

(a) To place or keep a journeyman plumber's license in inactive status, the journeyman plumber shall pay annually an inactive fee of thirty (30) dollars.

(b) An inactive journeyman plumber shall not represent himself or herself as a qualified journeyman plumber or otherwise engage in the work of a journeyman plumber.

(c) To reactivate a journeyman plumber's license, the inactive journeyman plumber shall first pay an additional thirty (30) dollars and comply with the continuing education requirements established in 815 KAR 20:032.

(5) Remittance of renewal fees. The renewal fee shall be paid by United States coin and currency, post office or express money order, bank draft, or certified check payable to the Kentucky State Treasurer.

Section 4. Requirements for Master Plumber Applicants. Pursuant to KRS 318.040(1)(d), each person shall meet the requirements established in subsections (1) through (4) of this section to become licensed as a master plumber.

(1)(a) An applicant shall have:

1. A valid journeyman plumber's license for a minimum of two (2) years within the past five (5) years immediately preceding application; and

2. Been actively employed in plumbing under the supervision of a licensed master plumber for a minimum of two (2) years; or

(b) The applicant shall be a Kentucky licensed engineer sufficiently experienced in mechanical engineering. The sufficiency of experience shall be determined based upon the number and complexity of the applicant's past mechanical engineering projects.

(2) An applicant shall successfully complete the examination developed and administered by the State Plumbing Examining Committee. The examination shall be designed to demonstrate that the applicant:

(a) Understands KRS Chapter 318 and 815 KAR Chapter 20;

(b) Is capable of the design of a plumbing system; and

(c) Understands the technical and practical installation techniques and principles for a safe and sanitary plumbing system.

(3) The examination shall include:

(a) Answering written questions pertaining to basic principles of plumbing and KRS Chapter 318 and 815 KAR Chapter 20; and

(b) Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes, and vents and the plumbing fixtures connected thereto.

1. The proper sizing of main stacks shall be given more importance than other piping.

2. Deductions shall be required for oversized piping and for undersized piping.

(4) The passing grade for the total examination for a master plumber shall be eighty (80) percent, with a minimum of seventy-five (75) percent obtained for each portion of the examination established in subsection (3)(a) and (b) of this section.

Section 5. Requirements for Journeyman Plumber Applicants. Pursuant to KRS 318.040(1)(d), an applicant shall meet the requirements established in subsections (1) through (3) of this section to become licensed as a journeyman plumber. (1) An applicant shall have completed two (2) consecutive years experience as an apprentice plumber.

(a) Proof of this requirement shall be satisfied by submission of:

1. A W-2 form;

2. An affidavit of a Kentucky licensed master plumber; or

3. A plumbing license issued by another state.

(b) Completion of a committee approved course shall be the

equivalent of one (1) year of experience. An applicant may only substitute one (1) year of experience if the applicant completes a committee approved course.

(2) An applicant shall successfully complete the practical and written examination developed and administered by the State Plumbing Examining Committee. The examination shall be designed to demonstrate the practical and technical understanding of plumbing principles and the ability to apply those principles for a safe and sanitary plumbing system. The examination shall include:

(a) Answering written questions pertaining to basic principles of plumbing and KRS Chapter 318 and 815 KAR Chapter 20;

(b) Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes, and vents and the plumbing fixtures connected thereto.

1. The proper sizing of main stacks shall be given more importance than other piping.

2. Deductions shall be required for oversized piping and for undersized piping; and

(c) Completing a practical section in which the applicant shall demonstrate the ability to properly install plumbing by engaging in certain activities such as properly installing a no hub cast-iron pipe and soldering copper solder connections.

(3) The passing grade for the total examination for a journeyman plumber shall be seventy-five (75) percent, with a minimum of seventy (70) percent obtained for each portion of the examination established in subsection (2)(a), (b), and (c) of this section.

Section 6. A master plumber or journeyman plumber shall notify the department of the name of the plumber's business and its address, employer, and the employer's address each time a change of employment is made.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PLB-1, "Application for License as a Master Plumber", August 2014; and

(b) Form PLB-2, "Application for License as a Journeyman Plumber", August 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m.]

STEVEN A. MILBY, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 am.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the qualifications for licensure as a master plumber and a journeyman plumber, the requirements for renewing and reactivating plumbing licenses, and the examination standards for licensed plumbers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assist the Division Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.040(1)(d) authorizes the commissioner to promulgate administrative regulations establishing qualifications for a master plumber's license and a journeyman plumber's license. KRS 318.040(2) and (3) require the department to promulgate administrative regulations establishing examination requirements. KRS 318.050 requires the department to establish reasonable application fees for licensure as a master plumber or journeyman plumber. KRS 318.054(3) requires the department to establish reasonable renewal fees for master plumbers and journeyman plumbers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the application and examination requirements and the application and renewal fees for master plumbers and journeyman plumbers.

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

(a) How the amendment will change this existing administrative regulation: This amendment corrects grammatical errors and reorganize the administrative regulation. In situations where a journeyman plumber applicant fails one of the two portions of the exam, the amendment allows a journeyman plumber applicant to retake the portion of the exam he or she failed, without having to retake the portion he or she passed. The amendment also eliminates the annual renewal fee for inactive licenses. The amendment also establishes the process for the interim period when a master plumber who represents a company passes away.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to assist the Division Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth. Eliminating superfluous language reduces the likelihood of public confusion and simplifies the regulation, without altering the net effect of the regulation. Repealing the annual fee to maintain an inactive license eliminates an unnecessary fee for the licensees. The amendment is also necessary to establish the processes for the interim period when a master plumber passes away in compliance with House Bill 100 of the 2018 Regular Session of the General Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.040(1)(d) authorizes the commissioner to promulgate administrative regulations establishing qualifications for a master plumber's license and a journeyman plumber's license. KRS 318.040(2) and (3) require the department to promulgate administrative regulations establishing examination requirements. KRS 318.050 requires the department to establish reasonable application fees for licensure as a master plumber or journeyman plumber. KRS 318.054(3) requires the department to establish reasonable renewal fees for master plumbers and journeyman plumbers.

(d) How the amendment will assist in the effective administration of the statutes: These amendments make the administrative regulation easier to understand, and eliminates an

unnecessary cost for inactive plumbers. The forms have also been updated to make them more user-friendly.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in the plumbing industry, potential applicants for master plumber license and journeyman plumber license, and Department of Housing, Buildings and Construction personnel.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3). In fact, those licensees that place their license in inactive status will no longer have to pay a yearly fee – reducing the licensee's overall cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will help the entities in question (3) read and understand the administrative regulation and the forms. Applicants for the journeyman plumber's examination will not have to retake the portion they passed in the same year. The licensees who place their license in inactive status will not have to pay the annual fee.

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

(a) Initially: There are no anticipated additional initial costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the Department. Any costs resulting from these administrative amendments will be met with existing agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not necessitate an increase in fees or require funding from the Department for implementation. The amendment actually reduces fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals in the plumbing industry and Department personnel are affected by the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 318.130.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? This amendment is not anticipated to generate additional revenue for the state or local government 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 is not anticipated to generate additional revenue for the state or local government in subsequent years. The Department's revenue will decrease by \$10,120.00 with the elimination of fees charged to inactive license holders.

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

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

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

Revenues (+/-): -\$10,120

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction Building Code Enforcement, Manufactured Housing Section (Amendment)

815 KAR 25:020. Recreational vehicles.

RELATES TO: KRS 227.550, 227.660

STATUTORY AUTHORITY: KRS 227.570, 227.580, 227.590, 227.610, 227.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.590 requires the department to establish administrative regulations governing the standards for the manufacture, sale, and alteration of recreational vehicles. KRS 227.570 requires the department to inspect and enforce the utility and safety systems of used recreational vehicles. KRS 227.580 requires a manufacturer to submit systems for quality control of recreational vehicles and the department to issue a certificate of acceptability upon approval of these systems. KRS 227.610 and 227.620 establish the requirements for the licensing of retailers. This administrative regulation establishes the requirements for retailers to obtain a license to sell recreational vehicles and the standards for certification of manufacturers of recreational vehicles.

Section 1. Standard for Recreational Vehicles. (1) All recreational vehicles manufactured for sale within the Commonwealth of Kentucky shall comply with the applicable standards set forth in the NFPA 1192 Standard on Recreational Vehicles.

Section 2. Licensed Retailers. (1) Application. An applicant for a recreational vehicle retailer license shall submit to the department:

(a) A completed Form HBC RV-2 Recreational Vehicle Retailer Application;

(b) A fee in the amount of \$200 for one (1) full year, or a reduced amount prorated on a monthly basis for a period of less than a full year, payable to the Kentucky State Treasurer; and

(c) Proof of liability insurance naming the department as the certificate holder in the minimum amount of at least:

1. \$200,000 bodily injury or death for each person;
2. \$300,000 bodily injury or death for each accident; and
3. \$100,000 property damage.

(2) Application review period. All licenses shall be granted or denied within thirty (30) days after receipt of the application.

(3) Certified Retailer. A licensed retailer may complete inspections for the public if the retailer qualifies as a certified retailer.

(a) An applicant to become a certified retailer shall complete

and submit to the department Form HBC MH/RV-2 Request for Approval to Inspect.

(b) A certified retailer shall not:

1. Perform negligent inspections or repairs on a unit; or
2. Apply the wrong seal to a unit.

(4) Out-of-state retailers. To inspect and apply Kentucky seals for used recreational vehicles that are sold by out-of-state retailers for delivery into Kentucky, an out-of-state retailer shall be a Kentucky certified retailer.

(5) Periodic reports.

(a) A retailer shall maintain a record of all new or used units sold to include the following:

1. Serial numbers;
2. B seal numbers;
3. Date manufactured;
4. Make of recreational vehicle; and
5. The name and address of the purchaser.

(b) The retailer shall make the report available to any department employee upon request.

Section 3. Certificate of Acceptability. (1) Certificate of acceptability requirement. A manufacturer shall not manufacture, import, or sell any recreational vehicle in the Commonwealth unless the manufacturer has received a certificate of acceptability issued by the department.

(2) Requirements for issuance. An applicant for a certificate of acceptability shall submit to the department:

(a) A completed Form HBC MH/RV-1 Application of Certificate of Acceptability;

(b) Its in-plant quality control systems;

(c) An affidavit certifying compliance with the applicable standards, such as NFPA 1192 as adopted through REVA;

(d) A \$500 certification of acceptability fee for a full year, or a reduced amount prorated on a monthly basis for a period of less than a full year, by check or money order, made payable to the Kentucky State Treasurer; and

(e) Proof of general liability insurance to include lot and completed operations insurance in the minimum amount of at least:

1. \$300,000 bodily injury or death for each person;
2. \$400,000 bodily injury or death for each accident; and
3. \$100,000 property damage.

(3) In-plant quality control. To obtain in-plant quality control approval, a manufacturer shall submit to an inspection by the department for field certification of satisfactory quality control. Applications for approval of in-plant quality control systems shall contain the following:

(a) A certified copy of the plans and specifications of a model or model-group for electrical, heating, and plumbing systems. All plans shall be submitted on sheets, the minimum possible size of which is eight and one-half (8 1/2) inches by eleven (11) inches, and the maximum possible size of which is twenty-four (24) inches by thirty (30) inches.

(b) The manufacturer shall certify that the systems comply with:

1. NFPA 1192 Standards on Recreational Vehicles; or
2. ANSI A119.5 Park Trailers.

(c) A copy of the procedure that directs the manufacturer to construct recreational vehicles in accordance with the plans, specifying:

1. Scope and purpose.
2. Receiving and inspection procedure for basic materials.
3. Material storage and stock rotation procedure.
4. Types and frequency of product inspection.
5. Sample of inspection control form used.
6. Responsibility for quality control programs, indicating personnel, their assignments, experience and qualifications.
7. Test equipment.
8. Control of drawings and material specifications.
9. Test procedures.

(4) Manufacturer and retailer. If the manufacturer is also a retailer, the manufacturer shall comply with retailer licensing provisions pursuant to Section 1 of this administrative regulation.

(5) Trade show. A certificate of acceptability shall not be

required for manufacturers attending a recreational vehicle trade show within the Commonwealth of Kentucky if they do not sell recreational vehicles to Kentucky licensed retailers.

(6) Incorrect or Incomplete applications.

(a) If the department receives an incorrect or incomplete application, the department shall issue a correction notice specifying the defect to the applicant within thirty (30) days of receiving the application. If no corrected application is filed within thirty (30) days, the department shall deem the application abandoned and the fee forfeited;

(b) A corrected application submitted after the thirty (30) day period shall be processed as a new application.

(8) Proprietary information.

(a) The manufacturer shall label as proprietary any information relating to building systems or in-plant quality control systems that the manufacturer considers proprietary.

(b) The department, the inspection and evaluation personnel, and local enforcement agencies shall maintain and treat the designated information as proprietary unless the department determines that disclosure is necessary to carry out the purposes of KRS 227.550 through KRS 227.665 and 815 KAR Chapter 25.

(9) Alternative standards. A manufacturer may submit alternative standard for recreational vehicles established by another state, federal government, or other independent third party for review by the department. If the department finds that the alternative standard for recreational vehicles is applicable to the standard adopted by this administrative regulation, then a certificate of accessibility shall be issued for those recreational vehicles.

Section 4. License and Certificate Renewals. (1) Expiration of a license and certificate. A license and a certificate of acceptability shall expire on:

(a) For individuals, the last day of the licensee's or certificate holder's birth month in the following year; or

(b) For business entities:

1. The licensee's or certificate holder's month of incorporation in the following year; or
2. The last day of the birth month of the principal officer of the firm.

(2) Renewal procedure. A retailer and a manufacturer holding a certificate of acceptability wishing to renew a license or certificate shall submit to the department:

(a) A completed Form HBC MH/RV-3 License and Certification Renewal Application;

(b) Proof of continuing general liability insurance coverage; and

(c) A check or money order for the annual license fee payable to the Kentucky State Treasurer, in the amount of:

1. \$200 for a licensed retailer; or
2. \$500 for a certificate of acceptability.

Section 5. Recreational Vehicles in Manufacturers' or Retailers' Possession. (1) Used recreational vehicle inspection.

(a) Prior to the offering for sale of any used recreational vehicle, or a recreational vehicle taken in trade, the retailer shall first certify that the electric, heating, plumbing, and fire and life safety systems are in a safe working condition.

(b) The retailer shall make any necessary repairs prior to offering the recreational vehicle for sale.

(c) The retailer shall affix a B seal to the recreational vehicle once any repairs have been made.

(d) If a seal is on the recreational vehicle prior to the inspection, the existing seal shall be removed and a new B seal placed on the recreational vehicle.

(2) Salvage units.

(a) A B2 seal shall be required if the retailer submits to the department an affidavit that the unit is a salvage unit.

(b) A salvage unit shall not be sold until it has been authorized, in writing, by the department to be labeled "salvage only" and the label has been affixed to the unit by the retailer.

(3) Sales between retailers.

(a) No seal shall be required if one (1) licensed retailer sells any unit to another licensed retailer.

(b) The retailer selling the unit shall submit prior notice of the sale to the department.

(4) All used recreational vehicles purchased outside the Commonwealth not bearing a Kentucky B seal shall be inspected as a used recreational vehicle by a certified retailer or the department.

(5)(a) A recreational vehicle that is not in compliance with the requirements of this administrative regulation shall be:

1. Corrected prior to the retailer certifying the recreational vehicle or offering the recreational vehicle for sale; or

2. Classified as a salvage unit and issued a salvage label in accordance with this administrative regulation.

(b) All recreational vehicles requiring repairs or corrections prior to recreational vehicle certification shall be reported to the department specifying the repairs required to correct the deficiencies.

(6) A retailer shall submit a completed Form HBC RV-7 Recreational Vehicle Unit Certification Format to the department no later than the first week of each month.

(7) Fees for inspections. The fees for the inspection of recreational vehicles shall be:

(a) If performed by a certified retailer:

1. Twenty (20) dollars per hour;

2. Twenty-two (22) cents per mile, measured from the place of the certified retailer's place of business; and

3. Twenty-five (25) dollars for the seal.

(b) If performed by the department:

1. Thirty-five (35) dollars; and

2. Twenty-five (25) dollars for the seal.

Section 6. Serial Numbers, Model Numbers, and Date Manufactured. A clearly designated serial number, model number, and date manufactured shall be stamped into the tongue or front cross member of the frame at the lower left hand side (while facing the unit) and if there is no tongue or cross member, then a data plate with this information shall be affixed on the outside in a conspicuous place.

Section 7. Change of Information. (1) Manufacturers or retailers shall notify the department in writing within thirty (30) days of a change in any of the following:

(a) The company or corporate name;

(b) The address of the company;

(c) Ownership interest of twenty-five (25) percent or more of the company within a twelve (12) month period; or

(d) The principal officers of the company.

(2) Manufacturers shall notify the department in writing within thirty (30) days of a change in any of the following:

(a) The location of any manufacturing facility; or

(b) The location of a new manufacturing facility

(3) If the business location of a retailer is changed, the department shall reissue the license to reflect the change of location without charge if it is located within the same county. A change of location to another county, which is not adjacent to the initial county, shall require a new license.

Section 8. Temporary Licenses. (1) An unlicensed retailer may offer for sale recreational vehicles within the Commonwealth of Kentucky if the retailer purchases a temporary license from the department.

(2) Temporary license requirements. An out-of-state applicant for a temporary license shall:

(a) Be a duly licensed retailer in a state other than Kentucky;

(b) Furnish to the department proof of liability insurance in the minimum amount of at least:

1. \$200,000 bodily injury or death for each person;

2. \$300,000 bodily injury or death for each accident; and

3. \$100,000 property damage;

(c) Provide satisfactory assurance to the department by way of a physical inspection by an authorized representative of the department that each new unit the retailer proposes to display, show, or offer for sale, bears a B seal;

(d) Submit to the department Form HBC RV-6 Temporary RV

Retailer's License:

- (e) Provide the department with the name, location and time of the proposed event.
- (f) Pay by check or money order a temporary license fee of \$100 made payable to the Kentucky State Treasurer.
- (g) Certify to the department that the event shall comply with the applicable fire code requirements.
- (h) Possess a valid Kentucky sales tax certificate; and
- (i) The state in which the applicant is licensed shall have reciprocal provisions for temporary licensing of Kentucky retailers.
- (3) An application for a temporary license shall be submitted to the department at least thirty (30) days prior to an event at which the retailer intends to offer for sale or sell recreational vehicles.
- (4) A retailer shall not be issued more than two (2) temporary licenses per calendar year.
- (5) Used recreational vehicles. A temporary license retailer shall not display, show, or offer for sale within the Commonwealth any used recreational vehicles except for used recreational vehicles with a Kentucky seal.
- (6) Duration of temporary license. A temporary license shall not exceed fifteen (15) days.
- (7) Temporary licenses shall be prominently displayed at the location where the applicant is transacting business. The license shall be valid only for the location stated on the application.

Section 9. Seals. (1) Application for seals. A licensed retailer shall submit to the department the following for B seals:

(a) A completed Form HBC MH-12, Application for Purchasing B Seals; and

(b) A fee of twenty-five (25) dollars for each B Seal requested, payable by check or money order to the Kentucky State Treasurer.

(2) Alteration or conversion of a unit bearing a seal.

(a) Any alteration of the plumbing, heat-producing equipment, electrical equipment installations or fire and life safety in a recreational vehicle which bears a seal, shall void the approval and the seal shall be returned to the department.

(b) The following shall not constitute an alteration or conversion:

- 1. Repairs with approved component parts by the manufacturer;
- 2. Conversion of listed fuel-burning appliances in accordance with the terms of the manufacturer's listing;
- 3. Adjustment and maintenance of equipment;
- 4. Replacement of equipment in kind; or
- 5. Any change that shall not affect those areas regulated by the NFPA 1192.

(c) Any dealer proposing an alteration to a recreational vehicle bearing a seal shall apply to the department. The application shall include:

- 1. Make and model of the recreational vehicle;
- 2. Serial number;
- 3. State seal number;
- 4. A complete description of the work to be performed together with plans and specifications when required; and
- 5. Location of the recreational vehicle where work is to be performed.

(d) Upon completion of the alteration, the applicant shall request the department to make an inspection.

(e) The applicant shall purchase a replacement seal, based on inspection of the alteration for a fee of twenty-five (25) dollars.

(3) Placement of B seals.

(a) Each B seal shall be assigned and affixed to a specific recreational vehicle.

(b) Assigned B seals shall not be transferable except upon prior approval of the department.

(c) A B seal that is not affixed as assigned shall be void, and the B seal shall be returned to or confiscated by the department.

(d) A B seal shall remain the property of the department and shall be seized by the department in the event of a violation of KRS 227.550 to 227.665 or this administrative regulation.

(e) A B seal shall be securely affixed by the door on the handle side at approximately handle height.

(f) No other seal, stamp, cover, or other marking shall be

placed within two (2) inches of the B seal.

(4) Lost or damaged seals.

(a) If a B seal becomes lost or damaged, the owner shall immediately notify the department in writing, specifying:

- 1. The manufacturer;
- 2. The recreational vehicle serial number; and
- 3. When possible, the B seal number.

(b) All damaged B seals shall be returned to the department.

(c) Damaged and lost B seals shall be replaced by the department after an inspection and payment of the appropriate fee under Section 3(10).

(4) Denial and repossession of seals.

(a) If the department discovers that a retailer fails to repair a used recreational vehicle under the standards and procedures set forth in KRS 227.550 to 227.665 and this administrative regulation, or fails to comply with any provision for placement of B seals, the department shall provide notice to the retailer of the violations.

(b) The retailer shall fix the violations.

(c) If the retailer continues to offer for sale recreational vehicles in violation of KRS 227.550 to 227.665 or this administrative regulation, applications for new seals shall be denied and the seals previously issued and unused shall be confiscated. The department shall reimburse the retailer for the price of the confiscated unused seals.

(d) Upon satisfactory proof of compliance, the retailer shall resubmit an application for B seals.

(5) Red Tagging.

(a) If any recreational vehicle bearing a B seal is found to be in violation of KRS 227.550 to 227.665 or this administrative regulation, the department shall attach to the vehicle a red-tag and furnish the retailer a copy of same.

(b) The department, a retailer, or a manufacturer shall not remove the red tag until the necessary corrections have been made and approved by an inspection conducted by the department or a certified retailer.

Section 10. Incorporation by reference. (1) The following material is incorporated by reference:

(a) "Form HBC MH/RV-1, Application of Certificate of Acceptability", August 2018;

(b) "Form HBC MH/RV-2, Request for Approval to Inspect", August 2018;

(c) "Form HBC MH/RV-3, License and Certification Renewal Application", August 2018;

(d) "Form RV-2, Recreational Vehicle Retailer Application", August 2018;

(e) "Form HBC RV-6, Temporary RV Retailer's License", August 2018; and

(f) "Form HBC MH-12, Application for Purchasing Seals", August 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>. [KRS 227.590 requires the Recreational Vehicle Certification and Licensure Board to establish rules and administrative regulation governing the standards for manufacture, sale, and alteration of recreational vehicles; and the office of the State Fire Marshal is required to license dealers pursuant to KRS 227.640 and to issue certificates of acceptability pursuant to KRS 227.580. These administrative regulations are intended to assure safety for owners and occupiers of recreational vehicles by regulating dealers, setting standards for construction and inspection. This amendment is necessary to clarify the law and improve the enforcement of safety standards for all recreational vehicles, including a new entity known as park trailers. This amendment was approved by the Recreational Vehicle Board on May 2, 1991.]

Section 1. Definitions. For purposes of this administrative regulation the following definitions shall apply:

(1) "Act" means the Mobile Home and Recreational Vehicle Act, KRS 227.550 to 227.660.

(2) "Agency, testing" means an outside organization which is:

(a) Primarily interested in testing and evaluating equipment and installations;

(b) Qualified and equipped for, or to observe experimental testing to approved standards;

(c) Not under the jurisdiction or control of any manufacturer or supplier of any industry;

(d) Makes available a published report in which the specific information is included stating that the equipment and installations listed or labeled have been tested and found safe for use in a specific manner; and

(e) Approved by the board.

(3) "Alteration or conversion" means the replacement, addition, modification, or removal of any equipment or installations which may affect the plumbing, heat-producing or electrical systems, and fire and life safety systems or their function, unless excluded by this administrative regulation.

(4) "ANSI" means the American National Standards Institute.

(5) "Board" means the Recreational Vehicle Certification and Licensure Board defined in KRS 227.550(1).

(6) "Certificate of acceptability" means the certificate provided to the manufacturer signifying the manufacturer's ability to manufacture, import or sell recreational vehicles within the state to licensed Kentucky dealers.

(7) "Certified Kentucky dealer" means a dealer who is approved by the State Fire Marshal to inspect used recreational vehicles which are brought into Kentucky, and repair them, if necessary, under ANSI A119.2/NFPA 501C or ANSI A119.5 before placing a "B" seal upon them.

(8) "Class 'A' seal" as defined by KRS 227.550(2).

(9) "Class 'B' seal" as defined by KRS 227.550(3).

(10) "Dealer" as defined by KRS 227.550(4).

(11) "Established place of business" as defined by KRS 227.550(5).

(12) "Hard surfaced lot" means an area open to the public during business hours with a surface of concrete, asphalt/macadam, compacted gravel or stone, or other material of similar characteristics.

(13) "HUD Act" or "federal act" as defined by KRS 227.550(6).

(14) "Manufacturer" as defined by KRS 227.550(8).

(15) "Manufactured housing" as defined by KRS 227.550(7).

(16) "NFPA 501(C)" as defined by KRS 227.550(12).

(17) "Office" as defined by KRS 227.550(13).

(18) "Offer for sale" means to display, exhibit or otherwise advertise a recreational vehicle before the general public. It also means negotiating the purchase and sale or exchange of recreational vehicles for a fee, commission, compensation, or other valuable consideration.

(19) "Park trailer" means a recreational vehicle that meets the following criteria:

(a) Built on a single chassis mounted on wheels.

(b) Primarily designed as temporary living quarters for seasonal or destination camping which may be connected to utilities necessary for operation of installed fixtures and appliances.

(c) Having a gross trailer area not exceeding forty (40) square feet in the set-up mode.

(d) Having a gross trailer area not less than 240 square feet and certified by the manufacturer as complying with ANSI A119.5.

(20) "Person" means a person, partnership, corporation or other legal entity.

(21) "Recreational vehicle" as defined by KRS 227.550(14), the HUD Act in 24 C.F.R., Parts 3280, 3282 and 3283, and defined herein as "park trailers."

(22) "Red tag" means a written notice which is applied to a recreational vehicle by a representative of the State Fire Marshal's office in accordance with Section 4 of this administrative regulation signifying that the recreational vehicle is not in compliance with applicable laws.

(23) "Registration" means the transfer of title or any other official recording of change of ownership.

(24) "Salvage unit" means any used recreational vehicle which

is identified by the State Fire Marshal and the dealer, or by title, to not be subject to "B" seal requirements because it is not to be sold or used for habitable purposes.

(25) "Suitable sign" means a sign with the dealership name and type of dealership in letters of a minimum height of six (6) inches and a minimum width of one and one-half (1 1/2) inches.

Section 2. Authorization. (1) This administrative regulation is authorized to carry out the provisions of law in KRS Chapter 227. If these administrative regulations conflict with the applicable provisions of ANSI A119.2/NFPA 501C, or ANSI A119.5 the codes shall govern in all cases.

(2) Subject to the provisions of applicable law, when it becomes necessary during an inspection to determine compliance, the office may require the dealer or manufacturer to remove or expose a portion of the recreational vehicle in order to make the inspection.

Section 3. Scope and Purpose. These administrative regulations establish licensing requirements for all dealers and govern the design, manufacture, storage, and sale of recreational vehicles which are manufactured, sold, leased, or transported for use within or outside of the Commonwealth. These administrative regulations apply to recreational vehicles manufactured in manufacturing facilities located within or outside the Commonwealth. Recreational vehicles brought into this state for exhibition use only and which shall not be sold in this state, shall be exempt from the coverage of this administrative regulation if inspections reveal no condition hazardous to health or safety.

Section 4. Standards for Vehicles in Manufacturers' or Dealers' Possession. (1) The office shall enforce the standards and requirements for the installation of plumbing, heating, electrical, and fire and life safety systems in recreational vehicles as it determines are reasonably necessary to protect the health and safety of the occupants and the public.

(2) All recreational vehicles manufactured for sale within the Commonwealth of Kentucky shall comply with the applicable standards set forth in ANSI A119.2/NFPA 501C, Recreational Vehicles, 1990 Edition, or ANSI A119.5, Park Trailers, 1988 Edition, hereby incorporated by reference. Copies of ANSI A119.2/NFPA 501C are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. Copies of ANSI A119.5 are available from the American National Standards Institute, 1430 Broadway, New York, New York 10018. This material is available for public inspection at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday between 8 a.m. and 4:30 p.m.

(3) Prior to the offering for sale of any used recreational vehicle, the dealer shall first certify that the electric, heating, plumbing, and fire and life safety systems have been checked, and repaired if necessary, and found to be in safe working condition and then affix a "B" seal to the unit.

(4) All recreational vehicles taken in trade by a dealer shall be reinspected and certified that they are in compliance with requirements of this subsection and subsection (7) of this section. The existing class "A" or class "B" seal shall be removed and a new seal or label affixed to the unit; or a new seal shall be affixed to the unit over the existing seal or label.

(5) A seal shall be required if the dealer submits to the office an affidavit that the unit is a salvage unit. A salvage unit shall not be sold until it has been authorized, in writing, by the office to be labeled "salvage only" and the label has been affixed to the unit by the dealer. No seal shall be required if one (1) licensed dealer sells any unit to another licensed dealer; however, prior notice of the shall be given to the office.

(6) All new recreational vehicles purchased outside the Commonwealth of Kentucky not bearing a class "A" seal of approval and all used recreational vehicles purchased outside the Commonwealth of Kentucky, not bearing any Kentucky seal of approval, shall be inspected by a certified Kentucky dealer or the office and a class "B" seal of approval issued according to the

following criteria:

- (a) Inspection of the plumbing and waste systems;
 - (b) Inspection of the heating unit to determine adequacy of the system;
 - (c) Inspection of the electrical systems including the main circuit box and all outlets/switches to detect any damaged coverings, lost screws, or improper installations;
 - (d) Inspection of fire and life safety (fire extinguishers and second means of egress).
- (7) Any Kentucky licensed recreational vehicle dealer that maintains the capability to perform minor maintenance of plumbing, heating, and electrical systems of recreational vehicles shall be permitted to inspect and certify those recreational vehicles purchased in another state for use within the Commonwealth of Kentucky. Any dealer desiring to perform this service shall make application to the Department of Housing, Buildings and Construction, State Fire Marshal's Office for appropriate certification. Upon application approval, the dealer shall be a "certified Kentucky dealer".
- (8) Any unit found to be in noncompliance with the requirements of this administrative regulation shall be corrected prior to the dealer certifying the unit or offering the unit for sale unless the unit has been issued a salvage label in accordance with this administrative regulation. All units requiring repairs or corrections prior to unit certification shall be reported to the office specifying the repairs required to correct the deficiencies. Appropriate reporting forms shall be made available to qualified dealers performing inspection.
- (9) The fee for the inspection of recreational vehicles shall be twenty (20) dollars per hour plus twenty-two (22) cents per mile and a twenty-five (25) dollar seal fee when performed by a certified Kentucky dealer. Inspections performed by the office shall be thirty-five (35) dollar inspection fee and twenty-five (25) dollar seal fee.

Section 5. Applicability and Interpretation of Code and Regulation Provisions. (1) Any request for interpretations of any provisions of this administrative regulation or the Act may be submitted, in writing, by any interested person to the office. It is the policy of the office that questions regarding ANSI A119.2/NFPA 501C or ANSI A119.5 shall, whenever feasible, be submitted to the NFPA or ANSI for their recommendation. The opinion or decision of the office shall be in writing for written requests.

Section 6. Certificate of Acceptability. (1) A manufacturer shall not manufacture, import, or sell any recreational vehicle in this state unless he has procured a certificate of acceptability from the board. Compliance shall be enforced through KRS 227.992. Recreational vehicles manufactured in this state and designed for delivery to and for sale in a state that has a code that is inconsistent with applicable provisions of ANSI A119.2/NFPA 501C or ANSI A119.5 as required by Section 4(2) of this administrative regulation shall not comply with this provision. A certificate of acceptability shall not be required for manufacturers attending a recreational vehicle trade show within the Commonwealth of Kentucky if they do not sell recreational vehicles to Kentucky dealers.

- (2) Requirements for issuance.
 - (a) The manufacturer shall submit and the office shall approve in-plant quality control systems;
 - (b) An affidavit certifying compliance with the applicable standards shall be attached to the application;
 - (c) A \$500 fee shall accompany the application. The fee shall be paid by check or money order and shall be made payable to: Kentucky State Treasurer;
 - (d) The manufacturer shall furnish and maintain with the office a certificate of insurance to certify proof of general liability insurance to include lot and completed operations insurance in the minimum amount of \$300,000 bodily injury or death for each person, \$400,000 bodily injury or death for each accident, and \$100,000 property damage.
- (3) To obtain in-plant quality control approval, a manufacturer shall submit a system for in-plant control pursuant to paragraph (b)

of this subsection and submit to inspection by the office for field certification of satisfactory quality control. Applications for approval of in-plant quality control systems shall contain the following:

(a) A certified copy of the plans and specifications of a model or model group for electrical, heating, and plumbing systems. All plans shall be submitted on sheets, the minimum possible size of which is eight and one-half (8 1/2) inches by eleven (11) inches, and the maximum possible size of which is twenty-four (24) inches by thirty (30) inches. The manufacturer shall certify that the systems comply with ANSI A119.2/NFPA 501C, Recreational Vehicles or ANSI A119.5, Park Trailers, whichever is applicable.

(b) Also a copy of the procedure which will direct the manufacturer to construct recreational vehicles in accordance with the plans, specifying:

- 1. Scope and purpose.
- 2. Receiving and inspection procedure for basic materials.
- 3. Material storage and stock rotation procedure.
- 4. Types and frequency of product inspection.
- 5. Sample of inspection control form used.
- 6. Responsibility for quality control programs, indicating personnel, their assignments, experience and qualifications.
- 7. Test equipment.
- 8. Control of drawings and material specifications.
- 9. Test procedures.

(4) A unit certification format certifying compliance with the Act and administrative regulations shall be submitted to the office no later than the end of the first week of each month. The unit certification format shall contain the information in the format in Section 12 of this administrative regulation.

(5) A manufacturer to which a certificate of acceptability has been issued shall not modify in any way its manufacturing specifications without prior written approval of the office.

(6) If the manufacturer is also a dealer, he shall also comply with dealer licensing provisions.

(7) If the applicant does not conform with these administrative regulations, the applicant shall be so notified in writing by the office within ten (10) working days of the date received. If the applicant fails to submit a corrected application in accordance with the information supplied on the application correction notice, the application shall be deemed abandoned and twenty (20) percent of fees due shall be forfeited to the office. Any additional submission shall be processed as new application.

(8) Manufacturers shall notify the office in writing within thirty (30) days of any of the following occurrences:

- (a) The corporate name is changed;
- (b) The main address of the company is changed;
- (c) There is a change in twenty-five (25) percent or more of the ownership interest of the company within a twelve (12) month period;
- (d) The location of any manufacturing facility is changed;
- (e) A new manufacturing facility is established; or
- (f) There are changes in the principal officers of the firm.

(9) Any information relating to building systems or in-plant quality control systems which the manufacturer considers proprietary shall be so designated at the time of plans submission, and shall be so held by the office, and by the inspection, evaluation, and local enforcement agencies unless the board determines in each case that disclosure is necessary to carry out the purposes of the Act.

(10) The office may determine that the standards for recreational vehicles established by a state or a recognized body or agency of the federal government or other independent third party are at least equal to applicable provisions of ANSI A119.2/NFPA 501C, Recreational Vehicles or ANSI A119.5, Park Trailers, as adopted by this administrative regulation. If the office finds that these standards are actually enforced then it may issue a certificate of acceptability for those recreational vehicles.

Section 7. Serial Numbers, Model Numbers, Date Manufactured. A clearly designated serial number, model number, and date manufactured shall be stamped into the tongue, or front cross member of the frame at the lower left hand side (while facing the unit), and if there is no tongue or cross member, then a data

plate with this information shall be affixed on the outside in a conspicuous place.

~~Section 8. Licensed Kentucky Dealers. (1) A dealer of recreational vehicles shall not engage in business in this state without a license issued by the office upon application.~~

~~(2) Application shall contain the following information:~~

~~(a) Name and address of the chief managing officer;~~

~~(b) Location of each and every established place of business;~~

~~(c) Social Security number and date of birth of chief managing officer;~~

~~(d) Affidavit certifying compliance with the Act and administrative regulations;~~

~~(e) Names of officers if dealership in corporate form;~~

~~(f) Names of partners if dealership in partnership form;~~

~~(g) A copy of a valid Kentucky sales tax certificate; and~~

~~(h) Any other information the office deems commensurate with safeguarding of the public interest in the locality of the proposed business.~~

~~(3) All licenses shall be granted or refused within thirty (30) days after application, and shall expire, unless revoked or suspended, on December 31 of the calendar year for which they are granted.~~

~~(4) The license fee shall be \$200. The fee shall be paid by check or money order and shall be made payable to Kentucky State Treasurer.~~

~~(5) The license shall be conspicuously displayed at the established place of business. If the business location is changed, the office shall endorse the change of location on the license without charge if it is located within the same municipality. A change of location to another municipality shall require a new license.~~

~~(6) The dealer shall furnish and maintain with the office a certificate of insurance to certify proof of liability insurance in the minimum amount of \$200,000 bodily injury or death for each person, \$300,000 bodily injury or death for each accident, and \$100,000 property damage.~~

~~(7) Periodic reports:~~

~~(a) Dealers shall maintain a record of all units sold, new and used, to include serial numbers, Kentucky seal numbers ("A" or "B"), date manufactured, make, and the name and address of the purchaser. This report shall be in the format depicted in Section 13 of this administrative regulation. The report shall be made available to the field inspector on a monthly basis.~~

~~(b) Notification of a change in the application information shall be made within thirty (30) days of any of the following occurrences:~~

~~1. Dealership name is changed;~~

~~2. Established place of business is changed;~~

~~3. There is a change in twenty-five (25) percent or more of the ownership interest of the dealership within a twelve (12) month period; or~~

~~4. There are changes in the principal officers of the firm.~~

~~(8) Out-of-state dealers with valid Kentucky license. Exception: an applicant whose place of business is in another state and who possesses a valid dealer's license in another state, shall be licensed upon application and approval by the office in accordance with this administrative regulation. These out-of-state dealers shall certify and provide Kentucky seals only for units actually sold for delivery into Kentucky.~~

~~(9) Any dealer duly licensed under subsections (1) through (8) of this section may offer for sale or sell recreational vehicles on a temporary basis at a location outside the municipality for which the dealer is currently licensed under the following conditions:~~

~~(a) Written notification to the State Fire Marshal's office thirty (30) days in advance of any event at which the dealer plans to exhibit recreational vehicles, giving name, location and duration of the proposed event and that the dealer shall comply with applicable fire code requirements for the event.~~

~~(b) No event exceeds fifteen (15) days in duration.~~

~~(c) The dealer complies with applicable temporary licensing requirements of Section 9 of this administrative regulation for authorized events in excess of two (2).~~

~~Section 9. Temporary Licenses. (1) A dealer, except one (1) possessing a valid Kentucky license issued pursuant to Section 8 of this administrative regulation shall not offer for sale or sell recreational vehicles within the Commonwealth of Kentucky unless the dealer shall purchase from the Office of the State Fire Marshal a temporary license.~~

~~(2) An out-of-state applicant for temporary license shall meet the following requirements before a temporary license shall be granted:~~

~~(a) Be a duly licensed dealer in a state other than Kentucky;~~

~~(b) Furnish to the office a certificate of insurance as proof of liability insurance in the minimum amount of \$200,000 bodily injury or death for each person, \$300,000 bodily injury or death for each accident, and \$100,000 property damage;~~

~~(c) Provide satisfactory assurance to the office by way of a physical inspection by an authorized representative of the office, that each new unit the dealer proposes to display, show or offer for sale, bears a Kentucky class "A" seal of approval. Used units shall not be displayed, shown or offered for sale within the Commonwealth of Kentucky by any dealer who does not possess a valid Kentucky license issued pursuant to Section 8 of this administrative regulation;~~

~~(d) Possess a valid Kentucky sales tax certificate;~~

~~(e) The state in which the applicant is licensed shall have reciprocal provisions for temporary licensing of Kentucky dealers;~~

~~(3) Any temporary license shall not exceed fifteen (15) days duration and the license fee shall be \$100 for each authorized event.~~

~~(4) Applications for a temporary license shall be made at least thirty (30) days in advance of any event at which recreational vehicles shall be offered for sale or sold and the application shall state the name, location and time of the proposed event and all dealers shall comply with applicable fire code requirements for the proposed event.~~

~~(5) Temporary licenses shall be prominently displayed at the location where the applicant is transacting business. The license shall be valid only for the location stated on the application.~~

~~(6) A dealer shall not be issued more than two (2) temporary licenses per calendar year.~~

~~Section 10. Seals. (1) A manufacturer who has received a certificate of acceptability from the office shall not sell or offer for sale to Kentucky dealers in this state recreational vehicles unless they bear a class "A" seal of approval issued by and purchased from the office. The provision shall not apply to vehicles sold or offered for sale for shipment out of state.~~

~~(2) A dealer who has received a license from the office shall not sell or offer for sale a recreational vehicle except as permitted between licensed dealers pursuant to Section 4(6) of this administrative regulation unless it has an "A", a "B" seal or a "salvage label" affixed to the unit. Any dealer who has acquired a used recreational vehicle without a seal shall apply to the office for a class "B" seal by submitting an affidavit certifying either that all electrical, heating, plumbing, and fire and life safety equipment has been checked, and if necessary, repaired, and is now in safe working condition, or that the unit meets the applicable code. Any licensed dealer who has acquired a new recreational vehicle without an "A" seal, shall notify the office and the manufacturer upon discovery. Units without seals affixed shall not be displayed or offered for sale prior to certification by the office or manufacturer.~~

~~(a) Acquisition of seals.~~

~~1. Any manufacturer, except one altering a new recreational vehicle bearing a seal, shall qualify for acquisition of a class "A" seal by obtaining a certificate of acceptability pursuant to KRS 227.580 and Section 6 of this administrative regulation.~~

~~2. Any dealer, except one altering a recreational vehicle bearing a seal, shall qualify for acquisition for a class "B" seal by giving an affidavit certifying either that all electrical, heating, plumbing, and fire and life safety equipment has been checked, if necessary, repaired, and is now in safe working condition, or that the unit meets the applicable code.~~

~~(b) Application for seals.~~

VOLUME 45, NUMBER 3 – SEPTEMBER 1, 2018

1. Any person who has met the applicable requirements of Section 6 or 8 of this administrative regulation shall apply for seals in the form prescribed by the office. The application shall be accompanied by the seal fee of twenty-five (25) dollars for each class "A" seal or twenty-five (25) dollars for each class "B" seal.

2. If the applicant has qualified to apply for seals pursuant to the in-plant quality control approval method, the seal application shall include the certificate of acceptability number.

(c) Alteration or conversion of a unit bearing a seal.

1. Any alteration of the plumbing, heat-producing equipment, electrical equipment installations or fire and life safety in a recreational vehicle which bears a seal, shall void the approval and the seal shall be returned to the office.

2. The following shall not constitute an alteration or conversion:

- Repairs with approved component parts;
- Conversion of listed fuel-burning appliances in accordance with the terms of their listing;
- Adjustment and maintenance of equipment;
- Replacement of equipment in kind;
- Any change that shall not affect those areas regulated by ANSI A119.2/NFPA 501C, Recreational Vehicles or ANSI A119.5, Park Trailers.

3. Any dealer proposing an alteration to a recreational vehicle bearing a seal shall make application to the office. The application shall include:

- Make and model of recreational vehicle;
- Serial number;
- State seal number;
- A complete description of the work to be performed together with plans and specifications when required; and
- Location of the recreational vehicle where work is to be performed.

4. Upon completion of the alteration, the applicant shall request the office to make an inspection.

5. The applicant shall purchase a replacement seal, based on inspection of the alteration for a fee of two (2) dollars.

(d) Denial and repossession of seals. If inspection reveals that a manufacturer is not constructing recreational vehicles according to the applicable provisions of ANSI A119.2/NFPA 501C or ANSI A119.5; or, if inspection reveals that any dealer failed to repair a used recreational vehicle under the standards and procedures set forth in this administrative regulation and KRS 227.550 to 227.660 or failed to comply with any other provision for placement of seals and labels; and the dealer or manufacturer, after having been served with a notice setting forth in what respect the provisions of this administrative regulation and the code have been violated, continues to manufacture, sell or offer for sale recreational vehicles in violation of these rules and the code, applications for new seals shall be denied and the seals previously issued and unused shall be confiscated and credit given. Upon satisfactory proof of compliance, the manufacturer or dealer shall resubmit an application for seals.

(e) Seal removal. If any recreational vehicle bearing the seal is found to be in violation of this administrative regulation or the Act, the office shall attach to the vehicle a notice of noncompliance or a "red tag" and furnish the manufacturer or dealer a copy of same. The office, dealer or manufacturer shall not remove the noncompliance tag or "red tag" until corrections have been made, and the owner or his agent has requested an inspection in writing to the office or given an affidavit certifying compliance. Removal of any "red tag" shall result in repossession of all seals held by the dealer or manufacturer until the facility is once again in full compliance with the Act and this administrative regulation.

(f) Placement of seals.

1. Each seal shall be assigned and affixed to a specific recreational vehicle. Assigned seals shall not be transferable unless upon prior approval of the office and shall be void when not affixed as assigned, and all seals shall be returned to or shall be confiscated by the office. The seal shall remain the property of the office and shall be seized by the office in the event of violation of the Act or administrative regulation.

2. The seal shall be securely affixed by the door on the handle side at approximately handle height.

3. No other seal, stamp, cover, or other marking shall be placed within two (2) inches of the seal or label.

(g) Lost or damaged seals.

1. When a seal becomes lost or damaged, the office shall be notified immediately in writing by the owner. The owner shall specify the manufacturer, the recreational vehicle serial number, and when possible, the seal number.

2. All damaged seals shall be promptly returned. Damaged and lost seals shall be replaced by the office with a replacement seal upon payment of the replacement seal fee of two (2) dollars.

3. A dealer shall not display, sell or offer for sale a recreational vehicle unless an "A" seal, a "B" seal or salvage label is affixed to the unit.

Section 11. Effective Date. The effective date of this administrative regulation shall be September 1, 1991.

Section 12. Recreational Vehicle Unit Certification Format.

RECREATIONAL VEHICLE UNIT CERTIFICATION FORMAT

Name of Manufacturer:

Mailing Address:

County:

City:

State:

Zip Code

I hereby certify that the recreational vehicles as described hereon have been constructed in compliance with ANSI A119.2/NFPA 501(C) or ANSI A119.5.

NO.	SERIAL #	KY SEAL #	DATE MFG.	MODEL	SIZE	DEALER
-	-	-	-	-	-	-

This form shall be used in reporting units to the Office of the State Fire Marshal. The form shall be completed in duplicate with the original to be sent to the Office of the State Fire Marshal, and the copy retained by the manufacturer. This form shall be mailed to the Office of the State Fire Marshal when the last entry has been filled or not later than the first week of each month.

Date: _____ By _____ (Person Authorized to Certify These Units)

Section 13. Dealer Certification Format.

DEALER CERTIFICATION FORMAT

Name of Dealer:

Mailing Address:

County:

City:

State:

Zip Code:

I hereby certify that the used units described hereon have been inspected, A NEW "B" seals is affixed, and are in compliance with the standards as required by KRS 227.550 through KRS 227.660 and administrative regulations thereto and that the new recreational vehicles described hereon have the Kentucky Class "A" seal affixed.

NO.	SERIAL #	KY SEAL #	DATE MFG.	MAKE	PURCHASER & ADDRESS
-	-	-	-	-	-

This form shall be used in reporting units to the Field Inspector.

Date:

Signature:]

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

September 26, 2018, at 10:00 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2018 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for persons and companies engaged in the sale of recreational vehicles and the standards for certification of manufacturers of recreational vehicles.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the licensing requirements for recreational vehicle retailers, the manufacturing standards and the process for a manufacturer to obtain a certificate of acceptability, and the inspection process to ensure the safety of owners of recreational vehicles and the public at large.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227.590 requires the department to establish rules and administrative regulation governing the standards for manufacture, sale, and alteration of recreational vehicles. KRS 227.570 requires the department to inspect and enforce the utility and safety systems of used recreations vehicles. KRS 227.580 requires a manufacturer to submit systems for quality control of recreational vehicles, and the department to issue a certificate of acceptability upon approval.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation directly implements the authorizing statutes and establishes the requirements for recreational vehicles.

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

(a) How the amendment will change this existing administrative regulation: This amendment corrects grammatical errors and reorganizes portions of the administrative regulation. It clarifies the renewal process for a licensed retailer and a certified manufacturer. This amendment also updates the required manufacturing standards to the NFPA 1192.

(b) The necessity of the amendment to this administrative regulation: To make the administrative regulation easier to read and aid in the understanding of the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment directly conforms to the authorizing statutes by establishing the requirements for renewal of licensure and certificate of acceptability. The amendment updates the standards for recreational vehicles. Finally, the amendment clarifies the inspection process for recreational vehicles.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make it easier for the intended readers to read and understand the administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All retailers of recreational vehicles,

manufacturers of recreational vehicles, and the Department of Housing, Buildings and Construction personnel will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This amendment imposes no new requirements on the affected parties in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will be easier to understand and will be consistent with the rest of 815 KAR Chapter 25.

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

(a) Initially: There are no anticipated initial costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs to administer these regulatory amendments on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the agency. Any agency costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all retailers of recreational vehicles and manufacturers of recreational vehicles will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Section will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 227.590.

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

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

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

(d) How much will it cost to administer this program for

subsequent years? There are no anticipated additional costs to administer this regulatory amendment for subsequent years.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Building Code Enforcement, Manufactured Housing Section
(Amendment)

815 KAR 25:040. Fire safety requirements in manufactured and mobile homes.

RELATES TO: KRS 227.590, KRS 219.310-219.410[KRS 227.550-227.665]

STATUTORY AUTHORITY: KRS 227.555, 227.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.590 requires the department to promulgate administrative regulations governing the manufacture, sale, and alteration of manufactured homes, mobile homes, and recreational vehicles. KRS 227.555 requires the department[~~Office of Housing, Buildings and Construction~~] to design and cause to be placed a notice stating the requirements of KRS 227.555(1) and the penalty for noncompliance as set out in KRS 227.555(6)[~~and to cause the notice to be placed at each vehicle entrance to a mobile home community~~]. This administrative regulation establishes requirements for the notice.

Section 1. Notice. (1) Each manufactured home and mobile home community permitted pursuant to KRS 219.310 to 219.410 and each county clerk's office[~~licensed by the Cabinet for Health and Family Services~~] shall post Form HBC MH-15[~~official notice of a homeowner's responsibilities set forth in KRS 227.555(1)~~].

(2) A permitted manufactured home or mobile home community or a county clerk's office may use a current or previously generated notice as long as the notice:

(a) Sets[~~The notice shall set~~] forth the language contained in KRS 227.555(1) and (5)[~~as required by KRS 227.555(2)(a)~~]; and

(b) States[~~The notice shall also state~~] that the failure of a homeowner to comply with the requirements shall be a violation [which is] punishable by a fine pursuant to KRS 534.040. [(2) ~~The county court clerk shall maintain a typed eleven (11) inch by fourteen (14) inch poster in a conspicuous place in the clerk's office providing the notice required by subsection (1) of this section.~~]

Section 2. Posting Requirements[~~of Notice~~]. (1) Placement.

(a) Form HBC MH-15[~~The notice~~] shall be permanently posted [outside] at each vehicle entrance to a manufactured home or mobile home community.

(b) The county court clerk shall post Form HBC MH-15 in a conspicuous place in the clerk's office.

(2) Display colors. The color of the letters on Form HBC MH-15[~~the notice~~] shall contrast with the background color of Form HBC MH-15[~~the notice~~].

(3) Size. The size of Form HBC MH-15 shall be a minimum of eight and one-half (8 1/2) by eleven (11) inches.

(4) Material used. Form HBC MH-15 shall be printed with and on material that will not deteriorate.

(5) Replacement. If a current notice or the Form HBC MH-15 becomes damaged or unreadable, the notice or Form HBC MH-15 shall be removed and a newly printed Form HBC MH-15 shall be posted in its place[~~The notice shall be printed with and on material that will not deteriorate and shall be of sufficient size to be clearly read by each resident entering the park.~~]. [(3) ~~The information on the notice may also be printed in an appropriate legal agreement or publication distributed by the park.~~]

(4) The size of the notice shall be a minimum of eight and one-half (8 1/2) by eleven (11) inches.

Section 3. Incorporation by Reference. (1) Form HBC MH-15, "Notice of Fire-safety Responsibilities", August 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. and 4:30 p.m. and is available online at http://dhbc.ky.gov.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 9:00 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the content and size requirements for fire safety equipment notices required to be posted at manufactured home communities, mobile home communities, and county clerks' offices.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement KRS 227.555.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227.555(1) requires manufactured and mobile homes to have at least one working smoke detector and two (2) exits from a home. KRS 227.555(2) requires the department to promulgate an administrative regulation to create a notice to be placed on each entrance to a manufactured or mobile home community and in the county clerk's office. This administrative regulation directly conforms to these provisions by establishing the requirements for the design and placement of a fire safety notice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation directly implements the authorizing statutes and establishes the requirements for the design and placement of a fire safety notice.

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

(a) How the amendment will change this existing administrative regulation: This amendment corrects errors and reorganizes portions of the administrative regulation. The notice required by KRS 227.555 is designed and incorporated by reference to alleviate the burden of designing a notice on those required to post the notice.

(b) The necessity of the amendment to this administrative

regulation: To make compliance with the administrative regulation user friendly through clarity and conciseness.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment directly conforms to the authorizing statutes by establishing the requirements for a notice about fire safety equipment.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist the effective administration of the statute by creating a notice in compliance with KRS 227.555.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All owners, developers, or managers of manufactured and mobile home communities; residents of manufactured and mobile homes; and county clerks in the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This amendment imposes no new requirements on the affected parties; it clarifies existing obligations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities will incur no additional costs based on the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is clear and concise and is consistent with the rest of this Chapter. The notice is now designed for easier compliance by the individuals in question (3).

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

(a) Initially: There are no anticipated initial additional costs to administer this regulatory amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this regulatory amendment on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any department costs of implementation will be met with existing department funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees increased by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all manufactured and mobile home communities and county clerk offices are required to post these notices.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Section and county clerks.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized and required by KRS 227.555.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? This amendment is not anticipated to generate additional revenue for the state or local government 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 is not anticipated to generate additional revenue for the state or local government in subsequent years.

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction Building Code Enforcement, Manufactured Housing Section (Amendment)

815 KAR 25:050. Administration and enforcement of manufactured housing construction standards.

RELATES TO: KRS 227.550, 227.555, 227.570, 227.580, 227.590, 227.600, 227.990, 227.992, 42 U.S.C. Chapter 70

STATUTORY AUTHORITY: KRS 227.590, 227.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.590 requires the ~~department~~[Manufactured Home Certification and Licensure Board] to promulgate administrative regulations governing the standards for the manufacture and sale of manufactured homes and mobile homes[housing]. KRS 227.600 establishes B seal requirements for manufactured homes or mobile homes. This administrative regulation establishes standards for the design, manufacture, installation, and sale of new and used manufactured homes and mobile homes, and when a B seal is to be applied to a manufactured home or mobile home.

Section 1. Limitations on the Conversion or Alteration of a Home.

(1) Retailer repairs. A retailer shall not make any of the following changes to a manufactured home or mobile home without the written approval of the manufacturer or the manufacturer's agent:

(a) The addition or deletion of a window, door, or partition;

(b) The addition of an electrical circuit to accommodate a washer or dryer;

(c) The conversion of a heating, cooling, or fuel burning system from one (1) fuel to another, such as electric to gas, or gas to electric or oil;

(d) The use of improperly listed materials for the repair of a unit; or

(e) The installation of an unlisted heating, cooling, or fuel burning appliance.

(2) Certified retailer repairs. A certified retailer may alter or convert equipment and make repairs associated with the sale of a used manufactured home or mobile home in accordance with this administrative regulation and the applicable codes adopted herein.

(3) Changes requested by the purchaser. A change to the equipment, an appliance, or the interior or exterior furnishings of the home shall be made only with the written agreement of the purchaser.

(4) Other changes. The following actions shall be consistent with the sales contract in quality and quantity:

(a) Replacement or removal of equipment or an appliance listed on the data plate;

(b) Change or removal of furniture; or

(c) Other cosmetic changes.

VOLUME 45, NUMBER 3 – SEPTEMBER 1, 2018

Section 2. Retailer Lot Inspections. An employee of the department may enter a retailer's place of business to inspect:

- (1) Each manufactured home or mobile home to ensure compliance with state and federal law; and
- (2) All records a retailer is required to maintain in accordance with Section 3(1)(a) through (c).

Section 3. Required Records. (1) The following records shall be maintained on the business premises from which the manufactured home or mobile home was sold or at corporate headquarters, if the headquarters are located in the Commonwealth, for at least three (3) years:

- (a) Sales or purchase agreements, including Forms HBC MH-10, HBC MH-11, and HBC MH-8;
- (b) Unit Inspection, Form HBC MH-16; and
- (c) Monthly Manufactured Home Dealer Certification Form, Form HBC MH-7.

Section 4. Consumer Complaints. (1) Upon written complaint and request by an owner or occupant, and to determine compliance with applicable law, a state inspector from the department may enter a privately-owned manufactured home or mobile home sold by a retailer.

(2) The department shall instruct the responsible party, either retailer, certified installer, or manufacturer, to correct a violation if the state inspector determines that:

- (a) The home is in violation of applicable construction standards;
 - (b) The home has been damaged in transit; or
 - (c) The installation violates applicable installation standards.
- (3) Failure of the retailer, certified installer, or manufacturer to correct a violation of safety standards shall subject the responsible licensee or certificate holder to the penalties established in KRS 227.630.

Section 5. Installation Inspections for used homes. The department may make random inspections, prior to or after installation of a used home, to:

- (1) Determine compliance with the minimum installation requirements;
- (2) Ensure the used home is properly sealed;
- (3) Ensure that the used[a] home has not been damaged in transit; or
- (4) Ensure the used home is correctly installed.

Section 6. Certified Retailer. (1) A certified retailer shall meet the following requirements:

- (a) Employ at least one (1) installer certified in accordance with 815 KAR 25:080;
 - (b) Certify to the department that the dealership is capable of performing minor maintenance to the following systems of manufactured homes:
 1. Plumbing;
 2. Heating;
 3. Cooling;
 4. Fuel-burning; and
 5. Electrical;
 - (c) Complete and submit Form HBC MH/RV-2 to the department.
- (2) A certified retailer shall not:
1. Perform negligent inspection or repair of a unit; or
 2. Apply the wrong seal to a unit.
- (3) The department shall maintain a list of certified retailers qualified to practice in Kentucky.

Section 7. Inspection of Used Manufactured Homes or Mobile Homes. (1) A used manufactured home or mobile home requiring a new seal shall be inspected by a state inspector or a certified retailer. The state inspector or certified retailer shall affix a B seal indicating the manufactured home's or mobile home's compliance or noncompliance with the applicable federal standards under which the home was constructed. A state inspector or certified retailer shall inspect:

- (a) The plumbing and waste systems to determine if the systems are operable and free of leaks;
 - (b) The cooling system and heating or fuel-burning system to determine if they are operational;
 - (c) The electrical system, including the main circuit box, each outlet, and each switch to detect:
 1. A damaged covering;
 2. A missing screw; or
 3. Improper installation;
 - (d) The presence of adequate and operable smoke detection equipment;
 - (e) The doors, windows, and general structural integrity of the unit;
 - (f) The existence of two (2) exits;
 - (g) Storm windows in a manufactured home, but not in a mobile home; and
 - (h) The sealing of all exterior holes to prevent the entry of rodents.
- (2) A unit that is not in compliance with the applicable federal standards under which it was constructed shall be issued a B2 seal unless brought into compliance.

Section 8. Application for Seals. (1) A retailer who possesses a used manufactured home or mobile home without a B seal, shall apply to the department for a B seal prior to offering the manufactured home or mobile home for resale. The application shall be:

- (a) Filed on Form HBC MH-12; and
 - (b) Accompanied by a request for an inspection; or
 - (c) Accompanied by notification that a certified retailer will conduct the inspection.
- (2) Placement of B seals.
- (a) Each B seal shall remain the property of the department and be:
 1. Assigned and affixed to a specific manufactured home or mobile home;
 2. Transferable only if assigned between retailers;
 3. Void when not affixed as assigned;
 4. Returned to the department if unused; and
 5. Seized for a violation of KRS 227.550 to 227.665 or this administrative regulation.
 - (b) The B seal shall be securely affixed on or next to the main entry door on the handle side at approximately handle height.
 - (c) Other seals, stamps, covers, or other markings shall not be placed within two (2) inches of the seal.
 - (3) Lost or damaged B seals.
 - (a) If a B seal is lost or damaged, the owner shall notify the department immediately, in writing, specifying:
 1. The manufacturer;
 2. The manufactured home serial number; and
 3. The seal number, if known.
 - (b) A damaged B seal shall be promptly returned to the department.
 - (c) A lost or damaged B seal shall be replaced by the department after an inspection and payment of the appropriate fee under Section 10 of this administrative regulation.

Section 9. Inspection of Used Homes in Manufacturer's or Retailer's Possession. (1)(a) A retailer or manufacturer shall re-inspect and place a new B seal on a repossessed home or a home taken in trade or purchased by a retailer or manufacturer before the manufactured home or mobile home is offered for sale.

(b) A retailer or manufacturer shall submit to the department on a completed Form HBC MH-16 prior to placing a B seal on the used manufactured home or mobile home to certify compliance with Section 7(1)(a) through (h) of this administrative regulation.

(c) A retailer shall remove any existing B seal upon taking possession of a used home.

Section 10. Fees for inspections of used homes. (1) The fee for an inspection of a used home shall be:

- (a) If performed by a certified retailer:
 1. Seventy-five (75) dollars;

2. Thirty-two (32) cents per mile traveled, measured from the place of the certified retailer's place of business; and
3. Twenty-five (25) dollars for the seal; and
 - (b) If performed by the department:
 1. Seventy-five (75) dollars; and
 2. Twenty-five (25) dollars for the seal.
- (2) The department shall charge no fee for random inspections conducted pursuant to Section 5 of this administrative regulation.

Section 11. Prohibition of Sales. (1) A home shall not be sold or transferred for use as human habitation or occupancy without:

- (a) A current, valid, marketable title; and
- (b) A HUD label or a B1 seal.

(2) A used home with a B2 seal shall not be resold unless the purchaser executes Form HBC MH-8.

(3) Sales between retailers. The requirement that a retailer inspect and apply B seals to each home before it is sold does not apply when the resale is between retailers.

(4) As a condition of continued licensure, a retailer shall:

- (a) Not sell or offer for sale a manufactured home or mobile home for which marketable title cannot be conveyed to the purchaser;
- (b) Provide an application for title as soon as possible; and
- (c) Demonstrate good cause for delay in providing an application for title, upon purchaser complaint.

Section 12. Red Tagging. (1) The department shall:

- (a) Attach a red tag to a manufactured home or mobile home found in violation of KRS 227.550 to 227.665 or this administrative regulation; and
- (b) Furnish the retailer with a copy of the red tag.

(2) The red tag shall not be removed and the home shall not be sold unless:

- (a) The department approves the correction of each violation and the red tag removal; or
- (b) The sale is from an unlicensed retailer to a certified retailer, who applies a B seal and resells the manufactured home or mobile home.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "ANSI A225.1, Manufactured Home Installations", 1994 Edition;
- (b) "Form HBC MH-7, Monthly Manufactured Home Retailer Certification Form", August 2018;
- (c) "Form HBC MH-8, Affidavit of Sale (Salvage Only)", August 2018;
- (d) "Form HBC MH-10, Consumer Protection Notice", August 2018;
- (e) "Form HBC MH-11, Release for Delivery", August 2018;
- (f) "Form HBC MH-12, Application Form for Purchasing "B" Seals", August 2018;
- (g) "Form HBC MH/RV-2, Request for Approval to Inspect", August 2018; and
- (h) "Form HBC MH-16, Unit Inspection for B-Seal", August 2018; and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>.

Section 1. Definitions. (1) "Alteration or Conversion" means the replacement, addition, modification or removal of equipment, an appliance, or an installation that may affect:

- (a) The body and frame design and construction; or
- (b) Any one (1) of the following systems:
 1. Plumbing;
 2. Heat producing;
 3. Cooling;
 4. Fuel burning;
 5. Electrical; or

6. Smoke detection.
- (2) "ANSI" means the American National Standards Institute as referenced in A225.1, Manufactured Home Installations, 1994 Edition.
- (3) "Certified inspector" means a manufactured housing inspector employed by the office.
- (4) "Certified retailer" means a licensed retailer who:
 - (a) Employs at least one (1) installer certified in accordance with 815 KAR 25:080; and
 - (b) Has certified to the office that the dealership is capable of performing minor maintenance to the following systems of manufactured homes:
 1. Plumbing;
 2. Heating;
 3. Cooling;
 4. Fuel burning; and
 5. Electrical.
- (5) "Class B1 Seal" and "Class B2 Seal" is defined by KRS 227.550(3), and signify the following:
 - (a) "B1 seal" means the unit has been inspected and found to be in compliance with applicable standards for human habitation; and
 - (b) "B2 seal" means the unit:
 1. Has been inspected and found not to be in compliance with applicable codes;
 2. Is a salvage unit unfit for human habitation; and
 3. Shall be sold only for the purpose of use as a storage or utility building.
- (6) "Factory-built housing" is defined by KRS 227.550(8).
- (7) "Federal act" are is defined by KRS 227.550(6).
- (8) "Manufactured home" is defined by KRS 227.550(7).
- (9) "Manufacturer" is defined by KRS 227.550(9).
- (10) "Mobile home" is defined by KRS 227.550(10).
- (11) "Office" is defined by KRS 227.550(11).
- (12) "Red tag" means a written notice which is applied to a manufactured home or mobile home by a representative of the office in accordance with Section 12 of this administrative regulation signifying that it shall not be sold because repairs are required or the appropriate seal has not been applied.
- (14) "Retailer" is defined by KRS 227.550(4).
- (15) "Salvage unit" means a used manufactured or mobile home not approved for human habitation.
- (16) "Used home" means a manufactured or mobile home offered for sale or sold after the original purchase.

Section 2. Limitations on the Conversion or Alteration of a Home by the Retailer. (1) A retailer shall not make any of the following changes to a manufactured or mobile home without the written approval of the manufacturer or the manufacturer's agent:

- (a) The addition or deletion of a window, door, or partition;
- (b) The addition of an electrical circuit to accommodate a washer or dryer;
- (c) The conversion of a heating, cooling, or fuel burning system from one (1) fuel to another, such as electric to gas, or gas to electric or oil;
- (d) The use of improperly listed materials for the repair of a unit; or
- (e) The installation of an unlisted heating, cooling, or fuel burning appliance.

(2) Certified retailer repairs. A certified retailer is authorized to alter or convert equipment and make repairs associated with the sale of a used manufactured or mobile home, in accordance with this administrative regulation and the applicable codes adopted herein.

(3) Changes requested by the purchaser. A change to the equipment, an appliance, or the interior or exterior furnishings of the home shall be made only with the written agreement of the purchaser.

(4) Other changes. The following actions shall be consistent with the sales contract in quality and quantity:

- (a) Replacement or removal of equipment or an appliance listed on the data plate;
- (b) Change or removal of furniture; or

(c) Other cosmetic changes.

Section 3. Retailer Lot Inspections. An officer, agent, or employee of the office may enter a dealer's place of business in order to inspect:

- (1) Each manufactured or mobile home's equipment and equipment installation to insure compliance with the provisions of:
 - (a) KRS 227.550 to 227.660;
 - (b) The Federal Act; and
 - (c) This administrative regulation; and
- (2) The maintenance of required records as set forth in Section 4 of this administrative regulation.

Section 4. Required Records. (1) The following records shall be maintained on the premises of the lot from which the home was sold or at corporate headquarters, if headquarters are located in the state of Kentucky, for at least three (3) years:

- (a) Sales or purchase agreements, including Forms KMH 101, KMH 104 and HBCMH 28;
- (b) Unit Inspection, Form HBCMH 40; and
- (c) Monthly Manufactured Home Dealer Certification Format, Form HBCMH 23.

(2) A written request for additional material required by the office for the purpose of audit or inspection, shall identify the record, file, or document required and the specific complaint or cause for the request. A licensee shall not be required to furnish a record deemed confidential or privileged because of purchaser or lender privacy protections under any federal, state or local law.

Section 5. Consumer Complaints. (1) Upon written complaint and request by an owner or occupant, and in order to determine compliance with applicable law, an inspector from the office may enter a privately-owned manufactured or mobile home sold by a retailer.

(2) The office shall instruct the responsible party, either retailer, certified installer, or manufacturer, to correct a violation if the inspector determines that:

- (a) The home is in violation of applicable construction standards;
 - (b) The home has been damaged in transit; or
 - (c) The installation violates applicable installation standards.
- (3) Failure of the retailer, certified installer, or manufacturer to correct a violation of safety standards shall subject the responsible licensee or certificate holder to the penalties established in KRS 227.630.

Section 6. Installation Inspections. The office may make random inspections, prior to or after installation, to:

- (1) Determine compliance with the minimum installation requirements;
- (2) Assure that a home has not been damaged en route; or
- (3) Assure the home is correctly installed.

Section 7. Retailer Inspection of Used Manufactured Homes in Manufacturer's or Retailer's Possession. (1) A repossessed home or a home taken in trade or purchased by the retailer, shall be re-inspected and certified to the office on Form HBCMH 40 regarding compliance with Section 9(1)(a) through (h) of this administrative regulation.

- (a) An existing B seal shall be removed upon trading or purchase. The unit shall be reinspected and a new seal shall be affixed to the unit if it meets applicable requirements.
- (b) A manufactured unit shall not be resold as a dwelling unless it qualifies for and has affixed to it a B1 seal.
- (c) The retailer shall affix the appropriate seal to the unit prior to possession or transportation of the unit.
- (2) A B2 seal unit shall not be resold unless the purchaser knowingly and willingly signs Form HBCMH 28.

Section 8. Special Exemptions for Retailers License Real estate developer and retailer venture. A retail license shall not be required of a developer who purchases new HUD homes from a licensed Kentucky retailer, places the homes on a parcel of land,

and offers the homes for sale to ultimate consumers, if the following conditions are met:

- (1) The developer receives prior written approval from the office;
- (2) The homes are installed by a certified installer;
- (3) The developer owns the homes and the lots upon which the homes are installed;
- (4) The manufacturer's warranty period begins at the time possession is transferred from the developer to the consumer-occupant;
- (5) The manufacturer's warranty support is performed in accordance with generally accepted standards for retail transactions;
- (6) The manufacturer's documentation shall contain the name and location of the:
 - (a) Developer;
 - (b) Development; and
 - (c) Retail dealer; and
- (7) The retailer and installer shall provide the required services as warranted and as required by laws governing retailer and installer license or certification.

Section 9. Process for Application of B1 Seals. (1) Every used manufactured or mobile home shall be inspected by a certified inspector or a certified retailer and a B seal indicating its compliance or noncompliance with the applicable federal standards under which the home was constructed shall be affixed to the home. The inspection shall consist of the following:

- (a) Inspection of the plumbing and waste systems to determine if the systems are operable and free of leaks;
- (b) Inspection of the cooling system, and heating or fuel-burning system to determine that they are operational;
- (c) Inspection of the electrical system, including the main circuit box, each outlet, and each switch in order to detect:
 - 1. A damaged covering;
 - 2. A missing screw; or
 - 3. Improper installation;
- (d) Inspection for the existence of adequate and operable smoke detection equipment;
- (e) Inspection of the doors, windows, and general structural integrity of the unit;
- (f) Inspection for the existence of two (2) exits;
- (g) Inspection for storm windows in a manufactured home, but not in a mobile home; and
- (h) The sealing of all exterior holes to prevent the entrance of rodents.

(2) Sales between retailers. The requirement that a retailer inspect and apply B seals to each home before it is sold does not apply if the resale is between retailers.

(3) A retailer desiring to become a certified retailer and to perform the B seal inspection and certification service, shall make application to the office on Form HBCMH 20.

- (4)(a) The office shall maintain a list of certified retailers qualified to practice in Kentucky.
- (b) A certified retailer shall not:
 - 1. Perform negligent inspection or repair of a unit; or
 - 2. Apply the wrong seal to a unit. A unit that is not in compliance with the applicable federal standards under which it was constructed:

- (a) Brought into compliance and issued a B1 seal; or
- (b) Issued a B2 seal.
- (5) Fees for requested inspections. The fee for a courtesy inspection of a manufactured home shall be:
 - (a) If performed by a certified retailer:
 - 1. Seventy-five (75) dollars;
 - 2. Thirty-two (32) cents a mile, measured from the place of the certified retailer's place of business; and
 - 3. Twenty-five (25) dollars for the seal; and
 - (b) If performed by the office:
 - 1. Seventy-five (75) dollars; and
 - 2. Twenty-five (25) dollars for the seal.

Section 10. Prohibition of Sales. (1) A home shall not be sold

or transferred for use as human habitation or occupancy without:

- (a) A current, valid, marketable title; and
- (b) A HUD label or a B1 seal.
- (2) As a condition of continued licensure, a retailer shall:
 - (a) Not sell or offer for sale a manufactured home for which a marketable title cannot be presented to the purchaser;
 - (b) Provide an application for title as soon as possible; and
 - (c) Demonstrate good cause for delay in providing an application for title, if the purchaser makes complaint.

Section 11. Application for Seals. (1) A retailer who possesses a used manufactured home without a seal, shall apply to the office for a B seal. The application shall be:

- (a) Filed on Form HBCMH 30; and
- (b) Accompanied by a fee of twenty-five (25) dollars for each seal.

(2) Recordkeeping. A retailer shall:

- (a) Maintain the following information, reported on Form HBCMH 23, for each new or used unit sold:

- 1. Unit serial number;
- 2. B1 or B2 seal number;
- 3. Date manufactured, if known;
- 4. Make of unit; and
- 5. Name and address of purchaser;

- (b) Retain the completed Form HBCMH 23 for three (3) years; and

(c) Keep the form available to a field inspector upon request.

(3) Placement of seals.

(a) Each seal shall:

- 1. Be assigned and affixed to a specific manufactured or mobile home;

2. Be transferable only if assigned between retailers;

3. Be void when not affixed as assigned;

4. Be returned to the office if unused;

5. Remain the property of the office; and

6. Be seized for a violation of KRS 227.550 to 227.665 or an administrative regulation implementing KRS 227.550 to 227.665.

(b) The seal shall be securely affixed on the door on the handle side at approximately handle height.

(c) Other seals, stamps, covers, or other markings shall not be placed within two (2) inches of the seal.

(4) Lost or damaged seals:

(a) If a seal becomes lost or damaged, the owner shall notify the office immediately, in writing, specifying:

- 1. The manufacturer;
- 2. The manufactured home serial number; and
- 3. The seal number, if known.

(b) A damaged seal shall be:

1. Promptly returned to the office; and

2. Replaced by the office at a cost of twenty-five (25) dollars.

Section 12. Red Tagging. (1) The office shall:

(a) Attach a notice of noncompliance, or "red tag", to a manufactured home found to be in violation of KRS 227.550 to 227.665 or of this administrative regulation; and

(b) Furnish the retailer with a copy.

(2) The "red tag" shall not be removed and the home shall not be sold unless:

(a) The office approves the correction of each violation and the red tag removal; or

(b) For an unlicensed retailer, sold to only a retailer qualified to inspect, apply seals, and resell.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "ANSI A225.1, Manufactured Home Installations", 1994 Edition;

(b) "Form HBCMH 23, Monthly Manufactured Home Retailer Certification Format", September, 2007;

(c) "Form HBCMH 28, Affidavit of Sale (Salvage Only)", September, 2007;

(d) "Form HBCMH 29, Request for Approval to Inspect", September, 2007;

(e) "Form HBCMH 30, Application Form for Purchasing "B" Seals", September, 2007;

(f) "Form HBCMH 40, Unit Inspection for B Seal", September, 2007;

(g) "Form KMH 101, Consumer Protection Notice", September, 2007; and

(h) "Form KMH 104, Release for Delivery", September, 2007.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, Division of Fire Prevention, Manufactured Housing Section, 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

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 9:00 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the design, manufacture, installation, and sale of new and used manufactured homes, and specifies when a B seal is to be applied to a manufactured home.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the standards for the design, manufacture, and sale of new and used manufactured homes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227.590 requires the department to promulgate administrative regulations to implement the provisions under KRS 227.550 to 227.660. KRS 227.600 establishes the specifications for a manufactured home or mobile home to receive a B seal. This administrative regulation establishes the standards for the design, manufacture, and sale of new and used manufactured homes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation directly implements the authorizing statutes and establishes the requirements for when a seal is to be applied to a manufactured or mobile home.

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

(a) How the amendment will change this existing administrative regulation: This amendment corrects errors and reorganizes portions of the administrative regulation. The amendment also

contains a section specifically sets forth requirements for certified retailers, rather than stating the requirements in the definition section.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make the administrative regulation to clarify what is required of a certified retailer.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes the standards and inspections for manufactured homes and mobile homes. Rules regarding the procurement and application of B seals are established to assure that manufactured homes or mobile homes are fit for human occupation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists the administration of the statutes by clarifying the standards for the design, manufacture, and sale of new and used manufactured homes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All retailers of new and used homes, certified retailers, and department personnel.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This amendment imposes no new requirements on the affected parties in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities will encounter no additional costs based on the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will be more easily understood and will be consistent with the rest of this Chapter.

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

(a) Initially: There are no anticipated additional initial costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs to administer these regulatory amendments on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any department costs of implementation will be met with existing department funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees increased by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation applies to all retailers and certified retailers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Section.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized and required by KRS 227.590 and 227.600.

3. Estimate the effect of this administrative regulation on the

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

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

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction Building Code Enforcement, Manufactured Housing Section (Amendment)

815 KAR 25:060. Licensing and certifications with manufactured homes and mobile homes[~~of manufactured home retailers~~].

RELATES TO: KRS 227.550, 227.560, 227.570, 227.580, 227.590, 227.600, 227.610, 227.620, 227.630, 227.990

STATUTORY AUTHORITY: KRS 227.560, 227.570(2), (3), (4), 227.580, 227.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.590 requires the ~~department~~[~~Manufactured Home Certification and Licensure Board~~] to promulgate administrative regulations governing the standards for the manufacture and sale of manufactured homes and mobile homes[~~housing~~]. KRS 227.560(1) ~~requires the department to issue certificates of acceptability to qualifying manufacturers.~~ KRS 227.580 makes it unlawful for a manufacturer to manufacture, import, or sell manufactured homes in Kentucky without a certificate of acceptability. KRS 227.570(4) ~~requires the department to promulgate administrative regulations to establish standards for the certified installer seal program~~[~~E.O. 2008-507, effective June 16, 2008, 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 standards for licensing persons and companies engaged in the sale of manufactured homes and mobile homes, establishes standards for certification of acceptability for manufacturers of manufactured homes, and establishes the requirements for certified installer seals and certification of manufactured home installers.

Section 1. Licensed Retailer. (1) License application.

(a) Except as provided in subsection (2) of this section, a person shall not engage in the business of selling manufactured homes or mobile homes within this state without holding a valid license issued by the department for each location.

(b) Before engaging in business, an applicant shall submit to the department:

1. The completed Form HBC MH-2;

2. A copy of a valid Kentucky sales tax certificate;

3. A check or money order for the annual license fee, in the amount of \$250 for a full year, or a reduced amount prorated on a

monthly basis for a period of less than a full year, payable to the Kentucky State Treasurer; and

4. Proof of insurance for general liability coverage that complies with KRS 227.610 in the amount of at least:

- a. \$200,000 bodily injury or death for each person;
- b. \$300,000 bodily injury or death for each accident; and
- c. \$100,000 for damage to property.

(c) An applicant whose place of business is in another state and who possesses a valid retailer license in another state shall:

1. Comply with this section;

2. Not be required to maintain an established place of business within Kentucky, if the applicant is not offering a home for sale within Kentucky; and

3. Provide a Kentucky B seal for a used manufactured home or mobile home unit sold for delivery into Kentucky.

(2) Exemptions from Licensure as a Retailer.

(a) A manufactured home shall be exempt from seal requirements and a retailer exempt from licensing if the unit:

1. Is brought into Kentucky for exhibition purposes only;
2. Is not sold in Kentucky; and
3. Inspection does not reveal a condition hazardous to health or safety.

(b) Real estate developer and retailer venture. A retail license shall not be required of a developer who purchases new HUD homes from a licensed Kentucky retailer, places the homes on a parcel of land, and offers the homes for sale to ultimate consumers, if:

1. The developer receives prior written approval from the department;

2. The home was installed by a certified installer;

3. The developer owns the homes and the lots upon which the homes are installed;

4. The manufacturer's warranty period begins upon possession and shall be transferred from the developer to the consumer-occupant;

5. The manufacturer's warranty support shall be performed in accordance with generally-accepted standards for retail transactions;

6. The developer's documentation contains the name and location of the:

- a. Developer;
- b. Development; and
- c. Retailer; and

7. The retailer and installer provides the required services as warranted and as required by laws governing retailer and installer license or certification.

(3) Retailer's satellite location.

(a) An additional license shall not be required of a fully-licensed retailer for the display or sale of a manufactured home located on an individual lot, in a subdivision, land-lease community, or manufactured home or mobile home park;

(b) A suitable sign identifying the name and business location of the retailer licensee shall be posted at the location.

(4) Qualified personnel required.

(a) Education requirements. A new retailer license or a renewal of an existing retailer license shall not be issued unless the retailer employs at least one (1) person in a management position who has successfully completed the educational training and departmental testing program administered as part of the Certified Installer Program under Section 4 of this administrative regulation. The proof of experience in Section 4(1)(a)4. shall not be required.

(b) Certification. The department shall classify a person qualifying under subsection (1) of this section as a certified manager.

(c) Exception. A certified manager shall not be required at each licensed location for a retailer with more than one (1) in-state location if:

1. The retailer has only one (1) set-up, installation, and delivery system located in Kentucky;

2. A certified manager supervises the work of the system; and

3. The arrangement is approved, in writing, by the department.

(5) Notification by Licensees.

(a) A retailer shall notify the department, in writing, within thirty

(30) days of a change in any of the following:

1. Dealership name;

2. Address of business;

3. Retailer ownership interest of twenty-five (25) percent or more within a twelve (12) month period; or

4. A principal officer or chief managing officer of the firm.

(b) A change in ownership interest of less than twenty-five (25) percent of the company within a twelve (12) month period shall be reported at the time of the renewal of the license.

(c) A new license shall be required if an established business changes location to a different county.

(6) Maintenance of Records. A retailer shall:

(a) Complete and maintain Form HBC MH-7 for each new or used manufactured home or mobile home sold;

(b) Retain the completed Form HBC MH-7, for three (3) years; and

(c) Keep the form available to a field inspector upon request.

Section 2. Manufacturer's Certificate of Acceptability. (1) Requirements for issuance. An applicant for a manufacturer's certificate of acceptability shall submit to the department:

(a) A completed Form HBC MH/RV-1;

(b) Proof of insurance for general liability coverage that complies with KRS 227.610 in the amount of at least:

1. \$300,000 bodily injury or death for each person;
2. \$400,000 bodily injury or death for each accident; and
3. \$100,000 for damage to property; and

(c) A certificate of acceptability fee in the amount of \$500 for a full year, or a reduced amount prorated on a monthly basis for a period of less than a full year, by check or money order made payable to the Kentucky State Treasurer.

(2) A manufacturer who is also a retailer shall comply with retailer licensing provisions in Section 1 of this administrative regulation.

(3) A manufacturer shall notify the department in writing, within thirty (30) days of a change in any of the following:

(a) Corporate name;

(b) Company address;

(c) Ownership interest of twenty-five (25) percent or more of the company within a twelve (12) month period;

(d) Location of a manufacturing facility;

(e) The number of facilities by virtue of the establishment of new manufacturing facility; or

(f) A principal officer of the firm.

(4) A change in ownership interest of less than twenty-five (25) percent of the company within a twelve (12) month period shall be reported at the time of the renewal of the certificate of acceptability.

(5)(a) A manufacturer who considers information relating to a building or in-plant quality control system to be proprietary shall designate the information as proprietary at the time of plan submission.

(b) The designated information shall be maintained and treated as proprietary by:

1. The department;
2. Inspection and evaluation personnel; and
3. Local enforcement agencies.

Section 3. Certified Installers. (1) Initial application.

(a) An applicant for certified installer shall submit to the department:

1. A completed Form HBC MH-3, Certified Installer Application;

2. An application fee of \$100;

3. Proof of successful completion of a fifteen (15) hour approved course of education;

4. Proof of regularly assisting in site preparation and installation functions:

- a. Under the supervision of a certified installer;
- b. For at least sixty (60) days; and
- c. On at least five (5) homes;

5. A Passing score on the certified installer examination given by the department; and

6. A certificate verifying current worker's compensation insurance coverage, if the applicant is employed at the time of

application.

(b) If an initial certificate is for a period of less than twelve (12) months, the fee shall be reduced on a pro rata monthly basis.

(2) An installer certification shall be issued in the name of the individual qualified under subsection (1) of this section. The individual may request that the certificate also bear the name of the employing company.

(3)(a) If the certified installer changes his business name or is no longer associated with the company whose name appears upon the certificate, the certified installer shall inform the department and request an amended certificate reflecting the individual's status.

(b) If the certified installer is no longer associated with a company, that company shall not hold itself out as a certified installer or as having in its employ a certified installer until another certified person has become associated with that company.

(4) Certified installer seal.

(a) A certified installer who installs a manufactured home or mobile home in accordance with KRS 227.570(3) and this administrative regulation shall place a certified installer seal on the home.

1. Certified installer seals shall be obtained from the department.

2. The application shall be:

a. Filed on Form HBC MH-12, Application for Purchasing Seals; and

b. Accompanied by a fee of twenty-five (25) dollars for each seal.

(5) Application and placement of certified installer seals.

(a) Each certified installer seal consists of two (2) parts that shall be affixed as follows:

1. One (1) part shall be placed two (2) inches above the HUD label on the outside left corner of a manufactured home or on the outside left corner of a mobile home if a HUD label is not required; and

2. One (1) part shall be placed on the inside of the electrical panel in the manufactured home.

(b) Other seals, stamps, covers, or other markings shall not be placed within two (2) inches of the certified installer seal.

(6) Lost or damaged seals.

(a) If a certified installer seal becomes lost or damaged, the owner shall notify the department immediately, in writing, specifying:

1. The manufacturer;

2. The manufactured or mobile home serial number; and

3. The certified installer seal number, if known.

(b) A damaged seal shall be:

1. Promptly returned to the department; and

2. Replaced by the department for a fee of twenty-five (25) dollars.

(7) Recordkeeping. A certified installer shall:

(a) Complete and maintain Form HBC MH 40-30, Monthly Certified Installer Certification, for each certified installation;

(b) Retain the completed Form HBC MH 40-30, Monthly Certified Installer Certification, for three (3) years; and

(c) Make a copy of the form available to a state inspector upon request.

(d) A certified installer shall send the department a monthly report of the information found in HBC MH 40-30 by mail, electronic mail, or facsimile.

Section 4. Incorrect or Incomplete Applications. (1) If there is an incorrect or incomplete application, the department shall:

(a) Issue a correction notice to an applicant within thirty (30) days of receiving a defective or incomplete application specifying the defect;

(b) Deem the application abandoned and the fee forfeited for an applicant who fails to submit a corrected application in accordance with the information supplied on the application correction notice, within thirty (30) days of receipt; and

(c) Process as a new application, a corrected application submitted after the thirty (30) day period.

Section 5. Renewals. (1) Expiration of a license and

certificates. A license, a certificate of acceptability, and an installer certification, unless renewed, revoked, or suspended, shall expire on:

(a) For individuals, the last day of the licensee's birth month in the following year; or

(b) For corporations:

1. The licensee's month of incorporation in the following year;

or

2. The last day of the licensee's birth month in the following year.

(2) Renewal of a license or certificates.

(a) A retailer, manufacturer, or a certified installer, wishing to renew a license or certification, shall submit the following:

1. A completed License and Certification Renewal Form HBC MH/RV-3;

2. Proof of continuing general liability insurance coverage; and

3. A check or money order for the annual license fee, in the amount of:

a. \$250 for a licensed retailer;

b. \$500 for a certificate of acceptability; or

c. Fifty (50) dollars for an installer certification.

(b) A retailer, manufacturer, or certified installer shall renew a license or certificate before the license or certificate expires according to subsection (1) of this section.

(c) A certified installer shall submit proof of completion of the continuing education requirements established in 815 KAR 1:030.

(d) A retailer and a manufacturer shall maintain at least minimum general liability insurance and shall notify the department if there is a change in insurance coverage.

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

(a) Form HBC MH/RV-1, "Application of Certificate of Acceptability for Manufactured Homes", August 2018

(b) Form HBC MH-2, "Application for Manufactured Home Retailer's License", August 2018;

(c) Form HBC MH-3, "Certified Installer Application", August 2018;

(d) Form HBC MH/RV-3, "License and Certification Renewal", August 2018;

(e) "Form HBC MH-12, Application for Purchasing Seals", August 2018;

(f) "Form HBC MH-7, Monthly Manufactured Home Retailer Certification Format", August 2018; and

(g) "Form HBC MH 40-30, Monthly Certified Installer Certification", August 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. and 4:30 p.m. and is available online at <http://dhbc.ky.gov>. [Section 1. Definitions:

(1) "Established place of business" is defined by KRS 227.550(6).

(2) "Hard-surfaced lot" means an area open to the public during business hours with a surface of concrete, asphalt or macadam, compacted gravel or stone, or other material of similar characteristics.

(3) "Offer for sale" means to:

(a) Display, exhibit, sell, transfer, exchange, or otherwise advertise a manufactured or mobile home; or

(b) Negotiate the purchase, sale, or exchange of a manufactured or mobile home for a fee, commission, compensation, or other valuable consideration.

(4) "Office" is defined by KRS 227.550(11).

(5) "Registration" means the transfer of title or other official recording of change of ownership.

(6) "Retailer" is defined by KRS 227.550(4).

(7) "Suitable sign" means a permanently erected sign with the dealership name and type in letters at least six (6) inches high and at least one and one-half (1 1/2) inches wide.

~~Section 2. Exemptions from Licensure as a Retailer. (1) A manufactured home shall be exempt from licensing and seal requirements if the unit:~~

- ~~(a) Is brought into Kentucky for exhibition purposes only;~~
- ~~(b) Is not sold in Kentucky; and~~
- ~~(c) Inspection does not reveal a condition hazardous to health or safety.~~

~~(2) Real estate developer and retailer venture. A retail license shall not be required of a developer who purchases new HUD homes from a licensed Kentucky retailer, places the homes on a parcel of land, and offers the homes for sale to ultimate consumers, if the following conditions are met:~~

~~(a) The developer receives prior written approval from the office;~~

~~(b) The home was installed by a certified installer;~~

~~(c) The developer owns the homes and the lots upon which the homes are installed;~~

~~(d) The manufacturer's warranty period begins upon possession and shall be transferred from the developer to the consumer occupant;~~

~~(e) The manufacturer's warranty support shall be performed in accordance with generally accepted standards for retail transactions;~~

~~(f) The manufacturer's documentation contains the name and location of the:~~

- ~~1. Developer;~~
- ~~2. Development; and~~
- ~~3. Retailer; and~~

~~(g) The retailer and installer provides the required services as warranted and as required by laws governing retailer and installer license or certification.~~

~~(3) Retailer's satellite location.~~

~~(a) An additional license shall not be required of a fully-licensed retailer for the display or sale of a manufactured home located on an individual lot, in a subdivision, land-lease community, or manufactured or mobile home park located within the same or adjoining county as the licensee;~~

~~(b) A suitable sign identifying the name and business location of the retailer licensee shall be posted at the location.~~

~~Section 3. License Application. (1) Except as provided in Section 2 of this administrative regulation, a person shall not engage in the business of selling manufactured or mobile homes within this state without holding a valid license issued by the office for each location.~~

~~(2) Before engaging in business, an applicant shall provide the office with:~~

~~(a) The completed Form HBCMH 2;~~

~~(b) A copy of a valid Kentucky sales tax certificate;~~

~~(c) A check or money order for the annual license fee, in the amount of \$250 for a full year, or a reduced amount prorated on a monthly basis for a period of less than a full year, payable to the Kentucky State Treasurer;~~

~~(d) Proof of insurance for general liability coverage that complies with KRS 227.610 in the amount of at least:~~

- ~~1. \$200,000 bodily injury or death for each person;~~
- ~~2. \$300,000 bodily injury or death for each accident; and~~
- ~~3. \$100,000 for damage to property; and~~

~~(e) A verified statement that the applicant complies with zoning and other requirements of the local government necessary for a business to operate legally.~~

~~(3) A license, unless renewed, revoked, or suspended, shall expire on:~~

~~(a) For individuals, the last day of the licensee's birth month in the following year; or~~

~~(b) For corporations:~~

- ~~1. The licensee's month of incorporation in the following year; and~~
- ~~2. The last day of the licensee's birth month in the following year.~~

~~(4) A licensed retailer shall maintain at least minimum general liability insurance and shall notify the office of a change in insurance coverage.~~

~~(5) An applicant whose place of business is in another state and who possesses a valid retailer license in another state shall:~~

~~(a) Be licensed upon completion and submission of Form HBCMH 2 and compliance with this section;~~

~~(b) Not be required to maintain an established place of business within Kentucky, if the applicant is not offering a home for sale within Kentucky; and~~

~~(c) Provide a Kentucky seal for a used manufactured housing unit sold for delivery into Kentucky.~~

~~(6) The office shall:~~

~~(a) Issue a correction notice to an applicant within thirty (30) days of receiving a defective or incomplete applicant specifying the defect;~~

~~(b) Deem the application abandoned and the fee forfeited for an applicant who fails to submit a corrected application in accordance with the information supplied on the application correction notice, within thirty (30) days of receipt; and~~

~~(c) Process as a new application, a corrected application submitted after the thirty (30) day period.~~

~~Section 4. Qualified Personnel Required: The Certified Manager. (1) Education requirements. A new retailer license or a renewal of an existing retailer license shall not be issued unless the retailer employs at least one (1) person in a management position who has successfully completed the educational training and departmental testing program administered as part of the Certified Installer Program under 815 KAR 25:080. The proof of experience in 815 KAR 25:080, Section 2(1)(d), shall not be required.~~

~~(2) Certification. The office shall classify a person qualifying under subsection (1) of this section as a certified manager.~~

~~(3) Exception. A certified manager shall not be required at each licensed location for a retailer with more than one (1) in-state location if:~~

~~(a) The retailer has only one (1) set-up, installation, and delivery system located in Kentucky;~~

~~(b) A certified manager supervises the work of the system; and~~

~~(c) The arrangement is approved, in writing, by the office.~~

~~Section 5. Notification by Licensees. (1) A retailer shall notify the office, in writing, within thirty (30) days of a change in any of the following:~~

~~(a) Dealership name;~~

~~(b) Location of established business;~~

~~(c) Retailer ownership interest of twenty-five (25) percent or more within a twelve (12) month period; or~~

~~(d) A principal officer or chief managing officer of the firm.~~

~~(2) A change in ownership interest of less than twenty-five (25) percent of the company within a twelve (12) month period shall be reported at the time of the renewal of the license.~~

~~(3) A new license shall be required if an established business changes location to a different county.~~

~~Section 6. Maintenance of Records. A retailer shall:~~

~~(1) Maintain the following information, reported on Form HBCMH 23, for each new or used unit sold:~~

~~(a) Unit serial number;~~

~~(b) B1 or B2 seal number;~~

~~(c) Date manufactured, if known;~~

~~(d) Make and model of unit; and~~

~~(e) Name and address of purchaser;~~

~~(2) Retain the completed Form HBCMH 23, for three (3) years; and~~

~~(3) Keep the form available to a field inspector upon request.~~

~~Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Form HBCMH 2, Application for Manufactured Home Retailer's License", September 2007; and~~

~~(b) "Form HBCMH 23, Monthly Manufactured Home Retailer Certification Format", September 2007.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing,~~

~~Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, between 8 a.m. and 4:30 p.m., Monday through Friday.]~~

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2018 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for retailers to become licensed to sell manufactured homes in the state, the standards for certification of acceptability for manufacturers of manufactured homes, and the requirements for certified installer seals and certification of manufactured home installers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the requirements and standards for applicants and current licensed manufactured home and mobile home retailers, manufacturers of manufactured homes, and installers of manufactured homes and mobile homes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227.590 requires the department to promulgate administrative regulations governing the standards for the manufacture and sale of manufactured homes and mobile homes. KRS 227.560(1) requires the department to issue certificates of acceptability to qualifying manufacturers. KRS 227.580 makes it unlawful for a manufacturer to manufacture, import, or sell manufactured homes in Kentucky without a certificate of acceptability. KRS 227.570(4) requires the department to promulgate administrative regulations to establish standards for the certified installer seal program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation directly implements the authorizing statutes and establishes the requirements and standards for a licensed retailer, manufacturers, and installers.

(2) If 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 combines the administrative regulations for licensed retailers, certified manufacturers, and certified installers. The amendment also eliminates the definitions section from the administrative regulation to eliminate duplicative administrative regulations. The amendment reorganizes the administrative regulations and corrects grammatical and technical

errors.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to combine all of the licensing and certification procedures related to manufactured housing into one administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment directly conforms to the authorizing statutes by establishing the requirements and standards for licensed retailers, manufacturers, and certified installers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make it easier for the intended readers to read and understand the manufactured housing and mobile home administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All retailers of manufactured and mobile homes, manufacturers of manufactured homes, and certified installers of manufactured homes and mobile homes, and Department of Housing, Buildings and Construction personnel will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment imposes no new requirements on the affected parties in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will be easier to understand and will be consistent with the rest of 815 KAR Chapter 25.

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

(a) Initially: There are no anticipated initial costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs to administer these regulatory amendments on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the agency. Any agency costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all retailers and other individuals wishing to sell manufactured homes, manufacturers of manufactured homes, and installers of manufactured homes in the Commonwealth need to comply this amendment.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Section.

2. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 227.560, KRS 227.570, KRS 227.580 and KRS 227.590.

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

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

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

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

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(Amendment)

815 KAR 25:090. Site preparation, [and] installation, and inspection [minimum] requirements.

RELATES TO: KRS 227.550, 227.570, 227.590[(2)], 227.660, 227.990, 24 C.F.R. 3285

STATUTORY AUTHORITY: KRS 227.570[(2)], 227.590(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.570[(2)] requires the department[office] to establish and enforce standards and requirements for installation of plumbing, heating, and electrical systems in manufactured homes or mobile homes[of installation, adopted by the Manufactured Home Certification and Licensure Board,] as it determines are reasonably necessary to protect public health and safety. KRS 227.590(1) requires the department to establish administrative regulations reasonably necessary to effectuate the provisions of KRS 227.550 to 227.660[charges the board with establishing the standards and the office with enforcing state and federal law]. This administrative regulation establishes minimum requirements for the installation and inspection of manufactured homes or mobile homes on permanent foundations.

Section 1. [Definitions. (1) "ANSI" means the American National Standards Institute as referenced in ANSI A225.1, Manufactured Home Installations, 1994 Edition, incorporated by reference.

(2) "Board" is defined in KRS 227.550(1).

(3) "Certified installer" means the individual certified, in accordance with 815 KAR 25:080, to install manufactured homes.

(4) "Installation" means the work performed by a certified installer on-site and the operations involved in the delivery, permanent securing, and placement of a manufactured home for the purpose of human occupancy, to:

(a) Include the following:

1. Preparation of a permanent foundation;
2. Placement of polyvinyl covering on the ground, if applicable;
3. Placement and connection of utilities performed by appropriately-licensed contractors;
4. Anchoring and tying down; and

5. Installation of other accessory or appurtenance specified in the sales contract; and

(b) Exclude the following:

1. site preparation; and
 2. For a single-section home, ground set after site preparation.
- (5) "Office" is defined in KRS 227.550(11).
- (6) "Permanent foundation" means a system of supports:
- (a) capable of transferring without failure, into soil or bedrock, the maximum design load imposed by or upon the structure;
 - (b) Constructed of concrete; and
 - (c) Placed at a depth below grade adequate to prevent frost damage.
- (7) "Placement" means blocking, leveling, and anchoring a manufactured home upon a foundation system prior to occupancy.
- (8) "Retailer" is defined in KRS 227.550(4).
- (9) "Site preparation" means work performed on the land in preparation for installation of the home:
- (a) Including:
 1. Clearing and initial grading;
 2. Water drainage; and
 3. Vegetation control; and
 - (b) Excluding final grading after the home has been set.

Section 2. [Minimum Site Preparation and Installation Standards. (1) Site preparation, installation, and ground anchoring shall be performed for:]

(a) A new manufactured home [new home or a used home with a B1 seal shall be performed] in accordance with the manufacturer's instructions, if available, or 24 C.F.R. Part 3285; and

(b) A used manufactured home or a mobile home in accordance with the manufacturer's instructions, if available, or ANSI A225.1, Manufactured Home Installation, as established by KRS 227.570(3).

(2) The permanent foundation [system] shall be installed [include]:

(a) In accordance with the manufacturer's installation instructions;

(b) In accordance with the following methods and materials designed to protect from the effects of frost heave:

1. With conventional footings below the frost line depth;
2. As a monolithic slab system in accordance with accepted engineering practice

and approved by the manufacturer and its associated DAPIA; or

3. As an insulated foundation system in accordance with accepted engineering practice and approved by the manufacturer and its associated DAPIA; and

(c) Using the following materials and methods:

1. [(a)] Piers set partially or completely below grade;
2. [(b)] Footers and perimeter blocking, if required;
3. ABS pads;
4. [(c)] Ground anchors, concrete anchors, or other anchoring systems approved by the manufacturer and its associated DAPIA;
5. Concrete block;
6. [(d)] Concrete slab;
7. [(e)] Continuous and spot [pot] footings;
8. [(f)] Pile or post systems; [(g) Pile and post systems;]
9. Steel supports;
10. [(h)] Concrete, concrete block, or other load bearing perimeter walls; or

11. [(i)] Another foundation system approved by a licensed engineer as well as the manufacturer and its associated DAPIA.

(3) The following parts of the chassis of a manufactured home shall be removed after the on-site construction of a permanent foundation:

- (a) Towing hitch;
- (b) Running gear;
- (c) Axles;
- (d) Brakes;
- (e) Wheels; and
- (f) Other parts that operate only during transport.

(4) Only a certified installer shall install a manufactured home or mobile home [A foundation footing shall be considered frost-free

if its depth is twelve (12) inches from grade level under the L-beam].

(5) All exterior electric, water, and sewer connections and additions to a manufactured home or mobile home shall be performed in accordance with the Kentucky Residential Code, as incorporated by reference in 815 KAR 7:125[A-perimeter footing shall be considered frost-free if its depth is twenty-four (24) inches from the final grade].

(6)(a) Underpinning shall be installed on a manufactured home or mobile home if required by the manufacturer's instructions.

(b) If underpinning is installed on a manufactured home or mobile home, the underpinning shall include at least one (1) access panel or door that shall:

1. Be at least eighteen (18) inches in width and twenty-four (24) inches in height;

2. Be at least three (3) square feet in dimension;

3. Be located so that all utility connections under the home are accessible;

4. Be clearly labeled for identification; and

5. Not be obstructed.

(c) An access panel required by this subsection shall not be permanently secured to the home.

Section 2. Site Preparation and[Section 3.] Installation [Inspections and] Responsibility. (1) Responsibility for site preparation. A retailer shall:

(a) Perform site preparation;

(b) [With respect to responsibility for site preparation and installation services;

1. Perform site preparation and installation services;

2. Contract with an independent certified installer to perform site preparation[or installation services]; or

(c) [3.] Assist a requesting purchaser in documenting[to document] the purchaser's voluntary responsibility, if any, to perform site preparation[and installation] functions specified in Form KMH 101 and the contract by:

1. [a.] Providing, explaining, and assisting in the completion of Form KMH 101; and[b.] Explaining the provisions of Form KMH 101;

c. Assisting in the completion of Form KMH 101;

2. [d.] Determining the readiness of the site.

(2) Responsibility for installation services. A retailer shall:

(a) Perform installation services, if the retailer is a certified installer or employs a certified installer; or

(b) Contract with an independent certified installer to perform installation services.

(3) Responsibilities upon the execution of a contract of sale of a new manufactured home. A retailer shall:

(a) Submit an application to the department that contains the following information:

1. Name, address, and telephone number of the purchaser;

2. Address of the manufactured home, if different from the purchaser's address;

3. Date of purchase;

4. United States Department of Housing and Urban Development certification label (HUD tag) number;

5. Serial number of the new manufactured home;

6. Date of installation; and

7. Name and certification number of the certified installer;

(b) [before the home is delivered, if the contract and form relieve the retailer of the foundation construction function;

e. Providing the manufacturer's footing design, which the office will inspect;

f. Collecting an on-site inspection fee of \$100 from the purchaser at the time the contract is signed; and

g. Remitting the inspection fee to the office at the time of the inspection;

(b) Supply the purchaser with Form HBC MH-17[Form KMH 102 at the time the contract for sale of a new or B1 seal home is executed]; and

(c) Include in its closing documents for the sale of a new manufactured home the following:

1. A notice, on a form provided by the department, advising the

purchaser that inspection of the new manufactured home's installation is required; and

2. The consumer disclosure as required by 24 C.F.R. Part 3286.7.

(4) Unlicensed retailers.

(a) An unlicensed retailer shall not sell or offer for sale more than one (1) manufactured home or mobile home in any consecutive twelve (12) month period.

(b) By no later than ten (10) days after the sale of a manufactured home or mobile home by an unlicensed retailer, the unlicensed retailer shall notify the department in writing of the following:

1. Name, address, and telephone number of the unlicensed retailer;

2. Name, address, and telephone number of the purchaser;

3. Date of purchase;

4. United States Department of Housing and Urban Development certification label (HUD tag) number, if any;

5. Serial number of the new manufactured home; and

6. Date of installation.

Section 3. Inspections of New Manufactured Home Installations.

(1) Site and footer inspection.

(a) The retailer shall do the following:

1. Coordinate with the department to schedule the site and footer inspection.

2. Provide the manufacturer's footing design to the department for review at least five (5) working days prior to the department's inspection of the site and footer location.

3. Not commence, or cause to commence, any installation services other than the site and footer location preparation until the department has completed its inspection and issued approval of the site preparation and footer location preparation.

(b) Before the new manufactured home is set, the department shall inspect:

1. The site preparation; and

2. The location intended for the methods and materials used to protect against frost heave in accordance with the manufacturer's installation instructions and this administrative regulation.

(c) The site and footer inspection shall be made by a state inspector.

(d) The site and footer inspection may be completed by a physical inspection or an electronic inspection.

(e) A site and footer inspection shall be scheduled with the retailer, certified installer, or property owner at least one (1) business day in advance and shall be completed by the department within three (3) business days of the scheduled inspection.

(2) Installation inspection.

(a) The department shall inform the installer, purchaser, and, if applicable, the retailer, at least one (1) day prior to the intended inspection of the installation of a new manufactured home.

(b) A person shall not obstruct, hinder, or delay a state inspector in the performance of his or her duty.

(c) 1. Upon completion of the inspection of a new manufactured home, the state inspector shall:

a. Issue a report to the installer, purchaser, and, if applicable, the retailer verifying that the installation complies with the minimum installation requirements of Section 2(1) of this administrative regulation; or

b. Issue a report to the installer and, if applicable, the retailer identifying all deficiencies and the corrective action required to ensure the installation complies with the minimum installation requirements of Section 2(1) of this administrative regulation.

2.a. The installer shall correct all deficiencies and take all corrective action identified by the state inspector's report of deficiency within thirty (30) days of the date of issuance of the report.

b. If all required corrections have been made within the period established in paragraph (b)2.a. of this subsection, the state inspector shall issue a report to the installer, purchaser, and, if applicable, the retailer verifying that the installation complies with

the minimum installation requirements of Section 2(1) of this administrative regulation.

c. If any of the required corrections have not been made within the period established in paragraph (b)2.a. of this subsection, the state inspector shall issue a report to the installer, purchaser, and, if applicable, the retailer identifying:

1. All deficiencies that were corrected in compliance with the report established in paragraph (b)1.b. of this subsection; and

2. All remaining deficiencies, and the remaining corrective action required to ensure the installation complies with the minimum installation requirements of Section 2(1) of this administrative regulation.

Section 4. Inspection Fees. (1) Installation inspection fee.

(a) The retailer shall pay the department an installation inspection fee of \$110 prior to the site and footer inspection conducted by the department.

(b) One (1) site and footer inspection and one (1) installation inspection shall be included by the payment of the installation inspection fee.

(2) Re-Inspection fees.

(a) A retailer shall pay a \$100 re-inspection fee to the department for additional inspections needed to determine if deficiencies found during the site and footer inspection or the installation inspection were corrected.

(b) The re-inspection fee shall be paid before or at the time of any subsequent inspection. [Before constructing a foundation, inspect the site for soil stability, height requirements, and vegetation removal;

(d) Ascertain that a problem revealed by site inspection is properly resolved;

(e) When satisfied that the foundation is ready for the home to be set, notify the office, by telephone, facsimile machine, or mail, at least three (3) working days before delivering the home to the consumer's site; and

(f) Not deliver or set up a home for which the retailer has requested a preinstallation inspection pursuant to paragraph (e) of this subsection, unless:

1. An office inspector issues Form KMH 104; or

2. The office fails to inspect within three (3) days of receipt of the notice required by paragraph (e) of this subsection; and

3. Foundation work has been performed properly; and

(g) If a foundation inspection is required, forward to the Office of the State Fire Marshal a completed Form KMH 105, Request for Inspection. The retailer shall hold the inspection fee and Form KMH 101 until both items can be retrieved by the inspector from the State Fire Marshal's Office prior to the inspection.

(2) The inspector shall:

(a) Provide a written report, on Form KMH 104, to the office, the retailer, and the purchaser:

1. Approving the foundation construction; or

2. Specifying corrective action required in order to meet minimum standards for delivery of the home; and

(b) Not issue Form KMH 104 if the preinstallation inspection reveals nonconformity with an applicable standard.

(3) A retailer shall not set a home on a permanent foundation that does not comply with manufacturer's instructions.

(4) This administrative regulation shall not be construed to relieve any other person involved in the installation of the home from legal liability based upon that person's conduct.

(5) Postinstallation actions:

(a) The office shall order the retailer to take corrective action to bring a home into compliance if an inspection reveals that the home has been installed in violation of:

1. Minimum installation requirements; or

2. A contract of sale and Form KMH 101 that place responsibility on the retailer.

(b) A retailer failing to correct deficiencies ordered corrected by the office shall be subject to the sanctions authorized by KRS 227.630 and 227.640.]

Section 5.[4.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "ANSI A225.1, Manufactured Home Installations",[,] 1994 Edition;

(b) "Form HBC MH-10, Consumer Protection Notice", August 2018[KMH 104, Consumer Protection Notice", September, 2007]; and

(c) "Form HBC MH-17 Site Preparation and Post Installation Guidelines", August 2018[KMH 102, Site Preparation", Foundation and Installation Guidelines, September, 2007];

(d) "Form KMH 104, Release for Delivery", September, 2007; and

(e) "Form KMH 105, Request for Inspection", September, 2007].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department[Office] of Housing, Buildings and Construction, Division of Building Code Enforcement[Fire Prevention], Manufactured Housing Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on September 26, 2018, at 9:00 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum requirements for the installation and inspection of manufactured homes or mobile homes on permanent foundations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement KRS 227.570.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227.570(1) requires the department to enforce standards of installation as the department determines are reasonably necessary to protect public health and safety. KRS 227.590(1) requires the department to establish administrative regulations reasonably necessary to effectuate the provisions of KRS 227.550 to 227.660. This administrative regulation directly conforms to these provisions by establishing the requirements for installation and inspection of manufactured homes or mobile homes on permanent foundations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation directly implements the authorizing statutes and establishes the requirements and standards for the installation and inspection of manufactured homes and mobile

homes.

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

(a) How the amendment will change this existing administrative regulation: This amendment corrects existing provisions that do not presently conform to statutory requirements regarding certified installers. In addition, this amendment clarifies and establishes requirements and procedures enabling the department to inspect all new manufactured home installations as required by KRS 227.570(4). Further, this amendment clarifies the adoption of existing Kentucky Residential Code requirements. All exterior electric, water, sewer connections, and additions to a manufactured home or mobile home must be performed in accordance with that Code. It establishes minimum requirements for inspector access to the underside of a home when the owner chooses to install underpinning. This regulation clarifies the reporting procedures to be used in addressing and resolving deficiencies that may be discovered during an inspection. The amendment increases the installation inspection fee to \$110. Any subsequent installation inspection fee will be \$100.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure conformity with existing statutory requirements relating to the performance and inspection of manufactured home installations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment directly conforms to the authorizing statutes by establishing the requirements for installation and inspection of manufactured homes and mobile home.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is essential to ensure that the department has the ability to effectively administer its manufactured home inspection program in accordance with applicable law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All certified manufactured home or mobile home installers as well as retailers doing business within the Commonwealth. In addition, purchasers of manufactured homes or mobile homes are affected as well.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: Retailers will be required to follow the reporting, noticing, inspection, and fee submission procedures established in this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Retailers will be responsible for submitting the site and footer inspection fee and the installation inspection fee for new manufactured homes established by KRS 227.570 and reflected in this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected consumers will enjoy enhanced public protection through state inspections ensuring that retailers and certified installers are complying with applicable state and federal rules regarding the proper placement and installation of their homes. The regulated entities will have clarity regarding applicable statutory requirements. Uniform procedures will ensure consistent inspections and opportunity to correct any deficiencies.

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

(a) Initially: The implementation costs of this administrative regulation will be approximately \$250,000.

(b) On a continuing basis: The implementation costs on an ongoing basis will be approximately \$250,000.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The increase of the initial inspection fee from \$100 to \$110 will help cover the costs associated with the implementation and

enforcement of this administrative regulation. Any further department costs of implementation will be met with existing department funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment establishes a new site and footer inspection that requires an increase in the installation inspection fee to \$110 from \$100. There is also a potential fee of \$100 for subsequent installation inspections for the same manufactured homes.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment increases the installation inspection fee to \$110 from \$100. There is also a potential fee of \$100 for subsequent installation inspections for the same manufactured homes.

(9) TIERING: Is tiering applied? Tiering is not applied as all relevant site preparation and installation work will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Section.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized and required by KRS 227.570.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is estimated that approximately 2,400 inspections per year will be required and that will result in a total revenue of approximately \$264,000 annually.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Approximately \$264,000 annually (See 3.(a)).

(c) How much will it cost to administer this program for the first year? The number of inspections will increase from 6,500 inspections to 11,300 inspections. In order to provide the industry and the consumer with timely responses, the Department anticipates an increase in staff of at least two (2) additional field inspectors. The Department approximates this increase in cost to be about \$250,000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$264,000 annually (See question 3.(c)).

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

Revenues (+/-): Increase (+\$264,000)

Expenditures (+/-): Increase (+\$250,000)

Other Explanation: None

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction
Building Code Enforcement, Manufactured Housing Section
(Amendment)

815 KAR 25:100. Alternative dispute resolution and mediation program.

RELATES TO: KRS 227.550, 227.640(4)[227-640(3)]

STATUTORY AUTHORITY: KRS 227.640(4)[227-640(3)], 227.590(1)

NECESSITY FUNCTION AND CONFORMITY: KRS 227.590(1) requires the department to promulgate administrative regulations to effectuate the provisions of KRS 227.550 to 227.660. KRS 227.640(4) [227.640(3)] requires the department [office] to establish [provide for] a dispute resolution process that may be used prior to a formal hearing under KRS Chapter 13B. [KRS 227.590(1) requires the board to promulgate administrative regulations to effectuate the provisions of KRS 227.550 to 227.660. 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 the executive director, as the head of the department.] This administrative regulation establishes a mediation process [the requirements] for dispute resolution [using the process of mediation].

Section 1. [Definitions. (1) "Board" is defined by KRS 227.550(1).

(2) "Certified installer" means an individual certified to install manufactured housing pursuant to 815 KAR 25:080.

(3) "Manufacturer" is defined by KRS 227.550(9).

(4) "Retailer" is defined by KRS 227.550(4).

Section 2. ~~Establishment of the~~ Kentucky Manufactured Housing [Certification and Licensure Board] Mediation Program. The department [board] shall administer the Kentucky Manufactured Housing [Certification and Licensure Board] Mediation Program [to comply with KRS 227.640(3)].

Section 2. [3.] Eligibility for Mediation. (1) A consumer, applicant, or a licensee [manufacturer, certified installer, or retailer of manufactured housing whose application, certification, or license is] subject to disciplinary action under KRS 227.640, may request mediation prior to [the convening of] a formal hearing under KRS Chapter 13B.

(2) A request to mediate shall be submitted to the department in writing [and shall be submitted to the board].

Section 3. [(3) Upon receipt of the request to mediate, the board shall forward the request to the Office of the Attorney General.

Section 4.] Mediation Procedures. (1) Mediations shall be conducted by the Office of Administrative Hearings within the Public Protection Cabinet [the Attorney General mediators].

(2) Mediations shall be scheduled by the Office of Administrative Hearings within the Public Protection Cabinet at a time agreed upon by [the Attorney General after receipt of the written request to mediate and agreement to participate at times convenient for] all participants.

(3) The [scheduled] mediation may be rescheduled with written agreement [approval] by all participants [participating parties].

(4) If the mediator initially assigned has a [documented] conflict of interest, the mediator, or the participants, shall request an alternate mediator from the Office of Administrative Hearings within the Public Protection Cabinet [within the Office of the Attorney General].

(5) [If it is determined that a conflict of interest exists between a party and the Office of the Attorney General's mediator, then a mediator shall be selected by the board from the roster maintained by the Administrative Office of the Courts.

(6) Mediation shall proceed only if all participants [parties] are present and each party has [with] full settlement authority [are present]. The participants shall be responsible to ensure that all [it shall be the responsibility of the parties to have the] necessary persons are present at the mediation.

(7) Participation in the mediation shall constitute an agreement by the participants [parties] that all offers of compromise, promises, or statements made in the course of the mediation shall not be offered at any subsequent hearing or trial relating to the subject matter of the dispute unless otherwise discoverable.

(8) The content of the mediation shall remain confidential as permitted by state and federal law.

(9) The mediator shall not be subject to participation or

subpoena in subsequent proceedings regarding the matter mediated.

(10) Following successful mediation, an agreement shall be prepared at the direction of the mediator and executed [Final mediation agreements shall be prepared by the mediator and signed] by the parties.

Section 4. [5.] Costs of Mediation. Cost of mediations conducted pursuant to this administrative regulation shall be divided equally among the participants [all parties participating in the mediation].

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Manufactured Housing Mediation Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement KRS 227.640(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227.640(4) requires the department to promulgate administrative regulations to provide a dispute resolution process that may be used to resolve violations committed by manufacturers, retailers, or certified installers prior to a formal administrative hearing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation directly implements the authorizing statutes and establishes the procedure for a mediation program.

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

(a) How the amendment will change this existing administrative regulation: This amendment revises and reorganizes portions of the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to make the administrative regulation more user friendly.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment directly conforms to the authorizing statutes by establishing the requirements for a dispute resolution process.

(d) How the amendment will assist in the effective

administration of the statutes: This amendment makes compliance with the alternative dispute resolution process easier.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in the manufacturing, sale, and installation of manufactured homes, mobile homes, and recreational vehicles, individuals with complaints, and department personnel.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This amendment imposes no new requirements on the affected parties; it clarifies an alternative process for dispute resolution.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities will encounter no additional cost based on the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is concise for ease of use and compliance, and the amendment is consistent with the rest of this Chapter.

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

(a) Initially: There are no anticipated additional initial costs to administer this regulatory amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this regulatory amendment on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any department costs of implementation will be met with existing department funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees increased by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all manufacturers, retailers, and installers of manufactured homes, mobile homes, and recreational vehicles are subject 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? The Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Section.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized and required by KRS 227.640(4).

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

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

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

revenue for the state and local government for subsequent years.

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction

Electrical Division

(Amendment)

815 KAR 35:015. Certification of electrical inspectors.

RELATES TO: KRS 198B.060, 198B.090, 211.350, 227.450, 227.480, 227.489, 227.491, 227.492, 227.495

STATUTORY AUTHORITY: KRS 227.489

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.489 requires the commissioner of the Department of Housing, Buildings and Construction to require[certify] electrical inspectors to be certified based on standards of the National Electrical Code. This administrative regulation establishes the procedures for achieving and maintaining a[the] certification as an electrical inspector.

Section 1.[Definitions. (1) "Applicant" means the person seeking to be certified as an electrical inspector.

(2) "Certified Electrical inspector" means a person who has:

(a) Met the requirements established in this administrative regulation; and

(b) Been issued a certificate by the department.

(3) "Code" means the National Electrical Code (NEC), which is incorporated by reference in 815 KAR 7:120 and 815 KAR 7:125.

(4) "Division" means the Electrical Division within the Department of Housing, Buildings and Construction.

(5) "Electrical" is defined by KRS 227.450(3).

(6) "Electrical industry" means the industry engaged in the generation, transmission, and distribution of electricity and the design, manufacture, construction, installation, alteration, or repair of electrical wiring, facilities, and apparatus for the utilization of electricity.

(7) "Commissioner" means the commissioner of the Department of Housing, Buildings and Construction.

(8) "Department" means the Department of Housing, Buildings, and Construction.

(9) "NCPCCI" means National Certification Program for Construction Code Inspectors, which administers examinations developed by national code enforcement organizations in collaboration with the Educational Testing Service for the purpose of providing nationally recognized evidence of competence in construction code enforcement.

Section 2.] Applicability. This administrative regulation shall apply to[an] electrical inspectors[inspector] in Kentucky and applicants[to an applicant] for certification as an electrical inspector in Kentucky.

Section 2.[3.] Classifications[Categories] of[Certified] Electrical Inspectors. (1) An[A certified] electrical inspector shall be classified as either[an]:

(a) An electrical inspector one (1) and two (2) family shall be a person who has:

1. Passed an examination focused on electrical installations in one (1) or two (2) family dwellings with a score of seventy (70) percent or greater by a test provider approved by the department; and

2. At least four (4) years experience immediately preceding the application in the installation and design of residential wiring systems installed in accordance with the National Electrical Code, NFPA 70 incorporated by reference in 815 KAR 7:120 and 815 KAR 7:125; or

(b) An electrical inspector general shall be a person who has:

1. Passed an examination focused on electrical installations in residential, commercial, and industrial buildings with a score of seventy (70) percent or greater by a test provider approved by the department; and

2. At least eight (8) years of experience immediately preceding the application in the installation and design of residential, commercial, and industrial wiring systems installed in accordance with the National Electrical Code, NFPA 70, incorporated by reference in 815 KAR 7:120 and 815 KAR 7:125.

(2) The requirements in subsections 1(a) and 1(b) shall be satisfied if the person is:

(a) A registered professional electrical engineer engaged in that profession for at least three (3) years immediately preceding the application; or

(b) Currently licensed as a master electrician and actively engaged in the electrical trade in that capacity immediately preceding the application.

(3)(a)(2) An electrical inspector one (1) and two (2) family shall be certified:

(a) A person who has passed the NCPCCI 2A examination; and

(b) Qualified] to inspect and approve an electrical installation related to a:

1. One (1) or two (2) family dwelling; or

2. Manufactured home or mobile home.

(b)(3) An electrical inspector general shall be certified:

(a) A person who has passed the NCPCCI 2B examination; and

(b) Qualified] to inspect and approve an electrical installation related to any type of residential, commercial, industrial, or other property that requires electrical inspection.

(4) A passing score as described in subsections (1)(a)1. and (1)(b)1. shall be valid for a period of three (3) years.

Section 4. Application Requirements for Certification. (1) An applicant for certification as an electrical inspector shall submit to the department:

(a) A completed Application for Electrical Inspector Certification on Form EL-11;

(b) Proof of successful completion of the examination applicable to the certification sought pursuant to Section 2(1)(a) and (b) of this administrative regulation;

(c) Except for electrical inspectors employed by the department, a fee of \$100 dollars payable to the Kentucky State Treasurer;

(d) Proof of the applicant's experience as required by Section 3(1)(a)2. and (b)2. of this administrative regulation;

(e) A passport-sized, color photograph of the applicant taken within the past six (6) months; and

(f) Proof of a bond in the amount of \$5,000 in compliance with KRS 227.487(4), unless employed by the department or a local government rules otherwise.

(2) An applicant shall~~1. Have at least five (5) years of experience immediately preceding the application in the installation and design of all types of:~~

a. ~~Residential wiring systems installed in accordance with the code, if the applicant is applying for certification as an electrical inspector one (1) and two (2) family; or~~

b. ~~Residential, commercial, and industrial wiring systems installed in accordance with the code, if the applicant is applying for certification as an electrical inspector general;~~

2. ~~Be a registered professional electrical engineer engaged in that profession for at least three (3) years immediately preceding the application; or~~

3. ~~Be currently licensed as a master electrician and have been actively engaged in the electrical trade in that capacity immediately preceding the application;~~

(b) possess:

(a)[4.] ~~The ability to read and write the English language; and~~

(b)[2.] ~~A general educational level at least adequate to perform his or her duties.~~

(3) Proof of listed experience shall be provided by:

1. A federal or state tax form; or

2. An affidavit by another license holder who worked with the applicant.

(4)]:

(c) Submit a completed Form EL-11, Application for Electrical Inspector Certification, which shall be:

1. Notarized; and

2. received by the department at least thirty (30) days prior to the next scheduled Electrical Advisory Committee meeting; and

(d) Submit with the application:

1. Proof of successful completion of the NCPCCI examination applicable to the certification sought, as established by Section 3(2)(a) and (3)(a) of this administrative regulation;

2. Except as established by subparagraph 4. of this paragraph, a fee of \$100 dollars payable to the Kentucky State Treasurer;

3. A recent passport-sized, color photograph of the applicant taken within the past six (6) months; and

4. The fee established by subparagraph 2. of this paragraph shall not apply to an electrical inspector employed by the department.

(2) ~~If an otherwise qualified applicant is not able to demonstrate compliance with the experience requirements established in subsection (1)(a) of this section, the applicant may request to appear before the Electrical Advisory Committee to establish his or her background in and familiarity with electrical construction through other means. The department with recommendations from the Electrical Advisory Committee shall:~~

(a) ~~Review the documentation; and~~

(b) ~~Approve the applicant if it is satisfied that the applicant's qualifications are substantially equivalent to the experience requirements established in subsection (1)(a) of this section.~~

(3) ~~An applicant shall receive credit[earned] for an electrical course satisfactorily completed from an accredited vocational school or college on a year-for-year basis. Credit for education to replace an applicant's experience requirements shall be limited to a total of two (2) years.~~

(5) The department shall issue a certification for an electrical inspector only to an individual. A corporation, partnership, company, or other entity shall not be issued a certification.

Section 5. Certificate Renewal~~[Renewals of "General" and "One (1) and Two (2) Family" Certificates]. (1) Certification period.~~

(a) Each electrical inspector's certification shall expire on the last day of the electrical inspector's birth month each year.

(b) The department shall send each electrical inspector a renewal application form prior to the date of expiration~~[Certification shall:~~

(a) ~~Be issued to an individual; and~~

(b) ~~Not be issued to a corporation, partnership, company, or other entity].~~

(2) Filing for renewal. Each~~[applicant seeking to renew his or her] electrical inspector seeking certification renewal shall submit to the department~~~~[division]:~~

(a) A completed Application for Electrical Inspector Certification on Form EL-11~~[Electrical Inspector Certification Renewal Application on Form EL-12];~~

(b) A~~[The] renewal fee of fifty (50) dollars~~~~[required by subsection (5) of this section];~~

(c) Proof of compliance with the continuing education requirements established in 815 KAR 2:010~~[Section 6(1) of this administrative regulation];~~

(d) If the electrical inspector~~[applicant] is employed by a local government~~~~[as an electrical inspector], documented proof of continued employment signed by the hiring authority responsible for administering the local jurisdiction's inspection and code enforcement program;~~

(e) For each local jurisdiction with which the applicant is contracted to act as an electrical inspector, a copy of the current

contract naming the applicant and establishing the terms and conditions of his or her authority; and

(f) For each local jurisdiction with which the applicant is employed or contracted to act as an electrical inspector, a copy of the ordinance fixing the schedule of fees authorized to be charged for electrical inspections within that jurisdiction.

(3) ~~Current information.~~[(a)] An applicant who has previously submitted a document required by subsection (2)(e) and (f) of this section ~~for~~[in connection with] a prior renewal shall not be required to resubmit that document ~~with his or her application for renewal~~ if it remains current and effective at the time of the current renewal.

(4) ~~Change of information.~~[(b)] Within ten (10) days of the occurrence, a ~~certified~~ electrical inspector shall provide the ~~department~~[division]:

(a)[1-] Notice of any establishment, change, or termination of the electrical inspector's contract or employment with a local jurisdiction;

(b)[2-] A copy of any new or revised contract entered into~~executed~~ with a local jurisdiction; and

(c)[3-] Notice of the termination of employment by a local government as an electrical inspector;

4. Notice of new employment by a local government as an electrical inspector, signed by the hiring authority responsible for administering the local jurisdiction's inspection and code enforcement program; and

5-] For any local jurisdiction with which the electrical inspector is employed or contracted, a copy of any ordinance amending the schedule of fees authorized to be charged for electrical inspections within that jurisdiction.

(5) ~~Late~~[(4)] Each electrical inspector certification shall expire on the last day of the inspector's birth month each year. The office shall mail each certified inspector, prior to the date of expiration, a renewal application form, and the certification shall be renewed subject to the provisions of this administrative regulation.

(5) A renewal fee of fifty (50) dollars shall be paid by each certified electrical inspector on or before the last day of the inspector's birth month in each succeeding year to maintain certification.

(6) ~~Delinquent~~ renewal fee].

(a) An ~~A~~ certified electrical inspector who fails to submit the renewal application and renewal fee ~~for renewal~~ on or before the last day of his or her birth month shall pay a late renewal~~delinquent~~ fee of fifty (50) dollars in addition to the renewal fee.

(b) If both fees are not paid or~~and~~ all required continuing education is not completed within sixty (60) days after the last day of the electrical inspector's birth month, the certification shall be terminated~~canceled and shall not be renewed~~.

(6) [(7)] Reinstatement.

(a) A certificate that has been terminated~~revoked or canceled~~ may be reinstated at the discretion of the commissioner upon a petition in writing, demonstrating just cause why the petitioner failed to comply~~could not have complied~~ with the renewal requirements established by this section.

(b) [(8)] An applicant for reinstatement shall:

1. [(a)] Pay a reinstatement fee of \$100 in addition to the late renewal fee required by subsection (5) of this section;

2. [(b)] Comply with the requirements established by subsection (2) of this section;

3. a. [(c)] Pay the delinquent renewal fee required by [subsection (6) of this section]; and

(d) 1-] Submit proof of required continuing education pursuant to 815 KAR 2:010 for the number of hours required in one (1) year ~~required by Section 6(1) of this administrative regulation for each year the certificate was revoked or cancelled~~; or

b. [2-] Submit proof of having passed the [NCPCC] examination applicable to the certification to be reinstated, as established by Section 2(1)(a) and (b)~~Section 3(2)(a) and (3)(a)~~ of this administrative regulation, within the current year.

(7) [(9)] The requirements of this section shall not apply to a state-employed electrical inspector.

Section 6. Duties and Responsibilities ~~[of a Certified Electrical~~

Inspector]. (1) ~~Each certified electrical inspector shall attend at least one (1) continuing education program of a minimum of twelve (12) hours each year. The program shall be approved by the department with advice from the Electrical Advisory Committee in accordance with the requirements established by 815 KAR 35:100.~~

(2) Each electrical inspection shall be conducted in a manner to verify compliance with the code, the Kentucky Building Code as adopted and incorporated by reference in 815 KAR 7:120, the Kentucky Residential Code as adopted and incorporated by reference in 815 KAR 7:125, and the Kentucky Standards of Safety as adopted and incorporated by reference in 815 KAR 10:060.

(3) In addition to the National Electrical Code~~code~~, the electrical inspector shall be familiar with all~~the~~ applicable building codes and fire safety codes governing buildings in the area in which the electrical inspector performs an inspection ~~to determine the occupancy load of a facility~~.

(2) Record retention.

(a) [(4)] The electrical inspector shall make an inspection upon request of the electrical contractor.

(5) The electrical inspector shall comply with the requirements of 815 KAR 35:020.

(6) (a) A temporary construction service approval shall receive a green sticker and a certificate of approval.

(b) For an installation subject to KRS 211.350, the electrical inspector shall not issue a certificate of approval or otherwise release the property for the supply of electricity until he or she has received the local health department's "Initial Notice of Release" (Notice of Release for Temporary Electrical Service, Form PHPS-001) and has recorded its number upon the certificate of approval.

(7) Except for manufactured homes, the electrical inspector shall make a rough-in and final inspection on a building's electrical system installation and other inspections necessary to approve the installation.

(a) Upon completion of the rough-in inspection, the inspector shall attach a red sticker with his or her signature and certification number on the main service equipment or at some other appropriate location.

(b) A "service only" approval may be issued by the inspector to provide temporary power for heating and lighting for the building during completion of construction and shall not authorize occupancy of the facility. The sticker issued for "service only" approval shall be yellow.

(c) Upon final approval of an electrical installation, the inspector shall:

1. Attach a green sticker to the main service equipment:

a. With his or her signature and certification number, name of the project, and location; and

b. Stating that the system has been inspected for compliance with the code; and

2. Provide the owner or the owner's agent with a certificate of approval. For an installation subject to KRS 211.350, the electrical inspector shall not issue a certificate of approval or otherwise release the property for the supply of electricity until he or she has received the local health department's "Final Notice of Release" (Notice of Release for Permanent Electrical Service, Form PHPS-002) and has recorded its number upon the certificate of approval.

(8) A red, yellow, or green sticker or a certificate of approval to be used by the electrical inspector shall be of a type and format issued or approved by the department.

(9) Each electrical inspector shall make ~~and retain for a minimum of three (3) years~~ a complete record of each inspection ~~and make it available to the department upon request~~. The record shall contain, as a minimum:

1. [(a)] Sufficient information to identify the location of the structure inspected;

2. [(b)] The date of the inspection;

3. [(c)] The type of structure, whether residential, commercial, industrial, or other;

4. [(d)] The designation of a required permit and the agency granting the permit;

5. [(e)] The size and complexity of the structure; and

6. [(f)] Any deficiencies in meeting code requirements and the actions~~action~~ required to comply.

(b) If the electrical inspector is employed by a local government, the electrical inspector or the local government shall maintain the records in compliance with 725 KAR 1:061.

(c) If the electrical inspector contracts with a local government, the local government shall maintain the records in compliance with 725 KAR 1:061.

(d) If the electrical inspector is an employee of the department, the electrical inspector shall submit the reports to the department in compliance with KRS 227.487(1)[(10) Violation of KRS 211.350(8) by a certified electrical inspector shall constitute misconduct].

Section 7. Complaints and Grievance Procedures. (1) A person may file a complaint against an[a-certified] electrical inspector if the person believes that an act or omission of the electrical inspector in the performance of his or her duties is in violation of this administrative regulation or other law or has caused an undue hardship to the person.

(2) A complaint or allegation of misconduct shall be submitted in writing to the department[commissioner] and shall:

(a) Include the nature of the alleged misconduct, with specific details as to acts, names, dates, and witnesses; and

(b) Specify the action requested of the of the department[commissioner].

(3) Following an investigation, the department[commissioner] shall:

(a)[Cause the matter to be heard and a recommendation rendered by the Electrical Advisory Committee;

(b)] Set the matter for public hearing; or

(b)[(c)] Take other appropriate action in accordance with KRS 227.495 to resolve or correct the matter.

Section 8. Suspension and Revocation of Certification. The commissioner shall revoke, suspend, or refuse to renew the certificate of an electrical inspector who is determined, by the commissioner after having afforded the opportunity for a KRS Chapter 13B administrative hearing, to have:

(1) Engaged in an activity that constitutes a conflict of interest, including:

(a) Work as an electrical contractor or electrician;

(b) Involvement in an activity in the electrical industry; or

(c) Having a pecuniary or associational interest in a business or other venture involved in an activity in the electrical industry;

(2) Engaged in fraud, deceit, or misrepresentation in obtaining certification;

(3) Demonstrated[Been guilty of] negligence, incompetence, or misconduct in the field of electrical inspection;

(4) Affixed or caused to be affixed a seal of approval or issued a certificate of approval for an electrical installation subject to inspection if he or she has not personally inspected the installation and found it to be satisfactory in accordance with the code;

(5) Operated as an electrical inspector in a locality in conflict with state or local laws, ordinances, or regulations;

(6) Knowingly overruled the proper findings of another electrical inspector or attempted to supplant, overrule, or otherwise invalidate the judgment of another electrical inspector without first obtaining express written consent from the designated electrical inspector's office supervising the original electrical inspector;

(7) Failed to maintain accurate and adequate recordkeeping as required by Section 6 of this administrative regulation;

(8) Violated KRS 211.350(8); or

(9)[(8)] Violated any provision of KRS 227.491 or this administrative regulation.

Section 9.[Electrical Inspections by State-Employed Certified Electrical Inspectors. (1) State-owned property, including each building being constructed by the state under the authority of the Finance and Administration Cabinet, shall be inspected by a certified electrical inspector who is an employee of the state.

(2) A state-employed certified electrical inspector shall inspect any electrical work subject to inspection within a local jurisdiction if a certified electrical inspector has not been made available by the local government.

(3) A state-employed certified electrical inspector shall assert

jurisdiction for the electrical inspection of a project subject to state plan review pursuant to Kentucky Building Code, 815 KAR 7:120.

(4) A state-employed certified electrical inspector may inspect a state leased facility that is not otherwise subject to state inspection pursuant to this section, upon request.

~~Section 10. Interpretations. If a provision of the code is shown to be unreasonable or impractical as applied to a particular installation, and if deviation from strict compliance would not create a safety hazard because of a particular use or condition, an individual may request to appear before the Electrical Advisory Committee of the Department of Housing, Buildings and Construction to request a modification to the code. Upon advice from the committee, the department shall render its decision in the matter and the decision shall be appealable to the Board of Housing, Buildings and Construction in accordance with KRS 198B.070 and the Kentucky Building Code, 815 KAR 7:120, or Kentucky Residential Code, 815 KAR 7:125.~~

Section 11.] Incorporation by Reference. (1) Form EL-11, "Application for Electrical Inspector Certification", August 2018 is incorporated by reference[The following material is incorporated by reference:

(a) Form EL-11, "Application for Electrical Inspector Certification", May 2015, Department for Housing, Buildings and Construction;

(b) Form EL-12, "Electrical Inspector Certification Renewal Application", May 2015, Department for Housing, Buildings and Construction;

(c) Form PHPS-001, "Notice of Release for Temporary Electrical Service", May 1998 Edition, Department for Public Health; and

(d) Form PHPS-002, "Notice of Release for Permanent Electrical Service", May 1998 Edition, Department for Public Health].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Electrical Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for obtaining and maintaining a certification as an electrical inspector.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria for obtaining and maintaining a certification as an electrical inspector.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227.489 requires the commissioner of the Department of Housing, Buildings and Construction to require that electrical inspectors be certified based on the standards of the National Electrical Code. This administrative regulation conforms to the authorizing statute by providing the requirements needed to become and remain a certified electrical inspector.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the application process for an individual to follow to become a certified electrical inspector. This administrative regulation also establishes the processes a certified electrical inspector must follow to maintain his or her certification.

(2) If 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 reduces the years of experience required to become a certified electrical inspector one and two family from five (5) years to four (4) years, and increases the years of experience required to become a certified electrical inspector general from (5) years to eight (8) years. This amendment allows an individual to take any examination that satisfies the requirements. A passing score on the examination will be applicable for three (3) years. Portions of the administrative regulation establishing requirements for electrical inspections are being concurrently moved to 815 KAR 35:020 for ease of use. The amendment clarifies which entity is required to maintain electrical inspection records. This amendment also reorganizes the administrative regulation and fixes grammatical and technical errors.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to better coordinate certification of electrical inspectors with the other electrical licenses. This amendment also updates and clarifies the certification and renewal process for electrical inspectors.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is authorized by the grant of authority in KRS 227.489 to require the certification of electrical inspectors in the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates and clarifies the electrical inspector certification process and forms to make them more user friendly and easier for electrical training programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All current and potential electrical inspectors in the Commonwealth and Department of Housing, Buildings and Construction personnel will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: Potential applicants seeking an electrical inspector general certification will have to establish eight (8) years of experience instead of five (5) years.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Potential electrical inspectors will no longer be restricted as to what examination the applicant must take.

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

(a) Initially: There are no anticipated initial additional costs to

administer this regulatory amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this regulatory amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the agency. Any agency costs resulting from this administrative amendment will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all electrical inspectors will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Electrical Division will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The amendments are authorized by KRS 227.489.

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

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

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Electrical Division (Amendment)

815 KAR 35:020. Electrical inspections.

RELATES TO: KRS 198B.050, 211.350, 227.460, 227.480, 227.487, 227.491

STATUTORY AUTHORITY: KRS 198B.060(18), 227.480(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.480(1)(b) requires the Department of Housing, Buildings and Construction to promulgate administrative regulations to describe the circumstances for which inspections are required for electrical

construction, installations, alterations, or repairs. KRS 198B.060(18) authorizes the department to establish a schedule of fees for the functions it performs pursuant to KRS Chapter 198B. This administrative regulation establishes the requirements for inspections of electrical construction, installations, alterations, and repairs.

Section 1. Jurisdiction. (1) State jurisdiction.

(a) The department shall conduct electrical inspections for state-owned property, including each building constructed by the state under the authority of the Finance and Administration Cabinet.

(b) An electrical inspector employed by the department shall inspect any electrical work subject to inspection within a local jurisdiction if a certified electrical inspector has not been made available by the local government.

(c) An electrical inspector employed by the department may assert jurisdiction for the electrical inspection of a project subject to state plan review pursuant to Kentucky Building Code, 815 KAR 7:120.

(d) An electrical inspector employed by the department may inspect a state leased facility that is not otherwise subject to state inspection pursuant to this section, upon request.

(2) Local jurisdiction. A local electrical inspector shall conduct electrical inspections pursuant to KRS 198B.060.

Section 2. Permits. (1) Prior to the commencement of electrical work subject to state inspection, the electrical contractor, property owner, or other person responsible for the electrical work to be performed shall request and obtain a permit from the department.

(2) The person requesting a permit shall submit to the department "Electrical Permit Application" on Form EL-13.

(3) It shall be the obligation of the contractor, property owner, or other person responsible for the electrical work to supply the complete value of the electrical work, including labor and material costs, regardless of the purchaser.

(4) The department shall request other documented proof of costs from the responsible person or owner if the true value is in question[Compliance with Applicable Codes. The department or a certified electrical inspector having jurisdiction shall inspect electrical construction, installations, alterations, and repairs, for compliance with NFPA 70, the National Electrical Code, incorporated by reference in 815 KAR 7:120, Kentucky Building Code, 815 KAR 7:125, Kentucky Residential Code, and 815 KAR 10:060, Kentucky Standards of Safety].

Section 3.[2. Mandatory] Electrical Inspections. (1)[Inspections shall be required for each electrical construction, installation, alteration, or repair that is not exempt from inspection pursuant to Section 4 of this administrative regulation.

(2)[Except as provided in subsection (2) of this section, the department or a local certified electrical inspector having jurisdiction shall inspect each electrical construction, installation, alteration, or repair to ensure compliance with NFPA 70, the National Electrical Code, incorporated by reference in 815 KAR 7:120, Kentucky Building Code, 815 KAR 7:125, Kentucky Residential Code, and 815 KAR 10:060, Kentucky Standards of Safety.

(2) Exemptions from Electrical Inspections. Electrical inspections shall not be required for:

(a) Electrical work beyond the scope of NFPA 70;

(b) Electrical work that is exempt from permitting requirements pursuant to:

1. Section 105.2 of the Kentucky Building Code, 815 KAR 7:120;

2. Section 2703.2 of the Kentucky Building Code, 815 KAR 7:120; or

3. Section R105.2 of the Kentucky Residential Code, 815 KAR 7:125;

(c) Electrical wiring under the exclusive control of electric utilities, in accordance with KRS 227.460;

(d) Electrical wiring of a surface coal mine, an underground coal mine, or at a coal preparation plant; and

(e) Appliances;

(a) Upon request by the permit holder or property owner;

~~(b) Upon discovery or receipt of information indicating that electrical work subject to the jurisdiction of the department or inspector has been performed without a permit, if a permit was required pursuant to KRS 227.480, 815 KAR 7:120, Kentucky Building Code, or 815 KAR 7:125, Kentucky Residential Code; or~~

~~(c) If required by 815 KAR 35:015 or this administrative regulation].~~

(3) The department or a local electrical inspector having jurisdiction shall perform an electrical inspection upon discovery or receipt of information indicating that electrical work requiring a permit pursuant to KRS 227.480, 815 KAR 7:120, Kentucky Building Code, or 815 KAR 7:125, Kentucky Residential Code has been performed without a permit.

(4) Inspection scheduling.

(a) The permit holder or property owner shall be responsible for scheduling an[appointment for] inspection with the electrical inspection authority for the jurisdiction.

(b)[(4)(a)] Each[mandatory] electrical inspection shall be[scheduled and] completed within five (5) working days of the[permit holder or property owner's] request for inspection, except for an inspection performed pursuant to subsection (3)[(2)(b)] of this section.

(c)[(b)] An inspection performed pursuant to subsection (3)[(2)(b)] of this section shall be conducted and completed within five (5) working days of discovery or receipt of information indicating that the electrical work has been performed.

(5) Rough-in inspections.

(a) Rough-in inspections shall be required only if any portion of the electrical work will be covered or concealed. The rough-in inspection shall be conducted prior to covering or concealment.

(b) A rough-in inspection may be requested for part of the electrical work on a project or all the electrical work on a project.

(c) Upon completion of the rough-in inspection, an electrical inspector shall attach a red sticker with his or her signature and certification number on the main service equipment or at some other appropriate location[A rough-in inspection shall be conducted on all permitted electrical work prior to covering or concealment].

(6) Prohibition on covering. (a) If an installation is covered without prior inspection, the electrical inspector shall require the system to be uncovered for inspection, unless unnecessary to perform the inspection.

(b) If conditions require partial coverage of the permitted electrical work, permission shall be requested and received from the electrical inspector prior to coverage.

(c) If in the judgment of the electrical inspector uncovering the electrical work is likely to result in more damage, then exposing the electrical work shall only occur at the request of the property owner[If conditions require partial coverage of the permitted electrical work, permission shall be requested of and received from the department or electrical inspector having jurisdiction prior to coverage or concealment].

(7) Final inspections.[Covering an installation without final approval or permission of the department or electrical inspector shall result in the uncovering of the electrical work for inspection, unless the department or inspector having jurisdiction determines that uncovering is unnecessary to confirm compliance with the National Electrical Code.

(8) A final inspection shall be conducted by the department or electrical inspector having jurisdiction after completion of the permitted electrical work and prior to use.

(8) Voluntary inspections. An[Section 3. Permissive Electrical Inspections. (1) A temporary or partial final inspection may be conducted if:

(a) The temporary or partial final inspection will not prevent the remaining portion of the permitted work from being inspected; and

(b) The electrical work subject to temporary or partial inspection is separate and distinguishable from installations remaining to be inspected.

(2) A voluntary inspection for any electrical construction, installation, alteration, repair, or maintenance normally exempt from inspections pursuant to subsection (2) of this section[, not subject to mandatory requirements as established in Section 2 of this administrative regulation,] may be requested to be performed

VOLUME 45, NUMBER 3 – SEPTEMBER 1, 2018

by the department or electrical inspector having jurisdiction.

(9) Construction service approval. A temporary construction service approval for a construction site shall receive a green sticker and a certificate of approval.

(10) Service only approval. A "service only" approval may be issued by the inspector to provide temporary power for heating and lighting for the building during completion of construction and shall not authorize occupancy of the facility. The sticker issued for "service only" approval shall be yellow.

Section 4. Access. All access, equipment, and material necessary for inspections shall be provided by the property owner or person obtaining the electrical permit or requesting the electrical inspection. The voluntary inspection shall be scheduled with the department or certified electrical inspector having jurisdiction.

Section 4. Exemptions from Mandatory Electrical Inspections. Electrical inspections shall not be required for:

(1) Electrical work beyond the scope of NFPA 70;

(2) Electrical work that is exempt from permitting requirements pursuant to:

(a) Section 105.2 of the Kentucky Building Code, 815 KAR 7:120;

(b) Section 2703.2 of the Kentucky Building Code, 815 KAR 7:120; or

(c) Section R105.2 of the Kentucky Residential Code, 815 KAR 7:125;

(3) Electrical wiring under the exclusive control of electric utilities, in accordance with KRS 227.460;

(4) Electrical wiring of a surface coal mine, an underground coal mine, or at a coal preparation plant; and

(5) Appliances.

Section 5. [Inspections by State Employed Electrical Inspectors.]

(1) The department shall conduct electrical inspections in accordance with 815 KAR 35:015.

(2) Prior to the commencement of electrical work subject to state inspection pursuant to this section, the electrical contractor, property owner, or other person responsible for the work to be performed shall request and obtain a permit from the department.

(3) The person requesting a permit pursuant to this section shall submit to the department:

(a) The address and location where the work is to be performed;

(b) The type of electrical service to be constructed, installed, altered, or repaired;

(c) The nature and scope of the work to be performed;

(d) The identity and contact information of the electrical contractor or other persons responsible for performing the work;

(e) The total dollar value of the electrical construction, installation, alteration, or repair;

(f) A copy of the electrical contract, if any; and

(g) The name and contact information of the property owner.

(4) It shall be the obligation of the contractor, property owner, or other person responsible for the work to supply the complete value of the work, including labor and material costs regardless of the purchaser.

(5) The department shall request other documented proof of costs from the responsible person or owner if the true value is in question.

(6) Fees for State Inspections. (1) The electrical contractor, property owner, or other person responsible for the electrical work shall (a) It shall be the responsibility of the electrical contractor, property owner, or other person responsible for the work to pay [to] the department the [an] inspection fee required by this section [subsection].

(2) [(b)] A certificate of inspection or other final approval of an electrical construction, installation, alteration, or repair shall not be issued by the department until the fee required by this subsection has been paid.

(3) [(c)] The fee to inspect electrical work having a complete value of less than \$8,000 shall be \$125.

(4) The fee to inspect electrical work having a complete value

more than \$8,000 but less than \$16,500 shall be \$250 [the total of:

1. Thirty-five (35) dollars per hour, excluding travel;

2. Ten (10) dollars per hour for travel to and from the inspection site; and

3. Mileage reimbursed at the rate equivalent to that afforded to state employees pursuant to 200 KAR 2:006, Section 7(4)(a)].

(4) [(d)] The fee to inspect electrical work having a complete value more than \$16,500 [of at least \$8,000] but less than \$25,000 shall be \$500.

(5) [(e)] The fee to inspect electrical work having a complete value of \$25,000 or more shall be calculated as a percentage of the complete value in accordance with the schedule established in this subsection [paragraph].

Amount in dollars	Permit fee
\$25,000 to \$199,999	2.0%
\$200,000 to \$299,999	1.9%
\$300,000 to \$499,999	1.5%
\$500,000 to \$699,999	1.3%
\$700,000 to \$999,999	1.1%
\$1,000,000 & Higher	1.0%

Section 6. Certificate of Approval. (1) Upon final approval of an electrical installation, the electrical inspector shall:

(a) Attach a green sticker to the main service equipment:

1. With his or her signature and certification number, name of the project, and location; and

2. Stating that the system has been inspected for compliance with the code; and

(b) Provide the owner or the owner's agent with a certificate of approval.

(2) For an installation subject to KRS 211.350, the electrical inspector shall not issue a certificate of approval or otherwise release the property for the supply of electricity until he or she has received the local health department's "Final Notice of Release" and has recorded its number upon the certificate of approval.

Section 7. Stickers. A red sticker for rough-in inspections pursuant to Section 3(5)(b), yellow sticker for service only pursuant to Section 3(9)(b), or green sticker or a certificate of approval pursuant to Section 6(1)(a) of this administrative regulation shall be of a type and format issued or approved by the department [Access. All access necessary for inspections shall be provided by the property owner or person obtaining the electrical permit or requesting the electrical inspection].

Section 8. Incorporation by Reference. (1) "Electrical Permit Application", Form EL-13, July 2018 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Electrical Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through

September 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for inspections of electrical construction, installations, alterations, and repairs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria for the inspections of electrical construction, installations, alterations, and repairs. This administrative regulation is also necessary to establish the fees for the electrical inspections.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227.480(1)(b) requires the Department of Housing, Buildings and Construction to promulgate administrative regulations to describe the circumstances for which inspections are required for electrical construction, installations, alterations, or repairs. KRS 198B.060(18) authorizes the department to establish a schedule of fees for the functions it performs pursuant to KRS Chapter 198B.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the application process and fees for electrical permits. The administrative regulation also establishes the inspection procedures for electrical construction, installations, alterations, or repairs.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the fee structure for permits by doing away with the material and labor pay structure for electrical projects under \$8,000 and establishing a single fee. The permit fee for electrical projects between \$8,000 and \$16,500 was lowered from \$500 to \$250. Sections pertaining to inspections and approval stickers were relocated from 815 KAR 35:015 to 815 KAR 35:020. This amendment also reorganizes the administrative regulation and fixes grammatical and technical errors.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make the permit fee structure more reasonable and concrete. This amendment also is needed to move permit and inspection information from 815 KAR 35:015 to a more appropriate administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is authorized by the grant of authority in KRS 227.480(1)(b) to describe the circumstances for which inspections are required for electrical construction, installations, alterations, or repairs, and KRS 198B.060(18)'s grant of authority to set a fee schedule.

(d) How the amendment will assist in the effective administration of the statutes: This amendment restructures the fee schedule for electrical permits. The amendment relocates all permit and inspection information in one administrative regulation, and the amendment makes the administrative regulation easier to understand.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals and electrical companies seeking an electrical permit and the Electrical Division will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or

amendment: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals and electrical businesses seeking a permit for a project below \$8,000 now only have to pay a flat fee instead of calculating the cost of a permit based on time and material. The permit fee will be \$250 less for projects between \$8,000 and \$16,500.

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

(a) Initially: There are no anticipated initial additional costs to administer this regulatory amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this regulatory amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional cost to the agency. Any agency costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all electrical operations will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Electrical Division will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The amendments are authorized by KRS 227.480(1)(b) and KRS 198B.060(18).

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

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

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Electrical Division
(Amendment)

815 KAR 35:060. Licensing of electrical contractors, master electricians, and [master] electricians [pursuant to KRS 227A.060].

RELATES TO: KRS 164.772(3), 227A.010, 227A.060, 227A.100, 339.230, 29 C.F.R. 570

STATUTORY AUTHORITY: KRS 227A.040(1), (8), 227A.060, 227A.100(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227A.040(8) authorizes [and 227A.060 authorize] the Department of Housing, Buildings and Construction to promulgate administrative regulations to establish procedures governing the licensure [a process for the licensing] of electrical contractors, master electricians, and [master] electricians. KRS 227A.100(9) authorizes the department to promulgate administrative regulations governing an inactive license. This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, master electricians, and [master] electricians.

Section 1. Initial [Application Procedure. An applicant for licensure pursuant to KRS 227A.060 shall:

- (1) Complete an application as required by Section 2 of this administrative regulation;
- (2) Pay the application fee required by Section 3 of this administrative regulation;
- (3) Provide verifiable evidence of experience and training as established in Section 4 of this administrative regulation; and
- (4) Provide evidence of passage of the examination required by Section 5 of this administrative regulation.

Section 2. Application Requirements. (1) Filing the application.

(a) Electrical contractor. An [The] applicant seeking an electrical contractor's license shall submit to the department:

1. A completed [complete an application form, either] Electrical Contractor's License Application, Form EL-2;
2. An application fee of \$200 for a twelve (12) month license;
3. The name and license number of the master electrician affiliated with the applicant; and
4. Proof of insurance as required by KRS 227A.060(1)(c).

(b) Master Electrician. An applicant seeking a master electrician license shall submit to the department:

1. A completed [Form BCE-EL-2, or] Electrical License Application, Form EL-3;
2. An application fee of \$100 for a twelve (12) month license; and
3. Proof of the applicant's experience as established by KRS 227A.060(2)(b) and this administrative regulation.

(c) Electrician. An applicant seeking an electrician license shall submit to the department:

1. A completed Electrical License Application, Form EL-3;
2. An application fee of fifty (50) dollars for a twelve (12) month license; and
3. Proof of the applicant's experience as established by KRS 227A.060(3)(b) and this administrative regulation.

(d) The application fees may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month.

(2) Photograph requirement. All electrical license applicants shall submit a passport-sized color photograph of the applicant taken within the past six (6) months [Form, BCE-EL-3, which shall include:

- (a) The applicant's name;
- (b) The applicant's home address;
- (c) The applicant's business address;
- (d) The applicant's home and business telephone numbers;
- (e) The applicant's date of birth;
- (f) The applicant's Social Security number or employer

identification number;

(g) The applicant's email address;

(h) The licenses applied for;

(i) For master electrician or electrician, a narrative listing of the applicant's experience in the electrical industry, including:

1. Business name and address;
2. Job title; and
3. Supervisor's name;

(j) For master electrician or electrician, a listing of all approved training or apprenticeship programs the applicant has completed;

(k) a statement confirming that the applicant is not in default on any educational loan guaranteed by the Kentucky Higher Education Assistance Authority in accordance with KRS 164.772(3);

(l) A passport-sized color photograph of the applicant taken within the past six (6) months;

(m) For electrical contractor licenses, the name and license number of the master electrician who will be affiliated with the applicant; and

(n) For electrical contractor licenses, the name of the insurer providing the applicant's liability and workers' compensation coverage and the policy number of each coverage].

(3) Voiding of application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted.

(b) At the end of one (1) year, the application shall be void.

Section 2. Reciprocity. [(2)] An applicant for reciprocity shall:

(1) [a)] Comply with:

(a) The requirements established in the reciprocity agreement between Kentucky and the state in which the applicant is licensed;

(b) The general application requirements in Section 1(2) of this administrative regulation;

(2) Provide:

(a) [and

(b) Submit a completed Reciprocity Electrical License Application, Form BCE-EL-4, which shall include:

1. A statement confirming that the applicant is not in default on any educational loan guaranteed by the Kentucky Higher Education Assistance Authority in accordance with KRS 164.772(3);

2. A passport-sized color photograph of the applicant taken within the past six (6) months;

3. For electrical contractor licenses, proof of compliance with the insurance and workers' compensation requirements established in Section 7 of this administrative regulation; and

4. A copy of the applicant's license from the participating state;

(b) A letter of good standing from the licensing authority of the state in which the applicant is currently licensed; and

(3) If applying for an electrical contractor's license, proof of insurance as required by KRS 227A.060(1)(c).

Section 3. [Application, Renewal, Reinstatement, and Late Fees. (1) The application and renewal fees shall be:

(a) \$200 for an electrical contractor's license;

(b) \$100 for a master electrician's license; or

(c) Fifty (50) dollars for an electrician's license.

(2) Application, renewal, reinstatement, and late fees shall not be refundable.

(3) The reinstatement fee for any lapsed license pursuant to KRS 227A.100(4) shall be equal to the license renewal fee and shall be paid in addition to the license renewal fee.

(4) The late renewal fee shall be fifty (50) dollars. If all documents required to be submitted for renewal are postmarked on or before the last day of the renewal month, the filing shall be considered timely and a late fee shall not be assessed.

(5) Renewal fees for inactive licenses shall be one-half (1/2) the fee for an active license.

(6) The fee to return a license to an active status from an inactive status shall be the remaining one-half (1/2) renewal fee for that year.

~~Section 4. Verification of Experience. (1) Records of experience. Proof of experience shall be provided by: [An applicant shall submit verification of experience for licensure as a master electrician or electrician.~~

~~(2) Verification shall be submitted in the form of:~~

~~(a) Tax returns or other official tax documents that indicate the applicant's occupation or the nature of the applicant's business activities, including Federal Schedule C, Form 1040 [Form W-2,] Form 1099, or local occupational tax returns;~~

~~(b) A copy of a business license issued by a county or municipal government that did not issue electrical contractors, master electrician's, or electrician's licenses prior to June 24, 2003, if the business license indicates the applicant operated as an electrical contractor or worker;~~

~~(c) A sworn affidavit, on the affiant's letterhead, certifying that the affiant has personal knowledge that the applicant has worked as a master electrician or an electrician for at least one (1) of the following:~~

- ~~1. An electrical workers union;~~
- ~~2. A certified electrical inspector; or~~
- ~~3. An employer that employed the applicant as an electrician or a master electrician; or~~

~~(d) Records of a branch of the United States Armed Forces that indicate the applicant performed a function that primarily involved electrical work. Experience gained while in the military shall be deemed to have been earned in Kentucky.~~

~~(2) An applicant for a master electrician license or electrician license attending an accepted electrical training program in accordance with 815 KAR 35:090 shall provide the following with his or her application:~~

~~(a) An affidavit from the director or authorized agent of the electrical training program confirming the applicant's participation in the electrical training program; and~~

~~(b) Documentation that the applicant has completed the required number of hours in accordance with 815 KAR 35:090.~~

~~(3) Additional proof of experience shall be requested by the department, prior to or after licensing, if the department has reason to believe that the experience shown is insufficient or nonexistent.~~

~~(4) [(3)] One (1) year of electrical experience shall consist minimally of 1,600 hours of electrical work in a contiguous twelve (12) month period.~~

Section 4. [5.] Examinations. (1) An applicant for an electrical contractor's license, master electrician's license, or electrician's license shall pass an examination administered by an approved examination provider.

(2) A passing score shall be valid for a period of three (3) years.

(3) Reasonable accommodations shall be made to provide accessibility to disabled applicants, upon request.

(4) [(2)] For an electrical contractor's license, an applicant that is a business entity shall designate a person to take the examination on behalf of the applicant. The designee shall be:

- (a) An owner of the applicant's business;
- (b) An officer of the applicant's business;
- (c) A director of the applicant's business; or
- (d) A full-time employee of the applicant's business.

[(3)(a)] If a person designated by an entity as established in subsection (2) of this section leaves the employment or no longer maintains an interest in that entity, the entity shall designate another person who either:

1. Has passed the examination; or
2. Successfully passes the examination within thirty (30) days.

(b) Failure to have a designee that has passed the examination shall render the licensee no longer qualified to be licensed.

(4) Upon application by a testing agency, a national code group, or by an applicant for licensure [certification], the department may recognize another examination as equivalent to an examination administered by an approved examination provider. The person or group submitting the examination shall demonstrate that the examination covers the same material and requires the same level of knowledge as the approved examinations.

Section 5. [6.] Appeal Procedure. (1) An applicant denied a license may appeal the decision to the commissioner of the department [of Housing, Buildings and Construction]. The applicant shall submit written notice of the appeal to the department [of Housing, Buildings, and Construction] within ten (10) business days of receiving notice that the license application has been denied.

(2) The appeal shall be conducted pursuant to KRS Chapter 13B by a hearing officer appointed by the commissioner of the department [of Housing, Buildings, and Construction].

Section 6. [7.] Proof of Insurance. (1) An electrical contractor's insurance policy shall name [An applicant for an electrical contractor's license shall provide proof of compliance with liability insurance requirements by providing an insurance certificate showing general liability insurance coverage of at least \$500,000 issued by an insurer authorized to do business in Kentucky and naming] the department [of Housing, Buildings, and Construction, Electrical Licensing,] as the certificate holder.

(2) The applicant shall provide proof of workers' compensation insurance by providing:

(a) An insurance certificate from an [approved] insurance provider approved by [with] the Kentucky Department of Insurance; or

(b) A notarized statement that the applicant is not required to obtain workers' compensation coverage and the reason why the coverage is not required.

(3) Each electrical contractor shall require the contractor's liability and workers' compensation insurers to provide notice to the department [of Housing, Buildings, and Construction] if a policy:

- (a) Is cancelled, terminated, or not renewed; or
- (b) Limit is lowered.

(4) An electrical contractor shall advise the department [of Housing, Buildings, and Construction] of a:

- (a) Change in the contractor's insurance coverage, including cancellation or termination of any policy;
- (b) Change in the insurer providing the coverage; or
- (c) Changed circumstances that require the contractor to obtain coverage.

Section 7. Inactive License Status. (1) A licensee may request that a license be placed in inactive status.

(2) An electrical contractor licensee in inactive status shall not be required to maintain liability insurance or provide proof to the department of compliance with workers' compensation laws.

(3) A certified electrical inspector may be licensed as an electrical contractor, master electrician, or electrician, but shall maintain that license as inactive while having an active electrical inspector certification.

(4) A licensee shall not perform electrical work while the license is inactive. Performing electrical work that requires a license while holding an inactive license shall be grounds for revocation or suspension of all electrical licenses and certifications held by the licensee.

Section 8. Renewal Requirements. (1) A license shall be valid for one (1) year and shall be renewed on or before the last day of the licensee's birth month. For electrical contractor licenses issued to corporations, partnerships, or business entities without a birth month, the renewal month shall be the month the license was issued.

(2) Filing for renewal. An electrical contractor, a master electrician, or an electrician shall submit to the department:

(a) A completed form:

1. Electrical Contractor's License Application, Form EL-2 for an electrical contractor; or

2. Electrical License Application, Form EL-3 for a master electrician and electrician;

(b) A renewal fee of:

1. \$200 for an electrical contractor;
2. \$100 for a master electrician; and
3. Fifty (50) dollars for an electrician;

(c) Proof of annual continuing education attendance in

accordance with 815 KAR 2:010; and

(d) Proof of insurance as required by KRS 227A.060(1)(c) and this administrative regulation for an electrical contractor.

(3)(a) A license that is in inactive status shall be exempt from annual renewal.

(b) An inactive license shall be reactivated upon payment of the annual renewal fee, the reactivation fee, and upon compliance with the continuing education requirements established in 815 KAR 2:010.

(4)(a) A licensee who applies for reissuance of a license pursuant to 2018 Ky. Acts ch. 186, sec. 2 shall submit to the department:

1. A completed:

a. Electrical Contractor's License Application, Form EL-2 for an electrical contractor; or

b. Electrical License Application, Form EL-3 for a master electrician and electrician;

2. Proof of licensure as described in 2018 Ky Acts ch. 186, sec. 2;

3. A reissuance fee of \$100; and

4. Proof of insurance as required by KRS 227A.060(1)(c) and this administrative regulation for an electrical contractor.

(b) The reissued license shall be valid for one (1) year from the date of issuance. The reissued license holder shall obtain a full license if the reissued license holder passes the corresponding license examination pursuant to Section 4 of this administrative regulation.

(c) If the individual with the reissued license fails to take and pass an examination within one (1) year of reissuance, the department shall terminate the license.

(6) A licensee who has not previously provided a passport-sized color photograph shall provide one (1) with the licensee's next application for renewal. The Department of Housing, Buildings, and Construction shall issue an initial license to an applicant for a period of up to twenty-three (23) months and shall charge a pro rata initial license fee to reflect the actual term of the initial license. An initial license shall not be issued for less than a twelve (12) month period.

(3) A licensee shall apply for license renewal on Electrical License Renewal Application, Form BCE-EL-5].

Section 9. Reinstatement and Late Fees. (1) Application, renewal, reinstatement, and late fees shall not be refundable.

(2) The reinstatement fee for a terminated license pursuant to KRS 227A.100(4) shall be equal to the license renewal fee and shall be paid in addition to the license renewal fee.

(3) The late renewal fee shall be fifty (50) dollars. If all documents required to be submitted for renewal are postmarked on or before the last day of the renewal month, the filing shall be considered timely and a late fee shall not be assessed.

Section 10. Change of information. (1) An electrical contractor and a master electrician shall notify the department of any change to the name of the electrical contractor's or master electrician's business and its address, employer, and the employer's address each time a change of employment is made.

(2)(a) Except as stated in subsection (3) of this section, if an electrical contractor designated by an entity as established in Section 4(4) of this administrative regulation leaves the employment or no longer maintains an interest in that entity, the entity shall designate another person who either:

1. Has passed the electrical contractor's examination; or

2. Successfully passes the electrical contractor's examination within thirty (30) days.

(b) Failure to have a designee that has passed the examination shall render the licensee no longer qualified to be licensed.

(3) Death of an electrical contractor or master electrician.

(a) If the electrical contractor or master electrician representing a company dies, the company shall notify the department within ten (10) days of the electrical contractor's or master electrician's death.

(b) The 180 day interim period established in KRS 227.480 and KRS 227A.140 shall begin on the date the electrical contractor or master electrician dies.

(c) The company shall not be required to renew the deceased's electrical contractor or master electrician license, if the license renewal date falls within the 180 day interim period.

(d) The company shall not use the deceased electrical contractor's or master electrician's license after the expiration date of the interim period.

(e) The company shall notify the department when the company has a replacement electrical contractor or master electrician to represent the company on or before the expiration date of the interim period. (1)(a) A licensee may request that a license be placed in inactive status.

(b) A licensee shall not perform electrical work requiring a license if the license is inactive.

(2) An electrical contractor licensee in inactive status shall not be required to maintain liability insurance or provide proof to the Department of Housing, Buildings, and Construction of compliance with workers' compensation laws.

(3) A certified electrical inspector may be licensed as an electrical contractor, master electrician, or electrician, but shall maintain that license as inactive while having an active electrical inspector certification.

(4) Performing electrical work that requires a license while holding an inactive license shall be grounds for revocation or suspension of all electrical licenses and certifications held by the licensee].

Section 11. Provisional License. (1) Application. An applicant seeking a provisional electrician license shall submit to the department:

(a) A completed Provisional Electrical License Application Form, EL-14;

(b) An application fee of fifty (50) dollars;

(c) A passport-sized color photograph of the applicant taken within the past six (6) months; and

(d) Proof of the applicant's experience as established by KRS 227A.060(4)(a)2.

(e) The proof requested in paragraph (d) of this subsection shall be satisfied with the documents listed in Section 3(1) of this administrative regulation.

(2) Responsibilities. A provisional electrician license holder shall have the same rights and responsibilities as an electrician licensed pursuant to KRS 227A.060(3) and this administrative regulation.

(3) Termination.

(a) A provisional electrician license shall be valid for one (1) year from the date of issuance. The provisional electrician license shall immediately terminate on the date of the one (1) year anniversary of the issuance of the provisional electrician license.

(b) The provisional electrician license holder shall no longer have the rights and responsibilities of an electrician licensed pursuant to KRS 227A.060(3) and this administrative regulation. The provisional electrician license holder shall revert to the individual's unlicensed status as before the issuance of the provisional license.

Section 12. [40.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [Form—BCE-EL-2,] "Electrical Contractor's License Application", Form EL-2, August 2018 [March, 2007 edition];

(b) [Form BCE-EL-3,] "Electrical License Application", Form EL-3, August 2018 [May 2011 edition]; and

(c) "Provisional Electrician License Application, Form EL-14, August 2018 [Form BCE-EL-4, "Reciprocity Electrical License Application," August 2009 edition; and

(d) Form BCE-EL-5, "Electrical License Renewal Application", August 2009 edition].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings, and Construction, Electrical Licensing, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412 [5405], Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>.

STEVEN A. MILBY, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted September 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, master electricians, and electricians.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the eligibility requirements and application process for electrical licenses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227A.040(8) authorize the Department of Housing, Buildings and Construction to promulgate administrative regulations to establish procedures governing the licensure of electrical contractors, master electricians, and electricians. KRS 227A.100(9) authorizes the department to promulgate administrative regulations governing an inactive license. This administrative regulation conforms to the authorizing statute by establishing the procedures for electrical licensure, and the procedures for inactive licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the eligibility requirements and application procedures for licenses within the electrical industry.

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

(a) How the amendment will change this existing administrative regulation: This amendment eliminates the annual inactive license fee for electrical licensees. The amendment also reforms the proration amount for electrical licenses to seven months and eighteen months, which is similar to the other divisions and sections in the Department. The amendment establishes the processes for the interim period when an electrical contractor or master electrician passes away and the provisional license. This amendment also reorganizes the administrative regulation and fixes grammatical and technical errors.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to eliminate an unnecessary fee for inactive licensees. The amendment is also necessary to establishes the processes for the interim period when an electrical contractor passes away in compliance with House Bill 100 of the 2018 Regular Session of the General Assembly and the provisional electrician's license with Senate Bill 78 of the 2018 Regular Session of the General Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is authorized by 227A.040(8)'s grant of authority to establish procedures governing the licensure of electrical contractors, master electricians, and electricians, and KRS 227A.100(9)'s grant of authority to govern inactive licenses.

(d) How the amendment will assist in the effective administration of the statutes: Inactive licensees will no longer have to pay an unnecessary renewal fee. The administrative regulation will be easier to understand.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All current and potential applicants for electrical contractor license, master electrician license, and electrician license, and the Electrical Division will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Inactive license holders will no longer have to pay the annual renewal fee for inactive licenses.

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

(a) Initially: There are no anticipated initial additional costs to administer this regulatory amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this regulatory amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the agency. Any agency costs resulting from this administrative amendment will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all current and potential electrical contractors, master electricians, and electricians will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Electrical Division will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The amendments are authorized by KRS 227A.040(8) and KRS 227A.100(9).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? This amendment may generate additional revenue for state government with the addition of a fee for the new provisional electrician's license established by Senate Bill 78 of the 2018 Regular Session of the General Assembly. This amendment is not anticipated to generate additional revenue for local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment may generate additional revenue for state government with the addition of a fee for the new provisional electrician's license established by Senate Bill 78 of the 2018 Regular Session of the General Assembly. This amendment is not anticipated to generate additional revenue for local government for subsequent years.

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

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

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

Revenues (+/-): The Department is not aware of how many individuals will apply for the provisional electrician's license, and therefore cannot determine the potential increase in revenue.

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Electrical Division
(Amendment)

815 KAR 35:080. Electrical code of ethics.

RELATES TO: KRS 227A.040(8), 227A.060, 227A.110[-EO 2009-535]

STATUTORY AUTHORITY: KRS 227A.040(8)[-EO-2009-535]

NECESSITY, FUNCTION AND CONFORMITY: KRS 227A.040(8) authorizes the Department[Office] of Housing, Buildings and Construction to promulgate administrative regulations to establish a code of ethics for electrical contractors, master electricians, and[master] electricians.[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 code of ethics for electrical contractors, master electricians and electricians.

Section 1. Code of Ethics. The department[of Housing, Buildings and Construction] may find that an applicant or licensee has violated the Electrical Code of Ethics and take disciplinary action against a licensee upon determination[if it finds] that an applicant or licensee:

(1) Failed to have immediate personal possession of electrical license while performing electrical work;

(2) Performed electrical work for which a permit is required without obtaining an electrical permit;

(3) Knowingly performed electrical work not in compliance with the Kentucky Building Code, 815 KAR 7:120, or the Kentucky Residential Code, 815 KAR 7:125[-, and the electrical codes and standards incorporated by reference in those administrative regulations];

(4) Intentionally charged a customer for work not performed or parts not provided;

(5) Obtained electrical permits on behalf of an electrical contractor without the knowledge and permission of the electrical contractor;

(6) Knowingly allowed a hazardous situation to remain so that the public is unduly exposed to risk of injury;

(7) Impersonated another licensee, or knowingly allowed the use of his or her license by an unlicensed person;

(8) Engaged in conduct intended to defraud or deceive the public;

(9) Failed to display the license number on all advertising or documents disseminated, either directly or indirectly, to the general public;

(10)[~~Failed to include the license number on letterhead or business cards;~~

(11)(a) ~~Utilized a company vehicle in the operation of an electrical business without displaying the name of the licensee or company and the licensee's Kentucky license number.~~

(b) ~~All identification information shall be in letters not smaller than three (3) inches in height and shall be legible at all time;~~

(12) ~~Was convicted by a court of law of a felony involving moral turpitude, fraud, or deceit;~~

(13) ~~Is a chronic or persistent alcoholic or is drug-addicted so that continued performance of electrical work is dangerous to clients or the public;~~

(11)[(14)] ~~Developed a physical or mental disability or other condition so that continued practice is dangerous to clients or to the public;~~

(12)[(15)] ~~Had a license, certificate, registration, or other official authorization to perform electrical work denied, limited, suspended, probated, or revoked in another jurisdiction on grounds sufficient to cause an electrical license to be denied, limited, suspended, probated, or revoked in this state;~~

(13)[(16)] ~~Attempted to use an expired, suspended, or revoked license;~~

(14)[(17)] ~~Failed to exercise due care in the supervision of electrical work of licensed and unlicensed persons under his or her supervision; or~~

(15)[(18)] ~~Has not completed[- in a timely manner,] work agreed to be performed and paid for by a customer in a timely manner.~~

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the code of ethics for electrical contractors, master electricians, and electricians.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to provide an ethical code for electrical contractors, master electricians, and electricians. This code of ethics ensures that individuals working in the electrical trade perform his or her duties to a uniform standard.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227A.040(8) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations to create a code of ethics and procedures governing the licensure of electrical contractors, master electricians, and electricians. This administrative regulation conforms to the authorizing statute by establishing the ethics standards for electrical contractors, master electricians, and electricians.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the code of ethics for individuals working in the electrical trade, thus creating a standard for electrical contractors, master electricians, and electricians to follow in their work.

(2) If 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 statutory authority referenced by the administrative regulation. The reference to license numbers on vehicles has been removed because this section has been moved to another section in Title 815. The provision that allows the department to discipline a licensee for a criminal conviction has been removed as this provision is superseded by KRS Chapter 335B. This amendment also reorganizes the administrative regulation and fixes grammatical and technical errors.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the administrative regulation to ensure the proper statutory authority is mentioned. The amendment is also necessary to remove sections that have been relocated elsewhere in Title 815 to eliminate duplicative administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is authorized by KRS 227A.040's grant of authority to create a code of ethics for electrical licensees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in streamlines KAR Title 815, and makes the title more user friendly.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All electrical contractors, master electricians, and electricians in the Commonwealth, potential electrical contractors, master electricians, and electricians, and Department of Housing, Buildings and Construction personnel will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): KAR Title 815 of the Kentucky Administrative Regulations will be more compact and easier to understand.

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

(a) Initially: There are no anticipated initial additional costs to administer this regulatory amendment.

(b) On a continuing basis: There are no anticipated additional

costs to administer this regulatory amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional cost to the agency. Any agency costs resulting from this administrative amendment will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all current and potential electrical contractors, master electricians, and electricians will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Electrical Division will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The amendments are authorized by KRS 227A.040(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? This amendment is not anticipated to generate additional revenue for state or local government for the first year.

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction

Electrical Division

(Amendment)

815 KAR 35:090. Electrical Training Program standards.

RELATES TO: KRS 227A.040, 227A.060[-EO-2009-535]

STATUTORY AUTHORITY: KRS 227A.040, 227A.060(2)(b)2, (3)(b)2[-EO-2009-535]

NECESSITY, FUNCTION AND CONFORMITY: KRS 227A.040(8) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations to create a code of ethics and procedures governing the licensure of electrical contractors, master electricians, and electricians. KRS 227A.060(2)

~~and (3) authorize~~[KRS 227A.060(2)(b)2 and (3)(b)2 requires] applicants for licensure as a master electrician or electrician to complete training courses in electrical work acceptable to the department to fulfill the requirements for licensure[Office of Housing, Buildings and Construction].[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 standards for an acceptable electrical training program[standards].

Section 1. Required Information. An applicant for certification as an electrical training program shall submit to the department a completed[complete] Application for[Certified] Electrical Training Program, Form EL-6[Form BCE-EL-6 and submit the following information to the Department of Housing, Buildings, and Construction:

- (1) Curriculum and course materials to be used;
- (2) Sample course work schedules;
- (3) Locations courses will be offered;
- (4) Availability of courses to the general public;
- (5) Fees to be charged for courses;
- (6) Identity and qualifications of teachers; and
- (7) Attendance verification procedures].

Section 2. Department Acceptance.~~[The Department of Housing, Buildings, and Construction shall review each application for certification and shall approve certification if the standards established in Section 3 of this administrative regulation have been met.~~

Section 3.] The department shall accept[certify] the applicant's electrical training program[applicant] if the applicant is one of the following:

- (1) A program that will provide:
 - (a)~~[The applicant can reliably provide]~~ Electrical training sufficient to allow trainees to operate safely and competently in the electrical industry;
 - (b)~~[(2) The applicant will provide]~~ An accurate certification of attendance at all courses offered;
 - (c) Instructors~~[(3) All courses will be taught by persons]~~ with sufficient technical knowledge of the subject matter; and
 - (d) Courses with~~[(4) The training program includes]~~ at least 288[576] hours of classroom training (one (1) hour of classroom training shall be equal to sixty (60) minutes); or
 - (2) An apprenticeship program registered with the Kentucky Labor Cabinet in accordance with 803 KAR 1:010 that offers apprenticeship in the electrical trade.

Section 3. Change of Information. An electrical training program shall notify the department within thirty (30) days of the following:

- (1) A change of any information submitted on Form EL-6;
- (2) A change of the instructors teaching the courses; or
- (3) Any change in the requirements in Section 2 of this administrative regulation.

Section 4. Disciplinary Action. The department may deny, suspend, or revoke acceptance of an electrical training program that:

- (1) Obtains or attempts to obtain acceptance through fraud, false statements, or misrepresentation;
- (2) Does not provide complete and accurate information in the initial application or fails to notify the department of a change of information;
- (3) Advertises as being accepted by the department prior to acceptance;
- (4) Uses fraudulent or deceptive business practices; or
- (5)[Certification Renewal. (1) The department shall review certifications of training programs every two (2) years following initial certification.
- (2) Training programs shall submit the following for

consideration by the department for renewal:

- (a) Completed application Renewal Application of Certified Electrical Training Program, Form BCE-EL-7; and
- (b) All items required by Section 1 of this administrative regulation for initial certification updated to reflect the current training program curriculum.

Section 5. An applicant denied certification may request that an administrative hearing be held pursuant to KRS Chapter 13B.

Section 6. Certification may be revoked if the office determines after a hearing pursuant to KRS Chapter 13B that the individual or organization No longer meets the requirements of [Section 3 of] this administrative regulation.

Section 5.[Section 7. (1) For a licensing applicant attending approved training programs consisting of more than 576 hours:

- (a) The applicant may apply for licensure after a department-approved interim Credential Form, is submitted to the department from the director of an approved training program; and
- (b) Confirmation is made by the department that the applicant has completed 576 or more hours of the approved training program.
- (2) The Interim Credential Form shall include the:
 - (a) Name of the applicant;
 - (b) Number of hours completed by the applicant;
 - (c) Title of the program completed; and
 - (d) Notarized signature of the training program agent or representative.

Section 8. On written request by an applicant for licensure as an electrician or master electrician, the Department of Housing, Buildings, and Construction, with advice from the Electrical Advisory Committee, shall recognize a training program completed in another state if the applicant demonstrates that the program would comply with the requirements of Section 1 of this administrative regulation.

Section 9.] Incorporation by Reference. (1) "Application for Electrical Training Program", Form EL-6, June 2018 is incorporated by reference[The following material is incorporated by reference:

- (a) "Application for Certified Electrical Training Program", Form BCE-EL-6, August 2009 edition; and
- (b) "Renewal Application of Certified Electrical Training Program", Form BCE-EL-7, August 2009 edition].
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412[5405], Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>.

STEVEN A. MILBY, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the

above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for the Department of Housing, Buildings and Construction to accept an electrical training program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide potential electrical training course providers with the standards necessary for acceptance by the Department. The administrative regulation is also necessary to ensure that the training programs taken by an applicant for a master electrician or an electrician license will count towards the applicant's experience requirement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227A.040(8) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations to create a code of ethics and procedures governing the licensure of electrical contractors, master electricians, and electricians. KRS 227A.060(2) and (3) authorize applicants for licensure as a master electrician or electrician to complete training courses in electrical work acceptable to the department to fulfill the requirements for licensure. This administrative regulation conforms to the authorizing statute by creating the standards an electrical training program shall meet in order to be accepted by the department and fulfill the experience requirement of an applicant for a master electrician license or an electrician license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the standards for an electrical training program to meet in order for an applicant for a master electrician license or electrician license to fulfill the applicants experience requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment decreases the required number of classroom hours from 576 hours to 288 hours. This amendment eliminates the need for an electrical training program to renew for acceptance every two (2) years. Instead, the training programs only need to notify the Department if there is a change in information. Form BCE-EL 7, which was used for renewals, has been eliminated. The amendment clarifies the reasons why the Department may revoke or suspend the acceptance of an electrical training program. This amendment also reorganizes the administrative regulation and fixes grammatical and technical errors.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update, clarify, and streamline the acceptance of electrical training programs.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is authorized by KRS 227A.040's grant of authority to regulate electrical licensing in the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates and clarifies the electrical training program acceptance process and forms to make them more user friendly and easier for electrical training programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All electrical training programs in the Commonwealth, potential master electrician and electrician licensees, and Department of Housing, Buildings and Construction personnel will be affected.

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

(a) List the actions that each of the regulated entities identified in

question (3) will have to comply with this administrative regulation or amendment: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Accepted electrical training programs will no longer have to submit a renewal form every two (2) years, and the training programs can provide fewer classroom hours.

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

(a) Initially: There are no anticipated initial additional costs to administer this regulatory amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this regulatory amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional cost to the agency. Any agency costs resulting from this administrative amendment will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all electrical training programs will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Electrical Division will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The amendments are authorized by KRS 227A.040 and KRS 227A.060(2) and (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 amendment is not anticipated to generate additional revenue for state or local government for the first year.

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:360. Private child care placement, levels of care, and payment.

RELATES TO: KRS 13B, 199.011, 199.640-199.680, 199.801, 600.020(25), 605.090(1)(b), (d), 610.110, 42 U.S.C. 622, 672

STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(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 to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) requires the cabinet to establish the rate setting methodology and the rate of payment for ~~nonprofit~~ child-caring facilities and child-placing agencies, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to promulgate administrative regulations prescribing conditions under which the cabinet may place a child committed to the Department of Juvenile Justice, or the cabinet, in a child-caring facility or a child-placing agency operated by a local governmental unit or private organization willing to receive the child, upon such conditions as the cabinet may prescribe. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) five (5) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care; and (f) procedures for determination of components of the model program cost analysis.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(3)(2).

(2) "Child-caring facility" or "facility" is defined by KRS 199.011(5) ~~199.641(4)(b)]~~.

(3) "Child-placing agency" or "agency" is defined by KRS 199.011(6).

~~(4) "Department" is defined by KRS 199.011(7) and 199.641(1)(b)[means the Department for Community Based Services or the department's agent].~~

~~[(4) "District placement coordinator" means an individual whose responsibilities are described in KRS 199.801.]~~

(5) "Emergency shelter" is defined by KRS 600.020(25).

(6) "Gatekeeper" means the department or agent responsible for:

(a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and

(b) Other administrative duties in the areas of:

1. Assessment;
2. Placement;
3. Performance measurement; and
4. Consultation regarding children and their needs.

(7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.

(8) "Initial level of care" means a level of care:

(a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and

(b) That is time-limited and effective for the first six (6) months of a child's placement.

(9) "Level of care" means one (1) of five (5) standards representing the treatment and service needs of a child placed by the cabinet in out-of-home care.

(10) "Level of care packet" means an assessment conducted by designated cabinet staff and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care in accordance with Section 2(2) of this administrative regulation.

(11) "Model program cost analysis" is defined by KRS

199.641(1)(c)(4).

(12) "Placement coordinator" means an individual whose responsibilities are described in KRS 199.801.

(13) "Reassigned level of care" means a level of care that is:

(a) Determined by the gatekeeper after a child's level of care expires; and

(b) Authorized for a specific period of time.

~~(14)(13)~~ "Time study" is defined by KRS 199.641(1)(d)(e).

~~(15)(14)~~ "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:

(a) Identifying the child's current level of functioning; and

(b) Assigning the appropriate level of care.

Section 2. Referral Process for Level of Care System Placement. (1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age or a child who is medically complex regardless of age when:

(a) The child enters the level of care system;

(b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age or is found to be medically complex; or

(c) A child's level of care expires and assignment of a new level is necessary.

(2) A level of care packet shall include the DPP-886, Private Child Care Client Inter-agency Referral Form, and the following child-specific information:

(a) Identifying data;

(b) Individual strengths and limitations;

(c) Daily living skills;

(d) Physical health needs, including documentation indicating the child's medically complex status if the child is medically complex;

(e) Mental health needs including:

1. Behavioral health; and

2. Diagnosis and treatment;

(f) Medications;

(g) History of substance abuse, high risk, or other significant behavior including:

1. Sexual acting out; and

2. Legal history, status, or delinquency behavior patterns;

(h) Out-of-home care placement information including:

1. Reason for entering out-of-home care;

2. History of abuse, neglect, or dependency;

3. Current custody status;

4. Current and previous placements; and

5. Permanency goal;

(i) Social supports;

(j) Educational functioning, grade level, and any special educational need;

(k) Religious background and practices; and

(l) If a child has an IQ of seventy (70) or above:

1. Child Behavior Checklist For Ages 1 1/2-5 (Achenbach);

2. Child Behavior Checklist For Ages 6-18 (Achenbach); or

3. Another tool pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15)(A).

(3)(a) If a child needs placement within the level of care system, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the ~~district~~ placement coordinator.

(b) The ~~district~~ placement coordinator shall forward the level of care packet to potential child-caring facilities or child-placing agencies.

(4) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement, a cabinet staff person shall:

(a) Complete the DPP-114, Level of Care Schedule, with the level of care payment rate:

1. As assigned by the gatekeeper within the previous six (6) months; or

2. If there is an emergency placement, within two (2) business days of the placement or receipt of the assigned level of care;

(b) Arrange transportation for the child to the placement; and

(c) Notify the [district] placement coordinator of the selected placement.

(5) If a child-caring facility or child-placing agency accepts an emergency placement requested by the cabinet outside of the gatekeeper's regular working hours, a cabinet staff person shall:

(a) Submit a level of care packet to the gatekeeper for a child who does not have a current level of care assignment; and

(b) Inform the [district] placement coordinator of the location and date of placement.

(6) The [district] placement coordinator shall notify a child-caring facility or child-placing agency that was not chosen for placement upon provision of notification in accordance with subsection (4)(c) of this section.

Section 3. Gatekeeper Responsibilities. The gatekeeper shall:

(1) Evaluate a child forty-eight (48) months of age or older or any child designated as medically complex:

(a) Who is referred by the department or currently placed in a child-caring facility or child-placing agency; and

(b) For an initial or reassigned level of care;

(2) Within three (3) working days of receipt of the level of care packet:

(a) Determine the appropriate level of care according to a needs assessment consistent with one (1) of the five (5) levels of care; and

(b) Return the completed:

1. DPP-886, Private Child Care Client Inter-agency Referral Form, to the department; or

2. CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Reassignment, to the department and the child-caring facility or the child-placing agency;

(3) Conduct a utilization review for a child:

(a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and

(b) 1. Every three (3) months thereafter if the child is in a private child care residential placement; or

2. Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;

(4) Reassign a child's level of care after the previous level has expired;

(5) Monitor each child-caring facility and child-placing agency;

(6) Maintain a confidential information system for each child served that shall include:

(a) Placement history;

(b) Level of care assignments;

(c) Length of treatment; and

(d) Discharge outcomes; and

(7) For a utilization review, return the completed CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, to the private child-caring facility or private child-placing agency and the cabinet after a level is conducted or reassigned.

Section 4. Levels of Care. A level of care shall be assigned in accordance with this section. (1) A Level I child shall be a child who requires a routine home environment that:

(a) Provides maintenance;

(b) Provides guidance;

(c) Provides supervision to meet the needs of the child; and

(d) Ensures the emotional and physical well-being of the child.

(2) A Level II child shall be a child who:

(a) May engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships; and

(b) Requires supervision in a structured supportive setting with:

1. Counseling available from professional or paraprofessional staff;

2. Educational support; and

3. Services designed to improve development of normalized social skills.

(3) A Level III child shall be a child who:

(a) May engage in an occasional violent act;

(b) May have superficial or fragile interpersonal relationships;

(c) Requires supervision in a structured, supportive environment where the level of supervision and support may vary from low to moderate, proportional to the child's ability to handle reduced structure;

(d) May occasionally require intense levels of intervention to maintain the least restrictive environment; and

(e) Requires a program flexible enough to allow:

1. Extended trials of independence if the child is capable;

2. A period of corrective and protective structure during relapse; and

3. Counseling available from professional or paraprofessional staff.

(4) A Level IV child shall be a child who:

(a) Has behavioral and physical, mental, or social needs that may present a moderate risk of causing harm to himself or others; and

(b) Requires a structured supportive setting with:

1. Therapeutic counseling available by professional staff; and

2. A physical, environmental, and treatment program designed to improve social, emotional, and educational adaptive behavior.

(5) A Level V child shall be a child who:

(a) Has a severe impairment, disability, or need;

(b) Is consistently unable or unwilling to cooperate in his own care;

(c) Presents a severe risk of causing harm to himself or others; and

(d) Requires Level IV services and a:

1. Highly structured program with twenty-four (24) hour supervision; or

2. Specialized setting that provides safe and effective care for a severe, chronic medical condition, behavioral disorder, or emotional disturbance.

Section 5. Payment Methodology and Rates. (1) Payment Methodology.

(a) The cabinet shall base a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, upon the model program cost analysis defined at KRS 199.641(1)(c)[(d)].

(b) Each private, nonprofit child caring facility shall report to the cabinet annually, on the DPP-888, cost report and time study and instructions.

(2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined.

(a) The factor shall be determined as follows:

1. Based on the amount of treatment provided at each level of care; and

2. By determining the median of:

a. Number of daily treatment hours, derived from time study data, provided to children served by private, nonprofit child-caring facilities; and

b. Level of care of children served by private, nonprofit child-caring facilities that contract with the cabinet.

(b) 1. For children whose level is determined, the median level of care shall be represented by an index factor of one (1).

2. For children whose level is not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to the children in the median level pursuant to subparagraph 1 of this paragraph.

(3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of ninety (90) percent for residential treatment and seventy-five (75) percent for a group home.

(4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(5) Statewide median cost shall be calculated:

(a) Using a utilization factor of eighty (80) percent:

1. For an emergency shelter with a treatment license:

- a. Board;
- b. Care; and
- c. Treatment components; or

2. For an emergency shelter without a treatment license:

- a. Board; and
- b. Care components; and

(b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(6)(a) To the extent funds are available, an incentive payment for a private child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(2)(a). Measurable performance outcomes shall include:

- 1. Child safety while in the care of a private child-caring facility or child-placing agency;
- 2. Child safety after reunification with the child's family;
- 3. Adequate educational support;
- 4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;
- 5. Increased placement stability during the service period;
- 6. Increased achievement of permanency goals; and
- 7. Increased stability in permanency placement following planned discharge.

(b) The cabinet's contract with a private child-caring facility shall specify the:

- 1. Indicators used to measure the performance outcomes described in paragraph (a) of this subsection; and
- 2. Target percentages used as performance goals.

(c) Each child in the custody of the cabinet who is placed in a private child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.

(d) When the contract period expires, each private child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private child-caring facilities or child-placing agencies to provide alternative services to children and their families. To the extent funds are available, the alternative services:

- (a) Shall be geared toward improved performance outcomes; and
- (b) May include case management responsibilities shared between the cabinet and the child-caring facility or child-placing agency.

(8) Payment to child-caring facilities or child-placing agencies that provide alternative services according to subsection (7) of this section shall be based upon expectations agreed upon between the cabinet and the child-caring facility or child-placing agency such as:

- (a) Reduced length of stay in out-of-home placement;
- (b) Increased safety from child abuse or neglect;
- (c) Increased number of children moving into and remaining in permanent placement;
- (d) Increased number of children and their families cared for in close proximity to their home communities;
- (e) Increased number of children reunified with their families;
- (f) Increased accountability for success in after care; or
- (g) Decreased reentry into state custody.

Section 6. Residential Care. (1) A child-caring facility in the levels of care system shall be licensed under 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.

(2) The facility shall comply with 922 KAR 1:390, Section 4, Residential Treatment Program, if providing treatment oriented

services.

(3) The daily rate for residential care to a child-caring facility shall be:

- (a) Level I – \$51.19;
- (b) Level II - \$61.52;
- (c) Level III - \$109.71;
- (d) Level IV:

1. \$183.00~~[\$175.87]~~; or

2. \$193.50~~[\$183.00]~~ on or after August~~[October]~~ 1, 2018~~[2016]~~;

and

(e) Level V:

1. \$236.60~~[\$248.99]~~; or

2. \$256.70~~[\$236.60]~~ on or after August~~[October]~~ 1, 2018~~[2016]~~.

Section 7. Emergency Shelter Care. (1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be:

(a) For a child-caring facility with a treatment license:

1. \$115.31 per day~~[for a child-caring facility with a treatment license]~~; or

2. \$126.80 per day on or after August 1, 2018; or

(b) For a child-caring facility without a treatment license:

1. \$101.41 per day; or

2. \$111.60 per day on or after August 1, 2018~~[for a child-caring facility without a treatment license]~~.

(2) If a child's treatment placement is disrupted and the child enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall:

(a) Receive a rate consistent with the child's assigned level of care for residential care during the previous placement, pending results of the next-scheduled utilization review;

(b) If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and

(c) Adhere to the child's individual treatment plan.

(3)(a) If the department determines that a child without an assigned level of care shall remain in an emergency shelter child-caring facility longer than thirty (30) days, the department shall make a referral to the gatekeeper, by the 20th day of placement, for assignment to an appropriate level of care.

(b) If a child remains in an emergency shelter longer than thirty (30) days, the emergency shelter child-caring facility with a treatment license shall:

1. Receive the residential rate consistent with the assigned level of care for each day the child is in the facility beyond the 30th day;

2. If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and

3. Adhere to the child's individual treatment plan.

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency. (1) The basic daily rate for foster care shall be \$44.82.

(2) The daily rates for therapeutic foster care shall be as follows:

(a) Levels I and II, if the child is stepped down from Level III or higher - \$76.10;

(b) Level III - \$83.16;

(c) Level IV - \$101.23; and

(d) Level V - \$139.96.

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

(1) A rate consistent with the assigned level of care for the adolescent parent; and

(2) Inclusive of child care cost, the amount specified in Section 8(1) of this administrative regulation for the committed child of an adolescent parent who is committed to the cabinet.

Section 10. Provider Requirements. (1) A child-caring facility or child-placing agency shall:

(a) Inform the department of the levels of care the facility or agency has the ability to serve;

(b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

1. Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;

2. Clinical services including:

a. The evaluation and treatment of an emotional disorder, mental illness, or substance abuse problem; and

b. Identification and alleviation of related disability or distress, experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and

3. Support services that:

a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;

b. Allow a child to cope with the disability or distress;

c. Provide access to improving the educational or vocational status of the child; and

d. Provide essential elements of daily living;

(c) Submit the following reports to the gatekeeper in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:

1. For a child who has an IQ seventy (70) or above, a behavior inventory appropriate to the child's developmental level consisting of completed forms specified in Section 2(2)(l) of this administrative regulation; and

2. For a child who has an IQ below seventy (70), a behavioral inventory appropriate to the child's development level:

a. Consisting of:

(i) A completed Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology); or

(ii) Another completed tool identified and piloted pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15)(A); and

b. By the first utilization review due date and every twelve (12) months thereafter; and

3. To the gatekeeper and designated cabinet staff, a copy of the CRP-7, Children's Review Program Application for Level of Care Payment (ALP):

a. On a quarterly basis, for a private child care residential placement; or

b. On a semiannual basis for a foster care placement;

(d) Provide outcomes data and information as requested by the gatekeeper; and

(e) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:

1. The Council on Accreditation; or

2. The Joint Commission on Accreditation for Healthcare Organizations.

(2) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (1)(e) of this section.

Section 11. Utilization Review and Authorization of Payment.

(1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports specified in Section 10(1)(c) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

(2) If the child-caring facility or child-placing agency fails to submit the reports as specified in Section 10(1)(c) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date, the cabinet shall:

(a) Suspend payments until the necessary information has been submitted to the gatekeeper;

(b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or

(c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.

(3) If the child-caring facility makes timely submission of the reports, and if the:

(a) Level of care remains unchanged, payments shall continue unchanged;

(b) Level of care is reduced, and the:

1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or

2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or

(c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.

(4) If a child-caring facility, child-placing agency, or the department determines it to be in the best interest of a child to be transitioned from a residential program to another program and the required reports specified in Section 10(1)(c) of this administrative regulation have been submitted on time, and if:

(a) The program is not therapeutic foster care, the rate for the level resulting from the utilization review shall remain in effect until the next scheduled utilization review; or

(b) The new program is therapeutic foster care, the residential rate for the level resulting from the utilization review shall remain in effect for thirty (30) days after the change in placement. On the 31st day, the therapeutic foster care rate for the assigned level shall apply.

(5) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination as specified in Section 12 of this administrative regulation.

Section 12. Redetermination. (1) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:

(a) New information which supports the request for a new level; and

(b) Completion of the "request for redetermination" section of one (1) of the following forms:

1. DPP-886, Private Child Care Client Inter-agency Referral Form, for an initial or reassigned level;

2. CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, for a utilization review;

3. CRP-4, Children's Review Program Notice of Level of Care Redetermination;

4. CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment, for a utilization review; or

5. CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Reassignment, for a reassignment.

(2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review or admission, and if the gatekeeper assigns a higher level with a CRP-4, Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive to the most recent of the following:

(a) The date of the most recent utilization review due date; or

(b) The date of admission.

(3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review or admission, and if a:

(a) Higher level is assigned by the gatekeeper with a CRP-4, the increased payment shall be effective the day after the request is received by the gatekeeper; or

(b) Lower level is assigned by the gatekeeper with a CRP-4, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.

(4) If the child-caring facility, child-placing agency, or cabinet

staff does not agree with the redetermination as provided by the CRP-4, an appeal may be requested in accordance with Section 14 or 15 of this administrative regulation.

Section 13. Reassignment. (1) If the level of care expires and the child is moved to a different child-caring facility or child-placing agency placement, a reassigned level of care shall be obtained by the:

(a) Department completing a level of care packet for a level assignment; or

(b) New child-caring facility or child-placing agency submitting the following within thirty (30) days of the placement:

1. A cover letter requesting a reassignment;

2. An assessment of the child;

3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary; and

4. Material as specified in Section 2(2)(l) of this administrative regulation.

(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as specified in Section 12 of this administrative regulation.

Section 14. Informal Dispute Resolution. (1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.

(2) Upon receipt of a request for informal resolution, the cabinet shall:

(a) Review the request; and

(b) Render a written decision on the issue raised within thirty (30) calendar days unless an extension is granted by the secretary or designee:

1. Due to extenuating circumstances that prolong the review; and

2. With notice provided to the contract agent.

(3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section 15 of this administrative regulation.

Section 15. Administrative Hearing Process. A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:320.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Child Behavior Checklist for Ages 1 1/2 - 5 (Achenbach)", 7/00;

(b) "Child Behavior Checklist for Ages 6-18 (Achenbach)", 6/01;

(c) "CRP-2, Children's Review Program Notice of Level of Care Payment Authorization", 11/14;

(d) "CRP-4, Children's Review Program Notice of Level of Care Redetermination", 11/14;

(e) "CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", 11/14;

(f) "CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Reassignment", 11/14;

(g) "CRP-7, Children's Review Program Application of Level of Care Payment (ALP)", 11/14;

(h) "DPP-114, Level of Care Schedule", 8/18[5/17];

(i) "DPP-886, Private Child Care Client Inter-agency Referral Form", 10/04;

(j) "DPP-888, Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and Instructions for Completing the Cost Report Time Study Codes and Definitions, and Instructions for the Time Study, for Child-Caring and Child-Placing Programs and Facilities", 10/04; and

(k) "Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology)", 1990.

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

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 26, 2018

FILED WITH LRC: August 1, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 24, 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 September 17, 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 September 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes five levels of care based upon the needs of a child for whom the Cabinet for Health and Family Services has legal responsibility, a payment rate for each level, gatekeeper responsibilities, provider requirements, procedures for classification at the appropriate level of care, and procedures for determination of components of the model program costs analysis.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policy and procedures for placement of a child in the custody of the cabinet with a private child care provider, levels of care and related payments, responsibilities and requirements of the gatekeeper and private provider, and rate setting methodology.

(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 levels of care and associated payments for a private child care placement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes through its incorporation of the methodology regarding the placement of a child in the custody of the cabinet with a private child care provider, procedures concerning the model program cost analysis, provider and gatekeeper requirements, levels of care, and payment rate for each level of care.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation increases the payment rates for children who are assessed as having levels of care IV and V, and who are placed with a private residential child-caring facility; and children who are placed in emergency shelters. In addition, the administrative regulation

makes technical corrections in accordance with KRS Chapter 13A, including alignment with 2018 Ky. Acts ch. 159 (a.k.a., House Bill 1).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to adjust reimbursement for children placed in residential child-caring facilities to better reflect actual costs of providers. The rate increase is anticipated to assist with provider capacity, thereby better assuring placement options and quality care for children in state custody. Without these placement options, children risk placement in more costly, restrictive settings or, conversely, in settings that do not otherwise meet the needs of the children. The health and welfare of said children are jeopardized without the payment rate increase, in addition to threats to federal child welfare funding due to an inadequate service array for children needing out-of-home care.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by adjusting residential child-caring facility payment rates in accordance with 2018 Ky. Acts ch. 169.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by enhancing provider payment rates so that they are more consistent with actual provider costs, thereby better facilitating placement options and preserving the health and welfare of children in the custody of the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The cabinet maintains a monthly average of 1,287 children who are placed in emergency shelters and are assessed as needing levels of care IV or V in residential child-caring facility placements.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation requires no new action on the part of regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation imposes no new or additional costs on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Residential child-caring facilities will benefit from the payment rate increase implemented through the amendment to this administrative regulation. The effect of the regulatory amendment will preserve the health and welfare of children in the custody of the cabinet.

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

(a) Initially: In accordance with 2018 Ky. Acts ch. 169, residential child-caring facilities, including emergency shelters, will realize payment rate increases. The cabinet has identified approximately \$7.3 million, a combination of federal, general, agency, and restricted funds, within its existing appropriations to support the rate increase.

(b) On a continuing basis: The cabinet projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include federal Title IV-E (of the Social Security Act) foster care maintenance, general funds, and agency and restricted funds derived from the Temporary Assistance for Needy Family (TANF) block grant and Medicaid.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Additional funding was appropriated in 2018 Ky. Acts ch. 169.

(8) State whether or not this administrative regulation

established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 622, 672

2. State compliance standards. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.090(1)(d), 605.150(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 622, 672

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, specifically the Department for Community Based Services (DCBS), is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1), 42 U.S.C. 622, 672

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new 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 generate no new revenues.

(c) How much will it cost to administer this program for the first year? The administrative body has conducted extensive analysis of its budgetary context and service demands to ensure the per diem increases are sustainable within appropriations. The cabinet has identified approximately \$7.3 million, a combination of federal, general, agency, and restricted funds to support the rate increase in accordance with 2018 Ky. Acts ch. 169.

(d) How much will it cost to administer this program for subsequent years? The administrative body projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Repealer)

103 KAR 15:041. Repeal of 103 KAR 15:040 and 103 KAR 15:090.

RELATES TO: KRS 131.183, 134.580, 141.210, 141.235
STATUTORY AUTHORITY: KRS 13A, 131.130
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. 103 KAR 15:040 summarizes and explains provisions of income tax law pertaining to time limitations on assessments of additional taxes and the granting of tax refunds. The information herein may be obtained from KRS 131.183, 134.580, 141.210 and 141.235(2)(a). 103 KAR 15:090 provides guidance for taxpayers that amortized intangible assets under two different methods in 1991, 1992, and 1993, because Kentucky did not adopt certain changes to Internal Revenue Code Section 197 in 1993. The entire amortization period of fifteen (15) years has passed, and no asset basis variances should still exist on taxpayer books and records. Therefore, these administrative regulations are obsolete and no longer needed.

Section 1. The following regulations are hereby repealed:

- (1) 103 KAR 15:040, Statute of limitations; assessments and refunds; and
- (2) 103 KAR 15:090, Computing the amortization deduction for intangible assets.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: August 14, 2108

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2018 at 10:00 a.m. in Room 11A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 103 KAR 15:040 regarding the applicability of the statute of limitations for tax assessments and refunds; and 103 KAR 15:090 regarding amortizing intangible assets under Internal Revenue Code Section 197. The guidance in KRS 131.183, 134.580, 141.210, and 141.235 clearly sets forth the statute of limitation for tax assessments in statutory language, removing the need to promulgate 103 KAR 15:040 to provide guidance. For 103 KAR 15:090, the differences created by Kentucky's "uncoupling" from certain intangible asset carryback provisions contained in Internal Revenue Code Section 197 no

longer exist due to the passage of time beyond the 15-year amortization period allowed for intangible assets in statute. Further, 103 KAR 15:090 was promulgated in 1995 because Kentucky did not adopt certain changes to Internal Revenue Code Section 197 in 1993, and has not been updated since its original filing in 1995. Since KRS Chapter 13A prohibits restating statutory language in a regulation, the department no longer has a need to promulgate these regulations and does not anticipate any future updates at this time.

(b) The necessity of this administrative regulation: KRS Chapter 13A requires a regulation that will no longer be updated or effective to be repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation is required per the provisions of KRS Chapter 13A to repeal regulations that are no longer needed or will no longer be updated in the future.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will ensure that the Department of Revenue is in compliance with KRS Chapter 13A.

(2) If 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: None.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering was not applied for this regulation because it is only repealing existing regulations that are no longer needed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No state or local government agency outside the Department of Revenue will be impacted by this regulation. This regulation repeals 103 KAR 15:040 and 103 KAR 15:090 because there is now sufficient

statutory language in place to provide the guidance that these regulations provided.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A requires that administrative regulations that will not be updated in the future, to be repealed. 103 KAR 15:040 was last updated in 1994. It has not been amended in 24 years. And the guidance it once provided is now clearly stated in KRS 131.283, 134.580, 141.210 and 141.235. For 103 KAR 15:090, the 15-year amortization period allowed for intangible assets in IRC Section 197 no longer exists due to the passage of time.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for state or local government agencies as a result of repealing of this administrative regulation.

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

(b) How 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:

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Repealer)**

103 KAR 16:011. Repeal of 103 KAR 16:010, 103 KAR 16:210, 103 KAR 16:310, and 103 KAR 16:360.

RELATES TO: KRS 141.010

STATUTORY AUTHORITY: KRS 131.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. 103 KAR 16:010 provides guidance regarding a special income tax deduction provided for corporations for certain income from the disposal of coal. The administrative regulation restates information contained in federal and Kentucky statutes, and the six (6) month holding period referenced in Section 1 is not permitted by either federal or Kentucky statute. 103 KAR 16:210 only applied to tax years 2005 and 2006 when pass-through entities were taxed as corporations, and is now obsolete. The Domestic Production Activity Deduction ("DPAD") in the Internal Revenue Code was repealed with the Tax Cuts and Jobs Act of 2017, so the guidance in 103 KAR 16:310 is now obsolete. 103 KAR 16:360 provides limited guidance to corporate taxpayers regarding the deductibility of income taxes in three other states. The department will use its authority under KRS 131.130(8) to issue informal guidance for the treatment of all state income taxes, not just those from New York, Massachusetts, and West Virginia. Furthermore, New York's tax laws have changed since the promulgation of this administrative regulation, making it now deficient. As a result, these administrative regulations are no longer needed and will not be amended in the future.

Section 1. The following administrative regulations are hereby repealed:

(1) 103 KAR 16:010, Taxable income; coal royalty;

(2) 103 KAR 16:210, Calculation of gross income for corporations that are pass-through entities and treatment of certain deductions for their individual members, partners, and shareholders;

(3) 103 KAR 16:310, Domestic production activity deduction; and

(4) 103 KAR 16:360, Deductibility of the New York franchise tax on business corporations, the Massachusetts corporate excise tax, and West Virginia business and occupations tax in computing a corporations net income.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: August 14, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2018 at 10:00 a.m. in Room 11A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 103 KAR 16:010, 103 KAR 16:210, 103 KAR 16:310 and 103 KAR 16:360. These regulations either no longer have statutory authority, or the statutes now contain sufficient language to provide guidance without these regulations. (See the NECESSITY, FUNCTION & CONFORMITY statement.)

(b) The necessity of this administrative regulation: KRS 13A requires that all regulations made inactive or ineffective by statute revision, or that will no longer be updated by the promulgating agency to be repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation seeks to repeal regulations that would be deficient and in violation of KRS 13A if not repealed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that the Department of Revenue is in compliance with KRS 13A.

(2) If 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: None.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since no regulated entities will be affected by the repeal of this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Finance and Administration Cabinet, Department of Revenue, will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A and 131.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies as a result of repealing these administrative regulations.

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

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Repealer)

103 KAR 17:042. Repeal of 103 KAR 17:041.

RELATES TO: KRS 141.215, 141.990

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. 103 KAR 17:041 provides guidance on income tax deferrals and payment due dates for certain military and civilian employees of the United States Government. The authorizing statutes for this administrative regulation have been found to contain sufficient guidance to adequately provide taxpayers with instruction on these topics. Therefore, this administrative regulation is no longer needed and will not be amended in the future.

Section 1. 103 KAR 17:041, Tax deferral for combat zone service, is hereby repealed.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: August 14, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2018 at 10:00 a.m. in Room 11A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 103 KAR 17:041 regarding the deferral of income tax filing and payment requirements for military personnel deployed on active duty. The authorizing statute, KRS 141.215, contains sufficient language and guidance without an administrative regulation. Also, 103 KAR 17:130 contains references to the same statutes contained in this regulation. Making this regulation redundant and no longer needed.

(b) The necessity of this administrative regulation: To comply with KRS Chapter 13A. See (1)(c).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 13A requires that all regulations made inactive or ineffective by statute revision, or that will no longer be updated by the promulgating agency, be repealed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will insure the department is in compliance with KRS Chapter 13A by repealing regulations that will remain deficient, and reduce confusion among servicemembers by removing outdated sources of information they may reference for guidance.

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

(a) How the amendment will change this existing administrative regulation: No, this is a repeal of an existing administrative regulation.

(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: None.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: Current department staff and funding will be used to implement this amendment.

(b) On a continuing basis: No additional funding will be needed.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None, as this regulation will be repealed.

(7) Provide an assessment of whether an 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 funding or fees is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since no regulated entities will be affected by the repeal of this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Finance and Administration Cabinet, Department of Revenue 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 Chapter 13A and 131.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on the expenditures and revenues of any state or local government agencies with the repeal of this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Repealer)

103 KAR 18:191. Repeal of 103 KAR 18:190, 103 KAR 18:200, 103 KAR 18:210 and 103 KAR 18:220.

RELATES TO: KRS 141.347, 141.400, 141.401, 141.407, 154.22-010, 154.22-070, 154.23-010, 154.23-055, 154.24-010, 154.24-110, 154.28-010, 154.28-110

STATUTORY AUTHORITY: KRS 131.130, 141.400, 141.401, 141.407, 141.347

NECESSITY, FUNCTION, AND CONFORMITY: 103 KAR 18:190 through 103 KAR 18:220 provides guidance for the filing of an annual report of wage assessment for various economic development credits authorized under various chapters of KRS 154, as listed herein. Formerly submitted on separate individual annual report forms by credit, the department has now streamlined the reporting instructions and consolidated all five annual report forms into one (1) form (42A900) and amended 103 KAR 18:180 as the new consolidated instructions for filing an annual report of wage assessment for all of the economic development credits listed below. Therefore, these separate administrative regulations are no longer needed.

Section 1. The following administrative regulations are hereby repealed:

(1) 103 KAR 18:190, Kentucky Rural Economic Development Act job development assessment fee;

(2) 103 KAR 18:200, Kentucky Industrial Development Act job development assessment fee;

(3) 103 KAR 18:210, Kentucky Jobs Development Act service and technology job creation assessment fee; and

(4) 103 KAR 18:220, Kentucky Economic Opportunity Zone job development assessment fee.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: August 14, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2018 at 10:00 a.m. in Room 11A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: Repeals 103 KAR 18:190, 103 KAR 18:200, 103 KAR 18:210 and 103 KAR 18:220 regarding the annual reporting of wage assessments for various economic development credits. The department has streamlined the process used to file the annual report of wage assessment for these credits by consolidating the guidance into one set of instructions to be used for all. 103 KAR 18:180 is being amended to contain the updated instructions for all of the economic

development credits listed herein. Therefore, these four separate regulations are no longer needed.

(b) The necessity of this administrative regulation: To comply with KRS Chapter 13A. See (1)(c).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 13A requires that all regulations made inactive or ineffective by statute revision, or that will no longer be updated by the promulgating agency, to be repealed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will assist the department with compliance with KRS Chapter 13A.

(2) If 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: None.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: Current department funding will be used to implement this amendment.

(b) On a continuing basis: No additional funding will be used.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None, as these regulations will be repealed.

(7) Provide an assessment of whether an 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 establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since no regulated entities will be affected by the repeal of this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A and 131.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies.

(a) How much 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 Department of Agriculture Office of the State Veterinarian (Repealer)

302 KAR 20:211. Repeal of 302 KAR 20:210.

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS 257.030

NECESSITY, FUNCTION, AND CONFORMITY: The prevention of the spread of pseudorabies, via the movement (both intrastate and interstate) of feeder pigs within market channels. Breeding swine on farms of origin which produce feeder pigs may be required to be tested. This administrative regulation repeals 302 KAR 20:210 because Kentucky was declared pseudorabies free by the USDA on May 1, 1997, making this administrative regulation not needed.

Section 1. 302 KAR 20:210. Procedures for the prevention of the spread of pseudorabies, via the movement (both intrastate and interstate) of feeder pigs within market channels, is hereby repealed.

RYAN F. QUARLES, Kentucky Commissioner of Agriculture

APPROVED BY AGENCY: August 9, 2018

FILED WITH LRC: August 10, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2018, at 10:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals the pseudorabies program in Kentucky.

(b) The necessity of this administrative regulation: The USDA has declared this disease eradicated in Kentucky, thus the necessity for the program no longer exists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 257 grants the Office of the State Veterinarian broad authority to eradicate communicable diseases in livestock, including creation of programs for monitoring and testing for a disease. This administrative regulation repeals an administrative regulation that was useful for that purpose, prior to Kentucky being declared pseudorabies free.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will assist by eliminating a non-required administrative regulation, helping the KDA comply with the intent of HB 50.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, and a single program enrollee.

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

(a) List 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 KDA, and Kentucky producers will need to do nothing to comply with the repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA will be a major benefit, by no longer needing to maintain a database for a single participant, who is already deemed to not have pseudorabies.

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

(a) Initially: No costs.

(b) On a continuing basis: No costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No source funds are required.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established in any form.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture, Office of the State Veterinarian.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.030.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(b) How 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 are no anticipated impacts to state or local government associated with this repealer.

(c) How much will it cost to administer this program for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated impacts to state or local government associated with this repealer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT Department of Agriculture Office of the State Veterinarian (Repealer)

302 KAR 20:221. Repeal of 302 KAR 20:220.

RELATES TO: KRS 246.210, 257.050, 257.080, 257.110-257.170, 257.480

STATUTORY AUTHORITY: KRS 257.020, 257.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.020(3) requires the board to prevent, control, and eradicate any communicable disease of livestock. KRS 257.030(4) authorizes the board to promulgate administrative regulations necessary to administer any provision of KRS Chapter 257. This administrative regulation establishes procedures for approving a pseudorabies herd cleanup plan and to eradicate pseudorabies from a porcine herd or animal upon a determination of infection or exposure to pseudorabies. This administrative regulation repeals 302 KAR 20:220 because Kentucky was declared pseudorabies free by the USDA on May 1, 1997, making this administrative regulation not needed.

Section 1. 302 KAR 20:220. Procedures for approving a pseudorabies herd cleanup plan and to eradicate pseudorabies from a porcine herd or animal upon a determination of infection or exposure to pseudorabies, is hereby repealed.

RYAN F. QUARLES, Kentucky Commissioner of Agriculture

APPROVED BY AGENCY: August 9, 2018

FILED WITH LRC: August 10, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2018, at 10:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals the pseudorabies program in Kentucky.

(b) The necessity of this administrative regulation: The USDA has declared this disease eradicated in Kentucky, thus the necessity for the program no longer exists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 257 grants the Office of the State Veterinarian broad authority to eradicate communicable diseases in livestock, including creation of programs for monitoring and testing for a disease. This administrative regulation repeals an administrative regulation that was useful for that purpose, prior to Kentucky being declared pseudorabies free.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will assist by eliminating a non-required administrative regulation, helping the KDA comply with the intent of HB 50.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, and a single program enrollee.

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

(a) List 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 KDA, and Kentucky producers will need to do nothing to comply with the repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA will be a major benefit, by no longer needing to maintain a database for a single participant, who is already deemed to not have pseudorabies.

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

(a) Initially: No costs.

(b) On a continuing basis: No costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No source funds are required.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established in any form.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

Department of Agriculture, Office of the State Veterinarian.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.030.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(b) How 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 are no anticipated impacts to state or local government associated with this repealer.

(c) How much will it cost to administer this program for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated impacts to state or local government associated with this repealer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT
Department of Agriculture
Office of the State Veterinarian
(Repealer)**

302 KAR 20:231. Repeal of 302 KAR 20:230.

RELATES TO: KRS CHAPTER 257

STATUTORY AUTHORITY: KRS 257.020, 257.030

NECESSITY, FUNCTION, AND CONFORMITY: To establish procedures for setting a fee basis schedule for the purpose of reimbursement payments to licensed and accredited veterinarians by the department for expenses incurred in performing the professional services mandated by the pseudorabies testing program as set out at 302 KAR 20:220. This administrative regulation repeals 302 KAR 20:230 because Kentucky was declared pseudorabies free by the USDA on May 1, 1997, making this administrative regulation not needed.

Section 1. 302 KAR 20:230. Procedures for setting a fee basis schedule for the purpose of reimbursement payments to licensed and accredited veterinarians by the department for expenses incurred in performing the professional services mandated by the pseudorabies testing program as set out at 302 KAR 20:230, is hereby repealed.

RYAN F. QUARLES, Kentucky Commissioner of Agriculture

APPROVED BY AGENCY: August 9, 2018

FILED WITH LRC: August 19, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2018, at 10:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted

through September 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals the pseudorabies program payment to veterinarians protocol in Kentucky.

(b) The necessity of this administrative regulation: The USDA has declared this disease eradicated in Kentucky, thus the necessity for the program no longer exists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 257 grants the Office of the State Veterinarian broad authority to eradicate communicable diseases in livestock, including creation of programs for monitoring and testing for a disease. This administrative regulation repeals an administrative regulation that was useful for that purpose, prior to Kentucky being declared pseudorabies free.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will assist by eliminating a non-required administrative regulation, helping the KDA comply with the intent of HB 50.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, and a single program enrollee. No veterinarians participate in the fee basis work as provided for in the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The KDA, and Kentucky producers will need to do nothing to comply with the repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA will be a major benefit, by no longer needing to maintain a database for a single participant, who is already deemed to not have pseudorabies.

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

(a) Initially: No costs.

(b) On a continuing basis: No costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No source funds are required.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

fees are established in any form.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture, Office of the State Veterinarian.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.030.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(b) How 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 are no anticipated impacts to state or local government associated with this repealer.

(c) How much will it cost to administer this program for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated impacts to state or local government associated with this repealer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT Department of Agriculture Office of the State Veterinarian (Repealer)

302 KAR 20:541. Repeal of 302 KAR 20:054.

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS 257.020, 257.030

NECESSITY, FUNCTION, AND CONFORMITY: To establish procedures for setting a fee basis schedule for reimbursement payments to licensed and accredited veterinarians for expenses incurred in performing professional services found necessary to eliminate brucellosis and to achieve the status of a brucellosis free state. This administrative regulation repeals 302 KAR 20:054 because Kentucky was declared brucellosis free by the USDA on September 16, 1997, making this administrative regulation not needed.

Section 1. 302 KAR 20:054. Fee basis schedule for brucellosis testing as set out at 302 KAR 20:054, is hereby repealed.

RYAN F. QUARLES, Kentucky Commissioner of Agriculture

APPROVED BY AGENCY: August 9, 2018

FILED WITH LRC: August 10, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2018, at 10:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was

received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals the brucellosis program payment to veterinarians protocol in Kentucky.

(b) The necessity of this administrative regulation: The USDA has declared this disease eradicated in Kentucky, thus the necessity for the program no longer exists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 257 grants the Office of the State Veterinarian broad authority to eradicate communicable diseases in livestock, including creation of programs for monitoring and testing for a disease. This administrative regulation repeals an administrative regulation that was useful for that purpose, prior to Kentucky being declared brucellosis free.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will assist by eliminating a non-required administrative regulation, helping the KDA comply with the intent of HB 50.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, and 7 program enrollees. No veterinarians participate in the fee basis work as provided for in the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The KDA, and Kentucky producers will need to do nothing to comply with the repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA will be a major benefit, by no longer needing to maintain a database for 7 participants, who are already deemed to not have brucellosis.

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

(a) Initially: No costs.

(b) On a continuing basis: No costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No source funds are required.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are associated with this repealer.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established in any form.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture, Office of the State Veterinarian.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.030.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(b) How 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 are no anticipated impacts to state or local government associated with this repealer.

(c) How much will it cost to administer this program for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated impacts to state or local government associated with this repealer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT Department of Agriculture Office of the State Veterinarian (Repealer)

302 KAR 20:561. Repeal of 302 KAR 20:056.

RELATES TO: KRS 257.020, 257.030, 257.110, 257.120, 257.140

STATUTORY AUTHORITY: KRS 257.030, 257.110, 257.120, 257.140

NECESSITY, FUNCTION, AND CONFORMITY: The administrative regulation is necessary to explain the conditions under which a cattle herd owner may collect state indemnity which is available only for sero negative exposed adult breeding cattle and heifer calves from within a brucellosis infected herd which are sent directly to slaughter. This administrative regulation repeals 302 KAR 20:056 because Kentucky was declared brucellosis free by the USDA on September 16, 1997, making this administrative regulation not needed.

Section 1. 302 KAR 20:056. Qualifications and eligibility requirements on state brucellosis indemnity payments for negative exposed cattle, is hereby repealed.

RYAN F. QUARLES, Kentucky Commissioner of Agriculture
APPROVED BY AGENCY: August 9, 2018

FILED WITH LRC: August 10, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2018, at 10:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals the brucellosis program indemnity payment protocol in Kentucky.

(b) The necessity of this administrative regulation: The USDA has declared this disease eradicated in Kentucky, thus the necessity for the program no longer exists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 257 grants the Office of the State Veterinarian broad authority to eradicate communicable diseases in livestock, including creation of programs for monitoring and testing for a disease. This administrative regulation repeals an administrative regulation that was useful for that purpose, prior to Kentucky being declared brucellosis free.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will assist by eliminating a non-required administrative regulation, helping the KDA comply with the intent of HB 50.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, and 7 program enrollees.

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

(a) List 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 KDA, and Kentucky producers will need to do nothing to comply with the repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA will be a major benefit, by no longer needing to maintain a database for 7 participants, who are already deemed to not have brucellosis.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: No costs.

(b) On a continuing basis: No costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No source funds are required.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established in any form.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture, Office of the State Veterinarian.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.030.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(b) How 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 are no anticipated impacts to state or local government associated with this repealer.

(c) How much will it cost to administer this program for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated impacts to state or local government associated with this repealer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT
Department of Agriculture
Office of the State Veterinarian
(Repealer)**

302 KAR 20:571. Repeal of 302 KAR 20:057.

RELATES TO: KRS 257.020, 257.030, 257.040, 257.050
STATUTORY AUTHORITY: KRS 257.020, 257.030, 257.040, 257.050

NECESSITY, FUNCTION, AND CONFORMITY: The purpose of the administrative regulation is to delineate the procedures for quarantine and quarantine release of brucellosis infected and exposed herds. This administrative regulation repeals 302 KAR 20:057 because Kentucky was declared brucellosis free by the USDA on September 16, 1997, making this administrative regulation not needed.

Section 1. 302 KAR 20:057. Brucellosis quarantine requirements, is hereby repealed.

RYAN F. QUARLES, Kentucky Commissioner of Agriculture

APPROVED BY AGENCY: August 9, 2018

FILED WITH LRC: August 10, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2018, at 10:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals the brucellosis program quarantine protocol in Kentucky.

(b) The necessity of this administrative regulation: The USDA has declared this disease eradicated in Kentucky, thus the necessity for the program no longer exists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 257 grants the Office of the State Veterinarian broad authority to eradicate communicable diseases in livestock, including creation of programs for monitoring and testing for a disease. This administrative regulation repeals an administrative regulation that was useful for that purpose, prior to Kentucky being declared brucellosis free.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will assist by eliminating a non-required administrative regulation, helping the KDA comply with the intent of HB 50.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, and 7 program enrollees.

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

(a) List 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 KDA, and Kentucky producers will need to do nothing to comply with the repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA will be a major benefit, by no longer needing to maintain a database for 7 participants, who are already deemed to not have

brucellosis.

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

(a) Initially: No costs.

(b) On a continuing basis: No costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No source funds are required.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established in any form.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture, Office of the State Veterinarian.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.030.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(b) How 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 are no anticipated impacts to state or local government associated with this repealer.

(c) How much will it cost to administer this program for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated impacts to state or local government associated with this repealer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT Department of Agriculture Office of the State Veterinarian (Repealer)

302 KAR 20:581. Repeal of 302 KAR 20:058.

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS 257.110, 257.120, 257.480, 257.030

NECESSITY, FUNCTION, AND CONFORMITY: To provide the procedure for enabling the Board of Agriculture to eliminate brucellosis by ordering the slaughtering or destruction of a bovine herd upon a determination of infection of or exposure to brucellosis within the herd. Such methods are necessary in order to achieve status of brucellosis free state. This administrative regulation repeals 302 KAR 20:058 because Kentucky was declared brucellosis free by the USDA on September 16, 1997, making this

administrative regulation not needed.

Section 1. 302 KAR 20:058. Brucellosis eradication, is hereby repealed.

RYAN F. QUARLES, Kentucky Commissioner of Agriculture

APPROVED BY AGENCY: August 9, 2018

FILED WITH LRC: August 10, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2018, at 10:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals the brucellosis eradication protocol in Kentucky.

(b) The necessity of this administrative regulation: The USDA has declared this disease eradicated in Kentucky, thus the necessity for the program no longer exists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 257 grants the Office of the State Veterinarian broad authority to eradicate communicable diseases in livestock, including creation of programs for monitoring and testing for a disease. This administrative regulation repeals an administrative regulation that was useful for that purpose, prior to Kentucky being declared brucellosis free.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will assist by eliminating a non-required administrative regulation, helping the KDA comply with the intent of HB 50.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, and 7 program enrollees.

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

(a) List 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 KDA, and Kentucky producers will need to do nothing to comply with the repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA will be a major benefit, by no longer needing to maintain a database for 7 participants, who are already deemed to not have brucellosis.

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

(a) Initially: No costs.

(b) On a continuing basis: No costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No source funds are required.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established in any form.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture, Office of the State Veterinarian.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.030.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(b) How 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 are no anticipated impacts to state or local government associated with this repealer.

(c) How much will it cost to administer this program for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated impacts to state or local government associated with this repealer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT Department of Agriculture Office of Agricultural Marketing (Repealer)

302 KAR 100:011. Repeal of 302 KAR 100:010.

RELATES TO: KRS 262.902, 262.904, 262.908

STATUTORY AUTHORITY: KRS 262.902, 262.908

NECESSITY, FUNCTION, AND CONFORMITY: KRS 262.908 requires the Purchase of Agricultural Conservation Easement Board to implement a Purchase of Agricultural Conservation Easement Program, including the development and promulgation

of necessary administrative regulations. KRS 262.908 requires the Purchase of Agricultural Conservation Easement Corporation to establish fair, equitable, objective, nondiscriminatory procedures for determining easement purchase priorities. KRS 262.908 also requires that land is selected for purchase because it will make a significant contribution to agricultural production. This administrative regulation repeals 302 KAR 100:010 because the lack of current funding makes purchase priorities irrelevant at this time.

Section 1. 302 KAR 100:010. Procedures for determining purchasing priority for agricultural conservation easements or other property interests in agricultural lands, is hereby repealed.

RYAN F. QUARLES, Kentucky Commissioner of Agriculture

APPROVED BY AGENCY: August 9, 2018

FILED WITH LRC: August 10, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2018, at 10:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals the current administrative regulation that established priorities for purchases of agriculture conservation easements.

(b) The necessity of this administrative regulation: The PACE program has not been funded by the General Assembly for a number of years. Program funds only cover small administrative needs on donations, making purchase priorities not needed in the near term. Therefore, the PACE Board wishes to repeal this regulation that is not currently needed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes for the PACE program grant to the PACE board wide leeway for creation of purchase priorities. The PACE board wishes to repeal this administrative regulation until it will be needed again, in an effort to conform with SB 50 requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will make administration of the program easier as it will clearly delineate purchase programs from the PACE board's current donation 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: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: This repeal could only affect persons likely to be funded for purchases. With no current funding, and no purchase contracts in place, it is impossible to figure who this might affect.

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

(a) List 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 PACE board, and the Kentucky Department of Agriculture will need to do nothing to comply with the repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease and the ability to draft new administrative regulation when fund for this program is restored.

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

(a) Initially: No costs.

(b) On a continuing basis: No costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No source funds are required.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established in any form.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture, and the PACE board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 262.902, KRS 262.904, and KRS 262.908.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(b) How 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 are no anticipated impacts to state or local government associated with this repealer.

(c) How much will it cost to administer this program for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated impacts to state or local government associated with this repealer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT
Department of Agriculture
Office of Agricultural Marketing
(Repealer)

302 KAR 100:021. Repeal of 302 KAR 100:020.

RELATES TO: KRS 262.902, 262.904, 262.908

STATUTORY AUTHORITY: KRS 262.902, 262.908

NECESSITY, FUNCTION, AND CONFORMITY: KRS 262.908 requires the Purchase of Agricultural Conservation Easement Board to implement a Purchase of Agricultural Conservation Easement Program, including the development and promulgation of necessary administrative regulations. KRS 262.908 requires the Purchase of Agricultural Conservation Easement Corporation to promulgate administrative regulations establishing policies and procedures for purchasing easements. KRS 262.908 also requires that land is selected for purchase because it will make a significant contribution to agricultural production. This administrative regulation repeals 302 KAR 100:020 because the lack of current funding makes purchase procedures irrelevant at this time.

Section 1. 302 KAR 100:020. Procedures for purchasing agricultural conservation easements or other property interests in agricultural lands, is hereby repealed.

RYAN F. QUARLES, Kentucky Commissioner of Agriculture

APPROVED BY AGENCY: August 9, 2018

FILED WITH LRC: August 10, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2018, at 10:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals the current administrative regulation that established procedures for purchases of agriculture conservation easements.

(b) The necessity of this administrative regulation: The PACE program has not been funded by the General Assembly for a number of years. Program funds only cover small administrative needs on donations, making purchase procedures not needed in the near term. Therefore, the PACE Board wishes to repeal this regulation that is not currently needed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes for the PACE program grant to the PACE board wide leeway for creation of purchase procedures. The PACE board wishes to repeal this administrative regulation until it will be needed again, in an effort to conform with SB 50 requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will make administration of the program easier as it will clearly delineate purchase procedures from the PACE boards current

donation 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: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This repeal could only affect persons likely to be funded for purchases. With no current funding, and no purchase contracts in place, it is impossible to figure who this might affect.

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

(a) List 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 PACE board, and the Kentucky Department of Agriculture will need to do nothing to comply with the repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease and the ability to draft new administrative regulation when funding for this program is restored.

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

(a) Initially: No costs.

(b) On a continuing basis: No costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No source funds are required.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established in any form.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture, and the PACE board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 262.902, KRS 262.904, and KRS 262.908.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(b) How 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 are no anticipated impacts to state or local government associated with this repealer.

(c) How much will it cost to administer this program for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated impacts to state or local government associated with this repealer.

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:

LABOR CABINET

Kentucky Workers' Compensation Funding Commission (Repealer)

803 KAR 30:021. Repeal of 803 KAR 30:020.

RELATES TO: KRS 342.122, 342.1231

STATUTORY AUTHORITY: KRS 342.1223(2)(g), (3)(f), 342.1231(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.1223(3)(f) authorizes the Kentucky Workers' Compensation Funding Commission to make and promulgate administrative regulations to carry out and effectuate the purposes for which it was established. This administrative regulation repeals 803 KAR 30:020, Payment of audit expenses by taxpayer, which is no longer necessary as a result of recent legislative changes. HB388 passed during 2018 General Session, modified the manner in which the Commission is to treat expense payments.

Section 1. 803 KAR 30:020, Payment of audit expenses by taxpayer, is hereby repealed.

This is to certify that the executive director has reviewed and recommended this repeal of administrative regulation prior to its adoption, as required by KRS 342.1224(5).

REUBEN JONES, Executive Director
JUDY LONG, Chair, Board of Directors
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2018, at 1:30 p.m. Eastern Time at the Kentucky Workers' Compensation Funding Commission Conference Room, 42 Mill Creek Park, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Estee Jackson, Administrative Services Officer, Kentucky Workers' Compensation Funding Commission, 42 Mill Creek Park, Frankfort, Kentucky 40601, phone (502) 782-1708, fax (502) 573-4923, email estee.jackson@ky.gov; or Olivia Orrender, Audit Review Manager, Kentucky Workers' Compensation Funding Commission, 42 Mill Creek Park, Frankfort, Kentucky 40601, phone (502) 782-1711, email Olivia.orrender@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Estee Jackson and Olivia Orrender

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 803 KAR 30:020 which is no longer necessary as a result of recent legislation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal the outdated regulation 803 KAR 30:020.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.1223(3)(f) authorizes the Kentucky Workers' Compensation Funding Commission (KWFCF) to promulgate administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will simplify the Funding Commission regulatory scheme and facilitate compliance with HB 388.

(2) If 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: Kentucky Workers' Compensation Funding 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:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No new actions are required by this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No new costs are being applied by this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will have a simplified scheme to follow.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: (a) Initially: (b) On a continuing basis: This administrative regulation will not add any further cost to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will not add any further cost to the administrative body.

(7) Provide an assessment of whether an 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 add any further cost to the administrative body.

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

(9) TIERING: Is tiering applied? No, because this is a repeal of 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? Kentucky Workers' Compensation Funding Commission (KWFCF)

(2) Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 342.1223(3)(f)

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

(a) How much 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 and 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 and Local Government.

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

(d) How much will it 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. This repealer will have no cost to administer.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
General Section
(New Administrative Regulation)

815 KAR 2:010. Continuing education requirements.

RELATES TO: KRS 198B.090, 198B.095, 198B.4009, 198B.4011, 198B.4013, 198B.4023, 198B.4025, 198B.6405, 198B.6409, 198B.654, 198B.658, 198B.660, 198B.664, 198B.672, 227.570, 227.590, 227A.040, 227A.100, 318.054, 318.130

STATUTORY AUTHORITY: KRS 198B.090(1)(a), 198B.095(1), 198B.4009(3), 198B.4023(7), (9), 198B.4025, 198B.6405(4), 198B.6409, 198B.654(1), 198B.684, 227.570(4), 227.590(1), 227A.040(8), 227A.100(7), 318.054, 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.090(1)(a) requires the department to create and administer a certification program for building inspectors. KRS 198B.095(1) authorizes the department to promulgate administrative regulations to create a building inspectors training program. KRS 198B.4023 and 198B.4025 require the department to promulgate administrative regulations establishing continuing education requirements for elevator contractors and elevator mechanics. KRS 198B.654(1) requires the department to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 through 198B.689. KRS 198B.684 authorizes the department to promulgate an administrative regulation with standards for continuing education for licensees and certificate holders of heating, ventilation, and air conditioning (HVAC). KRS 198B.6409 requires the commissioner to promulgate administrative regulations to establish the procedures necessary to implement KRS 198B.6401 through 198B.6417. KRS 198B.6405(4) establishes the continuing education requirements for fire sprinkler inspectors. KRS 227.590(1) requires the department to make and enforce administrative regulations to implement KRS 227.550 through 227.660. KRS 227.570(4) requires the department to establish the standards for the certified installer seal program. KRS 227A.040(8) authorizes the department to promulgate administrative regulations to establish procedures governing the licensure of electricians and electrical contractors. KRS 227A.100(7) requires the department to promulgate an administrative regulation to establish requirements relating to continuing education. KRS 318.130 requires the department to promulgate a Kentucky State Plumbing Code. KRS 318.054 requires the department to promulgate administrative regulations

establishing the requirements for continuing education requirements for plumbers. This administrative regulation establishes the requirements for continuing education for certified building inspectors, trainee building inspectors, elevator contractors, elevator mechanics, fire sprinkler inspectors, master HVAC contractors, journeyman HVAC mechanics, certified installers of manufactured homes, master electricians, electricians, electrical contractors, electrical inspectors, master plumbers, and journeyman plumbers.

Section 1. General Requirements. (1) Prior to license renewal or certification renewal, a licensee or certificate holder shall submit proof of continuing education to the department.

(2) Except as established in subsection (3) of this section, a licensee or certificate holder shall obtain the required number of hours of continuing education pursuant to Section 2 of this administrative regulation during the twelve (12) months prior to renewal of the license or certificate.

(3)(a) A licensee or certificate holder who accumulates more than the required annual number of continuing education hours may carry forward the excess credit hours into the two (2) successive educational years.

(b) Carried forward credit hours shall be limited to a total of twelve (12) hours. All excess credit hours above the total of twelve (12) hours shall not be carried forward.

(4) The required annual number of continuing education hours shall not be required for a licensee's first renewal if the initial license was issued within twelve (12) months of renewal.

(5) More than two (2) hours of safety practices and procedures per twelve (12) month period shall not be accepted towards the required annual number of continuing education hours.

(6) Out-of-state courses and trainings.

(a) Upon written request by a licensee or certificate holder, the department may recognize continuing education credit for courses or trainings held in another state if the material covered is relevant to the particular license.

(b) The licensee, certificate holder, or course provider shall submit with the request:

1. Course materials, including for example, handouts, course outlines, or a syllabus provided before or during the out-of-state course or training;

2. A certificate of completion of the out-of-state course or training, if applicable; and

3. The results of any quizzes or tests taken in association with the out-of-state course or training.

(7)(a) Except as established in paragraph (b) of this subsection, an individual who holds two (2) different licenses within one (1) division or one (1) section of the department shall comply with the required annual number or continuing education hours established in Section 2 for one (1) license.

(b) An electrical contractor shall not be able to apply a master electrician, electrician, or electrical inspector's hours toward the electrical contractor's continuing education.

(8) One (1) hour of class shall be equivalent to fifty (50) minutes of classroom instruction or approved online courses as established in 815 KAR 2:020.

(9)(a) A licensee who creates, teaches, instructs, or participates on a panel in an approved continuing education course as established in 815 KAR 2:020 shall be granted one (1) credit hour for each fifty (50) minutes of actual instruction time.

(b)1. A licensee who creates, teaches, instructs, or participates on a panel shall only receive credit for the initial creation, teaching, or participation on a panel for a continuing education course.

2. A licensee who creates, teaches, instructs, or participates on a panel shall not receive credit for any subsequent involvement with the same continuing education course.

(10) A licensee that is a corporation, business, or partnership shall designate an authorized agent to complete the licensee's annual continuing education requirements for purposes of license renewal.

(11) Inactive license.

(a) An inactive licensee or inactive certification holder shall not be required to attend or submit proof of annual continuing

education.

(b) Prior to reactivation of a license or a certificate, the licensee, certificate holder, or course provider shall provide proof that the licensee or certificate holder has completed the required annual number of continuing education hours for the particular license or certificate in the twelve (12) months preceding reactivation.

Section 2. Division and Section-specific Requirements. (1) Except as established in subsection (2) of this section, a licensee or certificate holder shall provide proof of at least six (6) hours of approved continuing education prior to license renewal.

(2) The licensee or certificate holders shall comply with the requirements established in paragraphs (a) through (e) of this subsection:

(a) Each certified building inspector and trainee building inspector shall provide proof of at least twelve (12) hours of continuing education.

(b) Each certified installer shall provide proof of at least five (5) hours of continuing education prior to license renewal.

(c) Each electrical inspector shall provide proof of at least twelve (12) hours of continuing education prior to certification renewal.

(d) Each elevator contractor, elevator mechanic, and accessibility and residential elevator mechanic shall provide proof of at least eight (8) hours of continuing education prior to license renewal.

(e) Each fire sprinkler inspector may submit proof of a NICET certification in the testing of water-based systems to the department instead of completing the required annual number of continuing education hours.

(3) Building inspectors. Each certified building inspector's and trainee building inspector's continuing education course shall relate to general business and technical skills required of a certified inspector.

(4) Elevators. Each elevator contractor's, elevator mechanic's, and accessibility and residential elevator mechanic's continuing education course shall relate to one (1) or more of the following:

- (a) Business;
- (b) Job safety;
- (c) Kentucky codes related to elevators; or
- (d) Subject matter directly related to the elevator trade.

(5) Heating, Ventilation, and Air Conditioning. Each master HVAC licensee's and journeyman HVAC licensee's continuing education course shall relate to one (1) or more of the following:

- (a) Business;
- (b) Job safety;
- (c) Codes relating to HVAC; or
- (d) Subject matter directly relating to the HVAC trade.

(6) Plumbing. Each master plumber's and journeyman plumber's continuing education courses shall relate to one (1) or more of the following:

- (a) Business;
- (b) Job safety;
- (c) The Kentucky State Plumbing Code; or
- (d) Subject matter directly related to the plumbing trade.
- (7) Electrical.

(a) Each master electrician's, electrician's, and electrical inspector's continuing education course shall relate to one (1) or more of the following:

- 1. Job safety;
- 2. Codes related to the electrical industry; or
- 3. Subject matter directly related to the electrical trade.

(b) Each electrical contractor's continuing education course shall relate to one (1) or more of the following:

- 1. Business; or
- 2. Job safety.

(8) Fire sprinkler inspectors. Each fire sprinkler inspector's continuing education course shall relate to one (1) or more of the following:

- (a) NFPA 25;
- (b) Kentucky Building Code Section 900; or
- (c) Job safety.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the requirements for continuing education for elevator contractors, elevator mechanics, fire sprinkler inspectors, master HVAC contractors, journeyman HVAC mechanics, certified installers of manufactured homes, master electricians, electricians, electrical contractors, electrical inspectors, master plumbers, and journeyman plumbers. By combining the continuing education requirements from administrative regulations across the Department's divisions, in 815 KAR Chapter 4, Chapter 8, Chapter 20, Chapter 22, Chapter 25, and Chapter 35 and placing them in a general administrative regulation chapter for the Department, this regulation will significantly reduce duplication and increase ease of compliance for all licensees, certificate holders, and Department staff.

(b) The necessity of this administrative regulation: KRS 198B.4023 and 198B.4025 requires the department to promulgate administrative regulations establishing continuing education requirements for elevator contractors and elevator mechanics. KRS 198B.684 authorizes the department to promulgate an administrative regulation with standards for continuing education for licensees and certificate holders of HVAC. KRS 198B.6405(4) establishes the continuing education requirements for fire sprinkler inspectors. KRS 227.570(4) requires the department to establish the standards for the certified installer seal program. KRS 227A.100(7) requires the department to promulgate an administrative regulation to establish requirements relating to continuing education. KRS 318.054 requires the department to promulgate administrative regulations establishing the requirements for continuing education requirements for plumbers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing the continuing education requirements for elevator contractors, elevator mechanics, fire sprinkler inspectors, master HVAC contractors, journeyman HVAC mechanics, certified installers of manufactured homes, master electricians, electricians, electrical contractors, electrical inspectors, master plumbers, and journeyman plumbers.

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

continuing education for elevator contractors, elevator mechanics, fire sprinkler inspectors, master HVAC contractors, journeyman HVAC mechanics, certified installers of manufactured homes, master electricians, electricians, electrical contractors, electrical inspectors, master plumbers, and journeyman plumbers.

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

(a) How the amendment will change this existing administrative regulation: This is not applicable as this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not applicable as this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not applicable as this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not applicable as 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 affects the Department of Housing, Buildings and Construction, all businesses that offer, or would like to offer, continuing education in Kentucky, and all elevator licensees, fire sprinkler inspectors, HVAC licensees, manufactured housing certified installers, electrical licensees, and plumbing licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This new administrative regulation will not impose any additional requirements on any of the regulated entities identified in question (3). These requirements were previously established in separate administrative regulations within 815 KAR Chapter 4, Chapter 8, Chapter 20, Chapter 22, Chapter 25, and Chapter 35.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This new administrative regulation will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new administrative regulation decreases the total number of hours of continuing education licensed plumbers and HVAC licensees need to complete from eight hours to six hours, allowing licensed plumbers and HVAC licensees to complete their continuing education requirements in one day. Licensees and certificate holders will be able to complete courses in one-hour increments, providing greater flexibility. By combining the administrative regulation requirements into one administrative regulation, the continuing education requirements for licensees and certificate holders within the department is more consistent with other trades.

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

(a) Initially: There are no anticipated additional initial costs to administer this new administrative regulation.

(b) On a continuing basis: There are no anticipated additional costs to administer this new 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: Implementation of this new administrative regulation is anticipated to result in no additional costs to the agency. Any agency costs resulting from this new administrative regulation will be met with existing agency funds.

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

funding to the Department for implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this new administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because all elevator licensees, fire sprinkler inspectors, certified installers of manufactured housing, HVAC licensees, electrical licensees and inspectors, and plumbing licensees will be subject to the new regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Building Codes Enforcement, Elevator Section, Manufactured Housing Section, Division of Fire Prevention, HVAC Division, Division of Plumbing, and the Electrical Division.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. These amendments are authorized by KRS 198B.4009(3), 198B.4023(7), (9), 198B.4025, 198B.6405(4), 198B.6409, 198B.654(1), 198B.684, 227.570(4), 227.590(1), 227A.040(8), 227A.100(7), 318.054, 318.130.

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

(a) How much 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 new administrative regulation is not anticipated to generate additional revenues for the agency.

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

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

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this new 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 Housing, Buildings and Construction

General Section

(New Administrative Regulation)

815 KAR 2:020. Continuing education course and provider approval.

RELATES TO: KRS 198B.090, 198B.095, 198B.4009, 198B.4023, 198B.4025, 198B.6504, 198B. 6409, 198B.654, 198B.664, 198B.684, 227.570, 227.590, 227A.040, 227A.100, 318.054, 318.130

STATUTORY AUTHORITY: KRS 198B.090(1)(a), 198B.095(1), 198B.4009(3), 198B.4025(3), 198B.6409(5), 198B.654(1), 198B.684, 227.570(4), 227.590(1), 227A.040(8), 227A.100(7), 318.054, 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.090(1)(a) requires the department to create and administer a certification program for building inspectors. KRS 198B.095(1)

authorizes the department to promulgate administrative regulations to create a building inspectors training program. KRS 198B.4009(3) authorizes the department to promulgate administrative regulations necessary to implement the provisions of KRS 198B.400 through 198B.540. KRS 198B.4025(3) authorizes the department to promulgate an administrative regulation to establish requirements for approval of continuing education programs. KRS 198B.6409 requires the department to promulgate an administrative regulation to establish requirements for approval of continuing education programs and continuing education courses for certified fire sprinkler inspectors. KRS 198B.654(1) requires the department to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 through 198B.689. KRS 198B.684 authorizes the department to promulgate an administrative regulation to establish requirements for approval of continuing education courses and providers. KRS 227.590(1) requires the department to make and enforce administrative regulations to implement KRS 227.550 through 227.660. KRS 227.570(4) requires the department to establish the standards for the certified installer seal program. KRS 227A.040(8) authorizes the department to promulgate administrative regulations to establish procedures to govern the licensure of electricians and electrical contractors. KRS 227A.100(7) requires the department to promulgate an administrative regulation to establish requirements relating to continuing education, including program content and qualifications of providers. KRS 318.054 authorizes the department to adopt continuing education requirements for plumbers. This administrative regulation establishes the requirements for approval of continuing education courses and providers.

Section 1. Requirements for Continuing Education Provider Approval. (1) A continuing education course provider shall be registered with the department.

(2) A course provider may be one of the following:

(a) Any individual, company, or organization approved by the department;

(b) A course provider of elevator continuing education may be an organization listed in KRS 198B.4025(3); or

(c) A course provider of electrical continuing education may be an organization listed in KRS 227A.100(7).

(3) Application.

(a) Each continuing education course provider shall apply to the department by submitting a completed Form HBC CE-1, Application for Course Provider Approval.

(b) A course provider that intends to offer courses covering material applicable to more than one of building inspectors, elevators, fire sprinklers, HVAC, certified installers, electrical, or plumbing shall submit one application to register with the department.

(4) The department shall maintain a list of current approved continuing education providers.

(5) A course provider shall report to the department any change in the registration information within ten (10) days of the change taking effect.

(6) Course provider registration shall be valid for two (2) years from the date of issuance.

(7) Renewal.

(a) A course provider shall renew its registration with the department prior to expiration of the course provider registration.

(b) A course provider shall submit an updated Form HBC CE-1 to the department for renewal.

(8) Inactive course provider.

(a) If a course provider does not hold at least one (1) class annually, then the course provider's approval shall be marked as inactive by the department.

(b) A course provider whose approval is inactive shall reapply to the department by submitting a completed Form HBC CE-1 before offering a course.

(9) Revocation. The department may revoke a course provider's approval if the department determines that the course provider:

(a) Obtains, or attempts to obtain, registration of course approval through fraud, false statements, or misrepresentation;

(b) Does not provide complete and accurate information either in the initial registration or in notification of changes to information;

(c) Advertises a continuing education course as being approved by the department prior to receiving approval;

(d) Engages in fraudulent or deceptive business practices; or

(e) Fails to comply with the requirements of this administrative regulation.

(10) A course provider may request a hearing pursuant to KRS Chapter 13B to challenge a denial or a revocation of the course provider's registration.

Section 2. Requirements for Continuing Education Course Approval. (1) Each continuing education course shall be approved by the department.

(2) Only an approved course provider registered with the department shall provide continuing education courses.

(3) Application. Each course provider shall submit a completed Form HBC CE-2, Application for Continuing Education Course Approval at least thirty (30) business days prior to the proposed new course's first class date.

(4) Course information changes.

(a) A course provider shall submit any change in course information within ten (10) days of the intended change taking effect.

(b) All course information changes shall be approved by the department before the changes may take effect.

(c) If a course change affects a class that is already scheduled, the course provider shall notify all licensees or certificate holders that have registered for the class.

(5) Class schedule. A course provider shall submit a class schedule for an approved course at least ten (10) days before the class date. The class schedule shall include the following:

(a) Times and dates that classes will be offered;

(b) The location where classes will be offered; and

(c) Availability of the class to the public.

Section 3. Online Continuing Education. (1) Online continuing education courses shall:

(a) Be provided by a continuing education provider registered with the department;

(b) Except as established in subparagraph 3. of this subsection, include personal security questions, consisting of:

1. One (1) random security question at each log-in; and

2. Remaining security questions at intervals not to exceed twenty (20) minutes.

3. Online continuing education programs with alternative assurances of user involvement shall not comply with interval security questions.

(c) Allow course participants access to the course for a minimum of thirty (30) days following receipt of payment for the course;

(d) Make the course certificate of completion available online for twelve (12) months to any licensee who completes an online course;

(e) Retain a record of all course applications and completions for a minimum of three (3) years; and

(f) Be capable of storing course content questions as follows:

1. Stored content questions shall equal 150 percent of the content questions required; and

2. Duplicate questions shall not be permitted.

(2) A minimum of four (4) content questions, chosen randomly from stored content questions, shall be answered during each twenty (20) minutes of continuing education programming.

(3) Notification of correct and incorrect answers prior to completion of the online course and issuance of a certificate of completion shall not be permitted.

Section 4. Continuing Education Course Records. (1) Each registered course provider shall establish and maintain the following records for each approved course for three (3) years:

(a) Certificates of completion as provided in subsection (2) of this section;

(b) An attendance sign-in and sign-out sheet; and

(c) A course syllabus.

(2) Certificates of completion.

(a) Each registered course provider shall issue a certificate of completion for each participant who enrolled and completed an approved continuing education course.

(b) Certificates of completion shall contain the following individual participant's information:

1. Name;

2. License number or numbers;

3. Date of attendance; and

4. Course, or courses, completed.

(c) The course provider shall submit a certificate of completion:

1. Electronically to the department; or

2. By hard copy provided to the licensee or certificate holder.

Section 5. Reschedule and Cancellations. (1) If a course provider cancels a course, the course provider shall notify the department and persons registered for the course at least five (5) business days prior to the cancellation, unless conditions exist that would preclude a five (5) business day notification of cancellation.

Section 6. Course Audits. (1) Records requested in writing by the department shall be delivered to the department within ten (10) business days of the requesting date.

(2) Representatives of the department may attend an approved continuing education course at no charge to ensure that the course meets the stated objectives provided by the course provider and that the course complies with this administrative regulation.

Section 7. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Form HBC CE-1, Application for Course Provider Approval," August 2018; and

(b) "Form HBC CE-2, Application for Continuing Education Course Approval," August 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for continuing education provider and course approval. It combines the continuing education course approval administrative regulations from 815 KAR Chapter 4, Chapter 8, Chapter 20, Chapter 22, Chapter 25, and Chapter 35 and places them in a general administrative regulation chapter for the Department.

(b) The necessity of this administrative regulation: KRS 198B.4025(3) authorizes the department to promulgate an administrative regulation to establish requirements for approval of continuing education programs for elevator contractors and mechanics. KRS 198B.6409 requires the department to promulgate an administrative regulation to establish requirements for approval of continuing education programs and continuing education courses for certified fire sprinkler inspectors. KRS 198B.684 authorizes the department to promulgate an administrative regulation to establish requirements for approval of continuing education courses and providers for HVAC licensees and certificate holders. KRS 227.570(4) requires the department to establish the standards for the certified installer seal program. KRS 227A.100(7) requires the department to promulgate an administrative regulation to establish requirements relating to continuing education, including program content and qualifications of providers. KRS 318.054 authorizes the department to adopt continuing education requirements for plumbers. This administrative regulation establishes the requirements for a continuing education provider for elevators, HVAC, fire sprinkler inspectors, inspectors, manufactured housing, electrical, and plumbing courses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the requirements for continuing education providers and courses for elevator contractors, elevator mechanics, fire sprinkler inspectors, master HVAC contractors, journeyman HVAC mechanics, certified installers of manufactured homes, master electricians, electricians, electrical contractors, electrical inspectors, master plumbers, and journeyman plumbers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation establishes the requirements for continuing education course providers and the course covering elevators, fire sprinkler inspectors, HVAC, manufactured housing certified installers, electrical, and plumbing.

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

(a) How the amendment will change this existing administrative regulation: This is not applicable as this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not applicable as this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not applicable as this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not applicable as 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 affects the Department of Housing, Buildings and Construction, all businesses that offer, or would like to offer, continuing education in Kentucky, and all elevator licensees, fire sprinkler inspectors, HVAC licensees, manufactured housing certified installers, electrical licensees, and plumbing licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This new administrative regulation will

not impose any additional requirements on any of the regulated entities identified in question (3). These requirements are already established in separate administrative regulations within 815 KAR Chapter 4, Chapter 8, Chapter 20, Chapter 22, Chapter 25, and Chapter 35.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This new administrative regulation will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new administrative regulation eliminates restrictions on who, or what company, can offer continuing education course. It also removes requirements from HVAC and plumbing course providers of having to offer courses in every Congressional District quarterly. By combining these administrative regulations, the providers that cover topics under different divisions only need to submit one application form to the department.

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

(a) Initially: There are no anticipated additional initial costs to administer this new administrative regulation.

(b) On a continuing basis: There are no anticipated additional costs to administer this new 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: Implementation of this new administrative regulation is anticipated to result in no additional costs to the agency. Any agency costs resulting from this new administrative regulation will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this new administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because all elevator licensees, fire sprinkler inspectors, certified installers of manufactured housing, HVAC licensees, electrical licensees and inspectors, and plumbing licensees will be subject to the new regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Building Codes Enforcement, Elevator Section, Manufactured Housing Section, Division of Fire Prevention, HVAC Division, Division of Plumbing, and the Electrical Division.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This new administrative regulation is authorized by KRS 198B.4009(3), 198B.4025(3), 198B.6409(5), 198B.654(1), 198B.684, 227.570(4), 227.590(1), 227A.100(7), 318.054, 318.130.

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

(a) How much 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 new administrative regulation is not anticipated to generate additional revenue for the 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 new administrative regulation is not anticipated to generate additional revenue for the state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this new administrative regulation in subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction General Section (New Administrative Regulation)

815 KAR 2:030. Vehicle identification.

RELATES TO: KRS 198B.670, 227A.020, 318.100, 318.170

STATUTORY AUTHORITY: KRS 198B.654(1), 198B.670, 227A.040(8), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the department to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 through 198B.689. KRS 198B.670 requires a master heating, ventilation, and air conditioning contractor's license number to appear on all vehicles used by the licensee for heating, ventilation, and air conditioning work. KRS 227A.040(8) requires the department to promulgate administrative regulations to establish a code of ethics and procedures governing the licensure of electrical contractors, electricians, and master electricians. KRS 318.130 requires the department to promulgate administrative regulations necessary to enforce the Kentucky State Plumbing Code. This administrative regulation establishes the identification requirements for all vehicles used in connection with heating, ventilation, and air conditioning, plumbing, and electrical work.

Section 1. Vehicle Identification. (1) Each vehicle used in the operating a heating, ventilation, and air conditioning company, an electrical company, or a plumbing business shall be identified as established in the following:

(a) Each vehicle used by a heating, ventilation, and air conditioning business shall bear the master HVAC contractor's Kentucky license number;

(b) Each vehicle used by an electrical business shall bear the electrical contractor's Kentucky license number; and

(c) Each vehicle used by a plumbing business shall bear the master plumber's Kentucky license number.

(2) All identification required by this administrative regulation shall be in letters and numbers not smaller than three (3) inches high and shall be legible and visible on the outside of the vehicle.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on

the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2018 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation requires the license numbers to be visible on a vehicle used in HVAC, plumbing, and electrical work. It combines the vehicle identification administrative regulations from 815 KAR Chapter 8, Chapter 20, and Chapter 35 and places them in a general administrative regulation chapter for the Department.

(b) The necessity of this administrative regulation: KRS 198B.670 requires that the vehicles used for HVAC work have the license number on them. The posting of the license number associated with a company helps inspectors in enforcing the HVAC, plumbing, and electrical codes. This administrative regulation establishes how these numbers are to be depicted so that they are visible.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.654(1) requires the department to "promulgate administrative regulations to administer, coordinate, and enforce the provisions of KRS 198B.650 to 198B.689. KRS 198B.670 requires the HVAC license numbers to appear on all vehicles used for HVAC work. KRS 227A.040(8) requires the department to promulgate administrative regulations to establish a code of ethics and procedures governing the licensure of electrical contractors, electricians, and master electricians. KRS 318.130 requires the department to promulgate administrative regulations necessary to enforce the Kentucky State Plumbing Code.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the required placement and size of the identification on the vehicles used by specified types of Department licensees, assisting the Department with appropriate regulation and enforcement.

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

(a) How the amendment will change this existing administrative regulation: This is not applicable as this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not applicable as this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not applicable as this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not applicable as this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Housing, Buildings and Construction and any local government inspectors authorized by the Department to make inspections. This administrative regulation will also affect all HVAC licensees and companies; plumbing licensees and companies; and electrical licensees and companies.

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

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This new administrative regulation will not impose any additional requirements on any of the regulated entities identified in question (3). This requirement is already established in separate administrative regulations within 815 KAR Chapter 8, Chapter 20, and Chapter 35.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This new administrative regulation will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The new administrative regulation clarifies where the license numbers are to be placed on the vehicle. The new administrative regulation does not include a previous requirement for HVAC vehicles to include the company's name.

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

(a) Initially: There are no anticipated additional initial costs to administer this new administrative regulation.

(b) On a continuing basis: There are no anticipated additional costs to administer this new 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: Implementation of this new administrative regulation is anticipated to result in no additional costs to the agency. Any agency costs resulting from this new administrative regulation will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this new administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because all HVAC, plumbing, and electrical licensees and Department personnel will be subject to the amended regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, HVAC Division, Division of Plumbing, and the Electrical Division.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This new administrative regulation is authorized by KRS 198B.654, 227A.040, and 318.130.

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

(a) How much 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 new administrative regulation is not anticipated to generate additional revenue for state and 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 new administrative regulation is not anticipated to generate additional revenue for state or local government in subsequent years.

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

administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this new administrative regulation in subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
General Section
(New Administrative Regulation)

815 KAR 2:040. Fees and refunds.

RELATES TO: KRS 198B.4037, 198B.615, 198B.676, 318.050, 318.054, 318.134

STATUTORY AUTHORITY: KRS 198B.4009(3), 198B.490(1), 198B.555(2)(b), 198B.654(1), 198B.6673, 227A.050, 236.030, 236.130, 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the department to promulgate administrative regulations necessary to implement KRS 198B.400 through 198B.540, the Kentucky Elevator Safety Act. KRS 198B.490(1) requires that all fees paid to the department are made payable to the Kentucky State Treasurer. KRS 198B.654(1) requires the department to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 through 198B.689. KRS 198B.656, 198B.660, 198B.662, 198B.664, 198B.6671, 198B.6673, and 198B.676 authorize the department to establish license and permit fees. KRS 236.030 and 236.130 authorize the commissioner to promulgate administrative regulations that establish reasonable fees for boilers, pressure vessels, and pressure piping. KRS 318.130 requires the department to establish a State Plumbing Code and authorizes the department to promulgate reasonable rules or administrative regulations to administer KRS Chapter 318. KRS 318.050, 318.054, and 318.134 authorize the department to establish license and permit fees. This administrative regulation establishes procedures pertaining to fee payments and refunds for elevators, HVAC, and plumbing.

Section 1. Payments. All payments submitted to the department shall be made payable to the Kentucky State Treasurer.

Section 2. Insufficient Funds. (1) If a submitted payment is returned to the department for insufficient funds, the payor shall pay an insufficient funds fee of thirty-five (35) dollars, unless proof of financial institution error is provided.

(2) If a payor submits a payment that is returned to the department for insufficient funds, the department shall not accept a personal check from the payor for at least six (6) months.

Section 3. Refunds. A refund for an installation permit shall be given if:

(1) The refund request is received by the department within six (6) months of the date of issuance of the permit; and

(2) Work has not begun on the project for which the permit was issued.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite

100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2018 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes that all fees paid to the divisions and sections within the Department of Housing, Buildings shall be made payable to the Kentucky State Treasurer, and sets forth a uniform process across the Department for returned payments. It also establishes when a person can receive a refund for fees. This administrative regulation combines the fees and refunds administrative regulations from 815 KAR Chapter 4, Chapter 8, and Chapter 20 and places them into a general administrative regulation chapter for the department.

(b) The necessity of this administrative regulation: This administrative regulation provides instructions on making payments and obtaining refunds of fees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.4009(3) authorizes the department to promulgate administrative regulations necessary to implement KRS 198B.400-198B.540, the Kentucky Elevator Safety Act. KRS 198B.490(1) requires that all fees paid to the department are made payable to the Kentucky State Treasurer. 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.656, 198B.660, 198B.662, 198B.664, 198B.6671, 198B.6673, and 198B.676 authorize the department to establish license and permit fees. KRS 318.050, 318.054, and 318.134 authorize the office to establish license and permit fees. KRS 318.130 requires the department to establish a State Plumbing Code and authorizes the department to promulgate reasonable rules or administrative regulations to administer KRS Chapter 318.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes important criteria concerning the department's handling of fees.

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

(a) How the amendment will change this existing administrative regulation: This is not applicable as this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not applicable as this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not applicable as this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not applicable as 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: All licensees and individuals who do

business with the Department of Housing, Buildings and Construction, and all department personnel.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This new administrative regulation will not impose any additional requirements on any of the regulated entities identified in question (3). The requirements in this administrative regulation are already required by separate administrative regulations in 815 KAR Chapter 4, Chapter 8, and Chapter 20.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This new administrative regulation will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new administrative regulation will not change the current requirements for current licensees in plumbing, elevator, and HVAC.

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

(a) Initially: There are no anticipated additional initial costs to administer this new administrative regulation.

(b) On a continuing basis: There are no anticipated additional costs to administer this new 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: Implementation of these amendments is anticipated to result in no additional costs to the agency. Any agency costs resulting from this new administrative regulation will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administration establishes a fee for a check that is returned for insufficient funds or non-payment. There are no fees directly or indirectly increased by this new administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals who make payments to the Department and the Department personnel will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, HVAC Division, Division of Plumbing, and Building Code Enforcement, Elevator Section.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This new administrative regulation is authorized by KRS 198B.4009, 198B.654, and 318.130.

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

(a) How much 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 new administrative regulation is not anticipated to generate additional revenue for the 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 new administrative regulation is not anticipated to generate additional revenue for the state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this new administrative regulation in subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction Building Code Enforcement Division, Elevator Section (Repealer)

815 KAR 4:071. Repeal of 815 KAR 4:040, 815 KAR 4:050, 815 KAR 4:060, and 815 KAR 4:070.

RELATES TO: KRS 198B.4009

STATUTORY AUTHORITY: KRS 198B.4009(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement the provisions of KRS 198B.400 to 198B.540. This administrative regulation repeals 815 KAR 4:040, 815 KAR 4:050, 815 KAR 4:060, and 815 KAR 4:070. The necessary provisions of 815 KAR 4:040 are being combined with 815 KAR 4:030 for ease of use. The necessary provisions of 815 KAR 4:050, 815 KAR 4:060, and 815 KAR 4:070 are being consolidated with similar provisions and promulgated as new administrative regulations in a general chapter of KAR Title 815 to eliminate duplication.

Section 1. The following administrative regulations are hereby repealed:

- (1) 815 KAR 4:040, Elevator mechanic licensing requirements;
- (2) 815 KAR 4:050, Continuing education requirements for elevator contractors and elevator mechanics;
- (3) 815 KAR 4:060, Requirements for approval of continuing education courses and providers; and
- (4) 815 KAR 4:070, Fees and refunds.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the

contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 815 KAR 4:040, 815 KAR 4:050, 815 KAR 4:060, and 815 KAR 4:070 because these administrative regulations have been combined and relocated within KAR Title 815.

(b) The necessity of this administrative regulation: This administrative regulation repeals the elevator mechanic licensing requirements, continuing education, and fees and refunds to simplify elevator licensing and eliminate duplicative administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is a repealer that conforms with the Department's authority in KRS 198B.4009(3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the reduction of the amount of duplicative administrative regulations within KAR Title 815.

(2) If 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: All elevator contractors, elevator mechanics, accessibility and residential elevator mechanics, and the Department of Housing, Buildings and Construction personnel 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: The repeal of this administrative regulation will not require the regulated entities identified in question (3) to take any new action to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will not incur any cost to comply with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): KAR Title 815 will be streamlined and easier to follow and understand.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: Nothing. This is a repeal of an administrative regulation.

(a) Initially: There will be no initial implementation cost. This is a repeal of an administrative regulation.

(b) On a continuing basis: There will be no implementation cost on a continuing basis. This is a repeal of an administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation and enforcement of this repealer.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this is a repeal of administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Building Codes Enforcement, Elevator Section will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.4009(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 will not generate revenue for state or local government for the first year.

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(Repealer)

815 KAR 8:091. Repeal of 815 KAR 8:020, 815 KAR 8:035, 815 KAR 8:050, 815 KAR 8:060, 815 KAR 8:090, and 815 KAR 8:095.

RELATES TO: KRS 198B.654, 198B.656, 198B.658

STATUTORY AUTHORITY: KRS 198B.654

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the department to promulgate administrative regulations to administer, coordinate, and enforce the provisions of KRS 198B.650 to 198B.689. The necessary substantive provisions of 815 KAR 8:020 and 815 KAR 8:035 are being combined with 815 KAR 8:010 to reduce duplication and make compliance easier. The necessary substantive provisions of 815 KAR 8:050, 815 KAR 8:060, 815 KAR 8:090, and 815 KAR 8:095 are being consolidated with similar administrative regulations and re-promulgated as a new section of KAR Title 815. This reduces duplicative

administrative regulations in KAR Title 815, and makes use and understanding of these administrative regulations easier.

Section 1. The following administrative regulations are hereby repealed:

- (1) 815 KAR 8:020, Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements;
- (2) 815 KAR 8:035, Reciprocal licensing requirements;
- (3) 815 KAR 8:050, Continuing education requirements for heating, ventilation and air conditioning (HVAC) license holders;
- (4) 815 KAR 8:060, Requirements for approval of continuing education courses and providers;
- (5) 815 KAR 8:090, Fees and refunds; and
- (6) 815 KAR 8:095, Vehicle identification.

STEVEN A. MILBY, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments regarding this administrative regulation shall be accepted if received through September 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 815 KAR 8:020 and 815 KAR 8:035 because the necessary substantive portions of these administrative regulations have been combined with 815 KAR 8:010 for ease of use. This administrative regulation also repeals 815 KAR 8:050, 815 KAR 8:060, 815 KAR 8:090, and 815 KAR 8:095 because the necessary substantive portions of these administrative regulations have been combined with other similar administrative regulations from KAR Title 815 for ease of use.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to remove duplicative administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is a repealer that conforms with the Department's authority in KRS 198B.654(1).

(c) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is a repealer that will assist in the effective administration of KRS 198B by eliminating duplicative administrative regulations because the requirements in those regulations are being concurrently combined elsewhere in KAR Title 815.

(2) If 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: All individuals who hold an HVAC license and the Department of Housing, Buildings and Construction 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: The repeal of these administrative regulations will not require the regulated entities identified in question (3) to take any action to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will not incur any cost to comply with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): 815 KAR Chapter 8 and KAR Title 815 as a whole will be easier to navigate and more user friendly.

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

(a) Initially: There will be no initial implementation cost. This is a repeal of an administrative regulation.

(b) On a continuing basis: There will be no implementation cost on a continuing basis. This is a repeal of an administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation and enforcement of this repealer.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this is a repeal of administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of HVAC will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.654.

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

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

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government for subsequent years.

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

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

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Repealer)

815 KAR 20:041. Repeal of 815 KAR 20:012, 815 KAR 20:015, 815 KAR 20:018, 815 KAR 20:032, 815 KAR 20:034, and 815 KAR 20:040.

RELATES TO: KRS Chapter 318.170

STATUTORY AUTHORITY: KRS 318.130.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department to promulgate administrative regulations necessary to enforce the Kentucky State Plumbing Code. 815 KAR 20:012 is repealed because the administrative regulation is unnecessary. This administrative regulation repeals 815 KAR 20:018 because House Bill 394 of the 2017 Regular Session of the General Assembly abolished the State Plumbing Code Committee. 815 KAR 20:015; 815 KAR 20:032; 815 KAR 20:034; and 815 KAR 20:040 are also repealed. The necessary substantive provisions of these administrative regulations are being consolidated and repromulgated in a new chapter of KAR Title 815 to eliminate repetitiveness. 815 KAR 20:015; 815 KAR 20:032; 815 KAR 20:034; and 815 KAR 20:040 are being repealed to prevent duplication.

Section 1. The following administrative regulations are hereby repealed:

- (1) 815 KAR 20:012, Sections declared independent;
- (2) 815 KAR 20:015, Fees and refunds;
- (3) 815 KAR 20:018, State plumbing code committee budget review and responsibility;
- (4) 815 KAR 20:032, Continuing education requirements for plumbers;
- (5) 815 KAR 20:034, Requirements for approval of continuing education courses and providers; and
- (6) 815 KAR 20:040, Vehicle identification.

STEVEN A. MILBY, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you

may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 815 KAR 20:012 because the regulation is unnecessary, and its repeal alleviates confusion. This administrative regulation repeals 815 KAR 20:018 because the State Plumbing Code Committee was dissolved as a result of House Bill 394 of the 2017 Regular Session of the General Assembly. 815 KAR 20:015; 815 KAR 20:032; 815 KAR 20:034; 815 KAR 20:040 are also repealed because the necessary provisions of these administrative regulations have been consolidated and relocated within KAR Title 815 for ease of use.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to remove a requirement for the Plumbing Division to report to the Committee because the Committee was discontinued by House Bill 394 of the 2017 Regular Session of the General Assembly. This administrative regulation repeals the plumbing continuing education regulations, vehicle identification regulation, and the fees and refunds regulation so there are not duplicative regulations pertaining to plumbing continuing education requirements, vehicle identification, and fees and refunds within KAR Title 815.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is a repealer that conforms with the Department's authority in KRS 318.130 and with the discontinuation of the State Plumbing Code Committee as a result of the repeal of KRS 318.071 and KRS 318.074 in House Bill 394 of the 2017 Regular Session of the General Assembly.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is a repealer that will assist in the effective administration of KRS Chapter 318 by removing the requirement that the Department submit budget documents to the State Plumbing Code Committee, which no longer exists as a result of House Bill 394 of the 2017 Regular Session of the General Assembly. This administrative regulation aids in the effective administration of KRS Chapter 318 by eliminating duplicative administrative regulations within KAR Title 815.

(2) If 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: All master plumbers, journeyman plumbers, and the Department of Housing, Buildings and Construction personnel 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: The repeal of this administrative regulation will not require the regulated entities identified in question (3) to take any action to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will not incur any cost to comply with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): KAR Title 815 will be streamlined and easier to follow and understand.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: Nothing. This is a repeal of an administrative regulation.

(a) Initially: There will be no initial implementation cost. This is a repeal of administrative regulations.

(b) On a continuing basis: There will be no implementation cost on a continuing basis. This is a repeal of administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation and enforcement of this repealer.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this is a repeal of administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 318.130.

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

(a) How much 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 for the first year.

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

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

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

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Fire Prevention, Fire Protection Systems Section (Repealer)

815 KAR 22:011. Repeal of 815 KAR 22:010.

RELATES TO: KRS 198B.6409

STATUTORY AUTHORITY: KRS 198B.6409(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.6409(1) requires the Commissioner of the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement the provisions of KRS 198B.6401 to 198B.6417. This administrative regulation repeals 815 KAR 22:010, because the necessary substantive provisions are being concurrently combined with similar administrative regulations from KAR Title 815 to eliminate duplication.

Section 1. The following administrative regulation is hereby repealed:

815 KAR 22:010, Requirements for approval of continuing education courses and providers.

STEVEN A. MILBY, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 815 KAR 22:010 because the necessary substantive provisions of the administrative regulation have been combined with other similar administrative regulations and relocated within KAR Title 815.

(b) The necessity of this administrative regulation: This administrative regulation repeals the fire sprinkler inspector's continuing education administrative regulation, so there are not duplicative regulations pertaining to continuing education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is a repealer that conforms with the Department's authority in KRS 198B.6409(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is a repealer that will aid in the reduction of the amount of duplicative administrative regulations within KAR Title 815.

(2) If 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: All individuals who are certified fire sprinkler inspectors and the Department of Housing, Buildings and Construction 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: The repeal of this administrative regulation will not require the regulated entities identified in question (3) to take any action to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will not incur any cost to comply with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): KAR Title 815 will be streamlined and easier to follow and understand.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: Nothing. This is a repeal of an administrative regulation.

(a) Initially: There will be no initial implementation cost. This is a repeal of an administrative regulation.

(b) On a continuing basis: There will be no continuing basis implementation cost. This is a repeal of an administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for implementation and enforcement of this repealer.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this is a repeal of an administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Fire Protection will be impacted by this repealer.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.6409.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 anticipated to generate additional revenue for state or local government for the first year.

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction Building Code Enforcement, Manufactured Housing Section (New Administrative Regulation)

815 KAR 25:001. Definitions for 815 KAR Chapter 25.

RELATES TO: KRS Chapter 227.550 - 227.665

STATUTORY AUTHORITY: KRS 227.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.590 requires the department to establish and enforce administrative regulations reasonably required to effectuate the provisions of KRS 227.550 to 227.660. This administrative regulation establishes definitions for terms found in 815 KAR Chapter 25.

Section 1. Definitions. (1) "Alteration or conversion" means the replacement, addition, modification, or removal of any equipment or installations that may affect the following:

(a) The body and frame design and construction; or

(b) The plumbing, heat-producing, cooling, fuel burning, electrical, or fire and life safety systems.

(2) "ANSI" is defined by KRS 227.550(13).

(3) "B1 seal" and "B2 Seal" are defined by KRS 227.550(2).

(4) "Certificate of acceptability" means the certificate provided to the manufacturer by the department signifying the manufacturer's ability to manufacture, import, and sell manufactured homes or recreational vehicles within the state to retailers.

(5) "Certified installer" means an individual certified [in accordance with 815 KAR 25:060] to install manufactured homes and mobile homes in Kentucky.

(6) "Certified installer seal" means a seal indicating that a manufactured home or mobile home has been installed by a certified installer.

(7) "DAPIA" means the Design Approval Primary Inspection Agency as used in 24 C.F.R. Part 3282.

(8) "Department" is defined by KRS 227.550(10).

(9) "Established place of business" is defined by KRS 227.550(5).

(10) "Federal act" is defined by KRS 227.550(4).

(11) "Frost line depth" means the minimum frost-protection depth for Kentucky as provided in the Kentucky Residential Code, Section R403.

(12) "Hard surface lot" means an area open to the public during business hours with a surface of concrete, asphalt, macadam, compacted gravel, stone, or other material of similar characteristics.

(13) "Installation" means the work performed by a certified installer on-site and the operations involved in the permanent securing and placement of a manufactured home or mobile home for the purpose of human occupancy.

- (a) "Installation" includes:
1. Preparation of a permanent foundation;
 2. Placement of polyvinyl covering on the ground, if applicable;
 3. Placement and connection of utilities performed by appropriately licensed contractors;
 4. Anchoring and tying down;
 5. Installation of any other accessory or appurtenance specified in the sales contract; and
 6. All activities within the scope of 24 C.F.R. Part 3285, the Department of Housing and Urban Development's Model Manufactured Home Installation Standards for new manufactured home installations.
- (b) "Installation" does not include site preparation.
- (14) "Manufactured home" is defined by KRS 227.550(6).
- (15) "Manufacturer" is defined by KRS 227.550(8).
- (16) "Mobile home" is defined by KRS 227.550(9).
- (17) "NFPA" means the National Fire Protection Association.
- (18) "Offer for sale" means to:
- (a) Display, exhibit, sell, transfer, exchange, or otherwise advertise a manufactured home, mobile home, or recreational vehicle; or
 - (b) Negotiate the purchase, sale, or exchange of a manufactured home, mobile home, or recreation vehicle for a fee, commission, or other valuable consideration.
- (19) "Permanent foundation" means a system of supports capable of transferring without failure, into soil or bedrock, the maximum design load imposed by or upon the structure.
- (20) "Recreational vehicle" is defined by KRS 227.550(11).
- (21) "Red tag" means a written notice that is applied to a manufactured home, mobile home, or recreational vehicle by a representative of the department signifying that the manufactured home, mobile home, or recreational vehicle needs repairs or the appropriate seal has not been applied.
- (22) "Registration" means the transfer of title or other official recording of change of ownership.
- (23) "Retailer" is defined by KRS 227.550(3).
- (24) "Salvage unit" means any used manufactured home, mobile home, or recreational vehicle that is not approved for human habitation.
- (25) "Site preparation" means work performed on the land in preparation for installation of a home.
- (a) "Site preparation" Includes:
1. Clearing and initial grading;
 2. Water drainage; and
 3. Vegetation control; and
- (b) "Site preparation" does not include final grading after the home has been set.
- (26) "State inspector" means a manufactured housing and recreational vehicle inspector employed by the department.
- (27) "Suitable sign" means a permanently erected sign with the dealership name and type of dealership in letters at least six (6) inches high and at least one and one-half (1 1/2) inches wide.
- (28) "Unlicensed retailer" means any person, firm, or corporation that sells or offers for sale a manufactured home or mobile home but is not a licensed retailer or is exempt from the definition of a retailer.
- (29) "Used home" means a manufactured or mobile home offered for sale or sold after the original purchase.

STEVEN A. MILBY, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the

proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the definitions for terms used throughout 815 KAR Chapter 25.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define terms used by the Division of Building Code Enforcement, Manufactured Housing Section in carrying out its statutory duty to establish administrative regulations that govern the standards for manufacture, sale, and alteration of manufactured homes and recreational vehicles.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227.590 requires the department to establish and enforce administrative regulations reasonably required to effectuate the provisions of KRS 227.550 to 227.660.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation removes repetitive definition sections from subsequent administrative regulations and consolidates all definitions for the chapter in one administrative regulation.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in the manufacturing, sale, and installation of manufactured homes, mobile homes, and recreational vehicles, and department personnel.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This new administrative regulation imposes no new requirements on the affected parties; it simply clarifies and unifies definitions for ease of access.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities will encounter no additional costs based on the new administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): 815 KAR Chapter 25 will be simplified and repetitive definitions eliminated, making the chapter more user-friendly.

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

(a) Initially: There are no anticipated initial additional costs to

administer this new administrative regulation.

(b) On a continuing basis: There are no anticipated additional costs to administer this new administrative regulation on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any costs for implementation will be met with existing department funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees established or increased by this new administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as all manufacturers, retailers, and installers of manufactured homes, mobile homes, and recreational vehicles are subject 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? The Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Section.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized and required by KRS 227.590.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment in the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment 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 Housing, Buildings and Construction
Building Code Enforcement, Manufactured Housing Section
(Repealer)

815 KAR 25:081. Repeal of 815 KAR 25:070 and 815 KAR 25:080.

RELATES TO: KRS 198B.6409

STATUTORY AUTHORITY: KRS 198B.6409(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.590 requires the department to promulgate administrative regulations

governing the standards for the manufacture and sale of manufactured homes and mobile homes. This administrative regulation repeals 815 KAR 25:070 and 815 KAR 25:080. The necessary substantive provisions of these administrative regulations are concurrently being relocated into 815 KAR 25:060, so that all licensing and certification pertaining to manufactured housing is located in one user-friendly administrative regulation. 815 KAR 25:070 and 815 KAR 25:080 are being repealed so that the administrative regulations are not duplicative.

Section 1. The following administrative regulations are hereby repealed:

(1) 815 KAR 25:070. Certification of manufacturers of manufactured homes; and

(2) 815 KAR 25:080. Requirements for certified installer seals and certification of manufactured home installers.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 815 KAR 25:070 and 815 KAR 25:080 because the necessary substantive provisions of these administrative regulations have been consolidated into one administrative regulation at 815 KAR 25:060.

(b) The necessity of this administrative regulation: This administrative regulation repeals the administrative regulation pertaining to certification of manufacturers of manufactured homes and certification of installers, so there are not duplicative regulations pertaining to continuing education. All manufactured housing licensing and certification requirements are now in one administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is a repealer that conforms with the Department's authority in KRS 227.590.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is a repealer that will aid in the reduction of the amount of duplicative administrative regulations within 815 KAR Chapter 25.

(2) If 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: All individuals who are certified installers and certified manufacturers of manufactured homes and the Department of Housing, Buildings and Construction 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: The repeal of this administrative regulation will not require the regulated entities identified in question (3) to take any action to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will not incur any cost to comply with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): 815 KAR Chapter 25 and the administrative regulations associated with manufactured housing will be streamlined and easier to follow and understand.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: Nothing. This is a repeal of an administrative regulation.

(a) Initially: There will be no initial implementation cost. This is a repeal of an administrative regulation.

(b) On a continuing basis: There will be implementation cost no continuing basis. This is a repeal of an administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for implementation and enforcement of this repealer.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this is a repeal of an administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Section will be impacted by this repealer.

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 227.590.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 anticipated to generate additional revenue for state or local government for the first year.

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Electrical Division (Repealer)

815 KAR 35:101. Repeal of 815 KAR 35:100.

RELATES TO: KRS 227A.040

STATUTORY AUTHORITY: KRS 227A.040(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227A.040(8) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations to establish procedures governing the licensure of electricians and electrical contractors. This administrative regulation repeals 815 KAR 35:100 because the necessary substantive provisions are being concurrently combined with similar administrative regulations from KAR Title 815 regarding continuing education for ease of use.

Section 1. The following administrative regulation is hereby repealed:

(1) 815 KAR 35:100, Electrical continuing education procedure.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2018, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 815 KAR 35:100 because the necessary substantive provisions are being consolidated within KAR Title 815 in a single administrative regulation governing continuing education across the Department of Housing, Buildings and Construction licenses.

(b) The necessity of this administrative regulation: This administrative regulation repeals the electrical continuing education administrative regulation to prevent duplicative regulations pertaining to electrical continuing education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is a repealer that conforms with the department's authority in KRS 227A.040(8).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the reduction of the amount of duplicative administrative regulations within KAR Title 815.

(2) If 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: All electrical contractors, master electricians, electricians, and the Department of Housing, Buildings and Construction personnel 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: The repeal of this administrative regulation will not require the regulated entities identified in question (3) to take any new action to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will not incur any cost to comply with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Title 815 will be streamlined and easier to follow and understand.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: Nothing. This is a repeal of an administrative regulation.

(a) Initially: There will be no initial implementation cost. This is a repeal of an administrative regulation.

(b) On a continuing basis: There will be no implementation cost on a continuing basis. This is a repeal of an administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation and enforcement of this repealer.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This repealer does not establish or increase any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied because this is a repeal of an administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Electrical Division will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 227A.040(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? This administrative regulation will not generate revenue for state or local government for the first year.

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Commissioner's Office

(Repealer)

900 KAR 1:091. Repeal of 900 KAR 1:090.

RELATES TO: KRS 205.6328

STATUTORY AUTHORITY: KRS 194A.050(1), 205.6328

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 194A.050(1) authorizes the cabinet secretary to promulgate, administer, and enforce administrative regulations necessary for the proper administration of the cabinet and its programs. A quarterly reporting requirement for the Department for Medicaid Services was established pursuant to KRS 205.6328(1) through December 31, 1996. KRS 205.6328(3) provided that the reporting requirement expired on January 1, 1997. This administrative regulation, therefore, repeals 900 KAR 1:090, which established the reporting requirements required by KRS 205.6328(1).

Section 1. 900 KAR 1:090, Health care reporting requirements, is hereby repealed.

JILL R. HUNTER, Acting Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 24, 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 September 17, 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 September 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, 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 repeals 900 KAR 1:090, because the legislative requirement established by KRS 205.6328 to generate the reports expired on January 1, 1997.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal an existing administrative regulation because the legislative directive to issue a report that was the basis of the promulgation of the regulation has expired.

(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 repealing a reporting requirement that has no existing legislative directive.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of this administrative regulation will remove a regulation that was promulgated pursuant to a legislative directive that has expired.

(2) If 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 administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Only the Department for Medicaid Services will be impacted by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department will not need to take any additional actions to comply 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): There will be no additional costs experienced.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): The benefit of this repealer regulation is to remove an expired reporting requirement and enhance the readability and clarity of the administrative regulations that are under the purview of the Department for Medicaid Services.

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

(a) Initially: There are no costs to this repeal.

(b) On a continuing basis: There are no costs to this repeal.

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

(7) Provide an assessment of whether an 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 nor funding is necessary to implement this repeal.

(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 simply repeals an administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310, KRS 194A.050, KRS 205.6328(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 is not expected to 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 is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? This administrative regulation is not expected to have any costs for its administration.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation is not expected to have any costs for its administration.

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

Commissioner's Office

(Repealer)

907 KAR 1:121. Repeal of 907 KAR 1:120 and 907 KAR 1:130.

RELATES TO: KRS 205.520, 205.560

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. KRS

194A.050(1) authorizes the cabinet secretary to promulgate, administer, and enforce administrative regulations necessary for the proper administration of the cabinet and its programs. 907 KAR 1:120 and 907 KAR 1:130 established conditions and payment requirements for health insuring organizations or prepaid health plan services to be offered to beneficiaries within the Medicaid program. Those provisions are no longer applicable following the implementation of statewide Medicaid managed care in October 2011. Therefore, this administrative regulation repeals 907 KAR 1:120 and 907 KAR 1:130.

Section 1. The following administrative regulations are hereby repealed:

(1) 907 KAR 1:120, Health insuring organization and prepaid health plan services; and

(2) 907 KAR 1:130, Payments for health insuring organizations and prepaid health plan services.

JILL R. HUNTER, Acting Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 13, 2018

FILED WITH LRC: August 14, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 24, 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 September 17, 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 September 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, 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 repeals 907 KAR 1:120 and 907 KAR 1:130.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal two (2) existing administrative regulations because statewide managed care as implemented statewide in 2011 performs and supersedes the functions of these administrative regulations.

(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 removing a nonfunctioning process that is fully addressed by the Commonwealth's use of statewide managed care in the Medicaid program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer administrative regulation will remove two (2) administrative regulations that were promulgated pursuant to a process that was available prior to the statewide implementation of managed care in 2011. The implementation of statewide managed care entirely superseded the process described in these administrative

regulations, and they are therefore nonfunctioning and duplicative.

(2) If 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 administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Only the Department for Medicaid Services will be impacted by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department will not need to take any additional actions to comply 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): There will be no additional costs experienced.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit of this repealer administrative regulation is to remove a nonfunctioning process that was entirely superseded by the implementation of statewide managed care in 2011. Furthermore, this repealer administrative regulation will enhance the readability and clarity of the administrative regulations that are under the purview of the Department for Medicaid Services.

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

(a) Initially: There are no costs to this repeal.

(b) On a continuing basis: There are no costs to this repeal.

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

(7) Provide an assessment of whether an 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 nor funding is necessary to implement this repeal.

(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 administration regulation simply repeals two (2) 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? Only the Department for Medicaid Services will be impacted by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310, KRS 194A.030, KRS 194A.050, KRS 205.520.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 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 revenue for state or local government.

(c) How much will it cost to administer this program for the first year? This administrative regulation is not expected to have any costs for its administration.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation is not expected to have any costs for its administration.

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 August 14, 2018

Call to Order and Roll Call

The August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 14, 2018, at 1:00 p.m. In Room 149 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the July 2018 meeting were approved.

Present were:

Members: Senators Ernie Harris, Perry Clark, and Julie Raque-Adams; and Representatives David Hale, Mary Lou Marzian, Jason Petrie, and Tommy Turner.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Guests: Miles Justice, Kate Ware, Kentucky Higher Education Assistance Authority; Kristen Green, Alan Harrison, Darrell Johnson; University of Kentucky; Jenni Scutchfield, State Board of Elections; Mary Elizabeth Bailey, Leslie Bilby, Rosemary Holbrook, Personnel Cabinet; Cheryl Lalonde, Board of Pharmacy; Jimmy Bevins, Kevin Bond, Harry Carlross, Eric Gibson, Frank Jemley, Regina Stivers, Karen Waldrop, Department of Fish and Wildlife Resources; Steve Sims, David Wayne, Department of Agriculture; Michael Mullins, George Seay, Department of Natural Resources; Deidra Douglas, Department of Criminal Justice Training; William Codell, Kris Mann, Wael Ghanim, Department of Juvenile Justice; Patrick O'Connor, Department of Insurance; David Trimble, Department of Professional Licensing; Jennifer Dudinskie, Janet Hall, Jennifer Rosenberg, Phyllis Sosa, Department for Aging and Independent Living; Mary Sparrow, Department of Income Support; Krista Quarles, Maribeth Schneber-Rhemrev; Department for Community Based Services. Pete Blandford, Tony Brown, Chet Hayes, Roger LaPointe, Ed Morris, Mile Ohlmann, Michael Roberts, Ivan Schell, Jim Strader, Rich Zimmer.

The Administrative Regulation Review Subcommittee met on Tuesday, August 14, 2018, and submits this report:

Co-Chair Hale called a recess, after which the meeting reconvened.

Administrative Regulations Reviewed by the Subcommittee:

KENTUCKY HIGHER EDUCATION ASSISTANCE SERVICES: Division of Student and Administrative Services: KHEAA Grant Programs

11 KAR 5:145. CAP grant award determination procedure. Miles Justice, senior associate counsel, and Kate Ware, student aid branch manager, represented the division.

A motion was made and seconded to approve the following amendments: to amend Sections 4 and 6 to comply with the drafting requirements of KRS Chapter 13A and make technical changes. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Educational Excellence Scholarship Program

11 KAR 15:010. Definitions for 11 KAR Chapter 15.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 15:110. Scholarships for Registered Apprenticeship programs.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 2 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.

AGRICULTURAL EXPERIMENT STATION: Pet Food

12 KAR 3:007. Definitions for 12 KAR Chapter 3. Kristen Green, regulatory specialist; Alan Harrison, feed director; and Darrel Johnson, executive director, represented the experiment station.

In response to a question by Co-Chair Harris, Mr. Johnson stated that there were no Kentucky-specific requirements in this package of administrative regulations. These administrative regulations were last amended in 1998. These updates were made commensurate with revisions to the model established by the American Association of Feed Control Officials.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 3:012. Labeling format and labeling.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 7, 9, 10, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 3:017. Brand and product names.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 3:022. Expression of guarantees.

A motion was made and seconded to approve the following amendments: to amend the TITLE and Sections 1, 3 through 6, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 3:027. Ingredients.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 3:028. Descriptive terms.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 3:032. Feeding directions.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 3:037. Drugs and pet food additives.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 3:039. Nutritional adequacy.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3, 5, 6, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the

amendments were approved.

12 KAR 3:042. Statements of calorie content.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

STATE BOARD OF ELECTIONS: Statewide Voter Registration

31 KAR 3:010 & E. Current address of Kentucky registered voters and distribution of voter registration lists. Erica Galyon, assistant secretary of state; Jennifer Scutchfield, assistant director; and Lindsay Thurston, senior advisor, represented the board.

In response to questions by Representative Petrie, Ms. Scutchfield stated that the board had revised the fee structure, which had not been updated for approximately ten (10) years, to cover staff and material costs related to providing the data. Kentucky's fees were much lower than most other states. Representative Petrie requested that the board provide subcommittee members and subject matter committee members with a cost-based analysis of staff time and materials to justify the fee increases.

In response to a question by Co-Chair Hale, Ms. Scutchfield stated that these requirements were already effective because there was an emergency administrative regulation in place.

A motion was made and seconded to approve the following amendment: to amend Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

PERSONNEL CABINET: Classified

101 KAR 2:020. Job classification plan. Mary Elizabeth Bailey, commissioner, Department of Human Resources Administration; Leslie Bilby, deputy secretary; and Rosemary Holbrook, executive director, Office of Legal Services, represented the cabinet.

101 KAR 2:034. Classified compensation administrative regulations.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 5, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

101 KAR 2:076. Vacancies, detail to special duty and temporary overlap.

101 KAR 2:095. Classified service general requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Unclassified

101 KAR 3:045. Compensation plan and pay incentives for unclassified service.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

101 KAR 3:050. Unclassified service; promotion, transfer, and disciplinary actions.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:015. Continuing education. Cheryl LaLonde, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND

CONFORMITY paragraph and Sections 1, 5, and 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.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish

301 KAR 1:115. Propagation of aquatic organisms. Frank Jemley, acting commissioner; Regina Stivers, deputy secretary; and Karen Waldrop, deputy commissioner, represented the department. Jimmy Bevins, chair, Kentucky Fish and Wildlife Commission; Pete Blandford, president, Quality Deer Management Association, Kentucky Advisory Council; Dr. Harry Carlross, MD, First District, commissioner, Kentucky Fish and Wildlife Commission; Chet Hayes, president, Kentucky League of Sportsmen; Mike Ohlmann, Safari Club International, Kentuckiana Chapter; and Rich Zimmer, Kentucky League of Sportsmen, Fifth District Federation, appeared in opposition to subcommittee amendments proposed for 301 KAR 2:172. Ed Morris, former president, Kentucky League of Sportsmen; Michael Roberts, United Bowhunters of Kentucky; and Jim Strader, sportsmen podcaster and radio host, appeared in support of subcommittee amendments proposed for 301 KAR 2:172.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Game

301 KAR 2:172. Deer hunting seasons, zones, and requirements.

Representative Turner proposed a subcommittee amendment to: (1)(a) reinsert the definition for "additional deer permit;" (b) delete the definition for "deer management permit;" and (c) modify the definition for "special deer hunt;" (2) delete references to deer management permits; (3) delete the additional two (2) Zone 1 modern gun hunt days in September; and (4) clarify that the special deer hunt shall only be overseen and sponsored by the department. Representative Turner stated that, after meeting with many stakeholders, these amendments were intended to establish fairness. These amendments reinstated provisions for additional deer permits in lieu of deer management permits. Recently, the department raised sportsmen fees for seniors and the disabled; therefore, it seemed incongruous to now reduce deer hunting fees. There was some confusion regarding special hunts (or mentor hunts). These amendments clarified that a special deer hunt shall only be overseen and sponsored by the department. Outside groups could volunteer for a special deer hunt with the approval of the department. These amendments also sought to curb nonresident special deer hunts by establishing that these hunts are for Kentucky residents, military members and their families stationed in Kentucky, and those enrolled in Kentucky educational institutions. These amendments also delete the additional two (2) Zone 1 modern gun hunt days in September. Issues related to deer hunting with crossbows were not part of these requirements, but were in another administrative regulation. Nuisance deer were a problem, but farmers were able to mitigate the damage pursuant to deer depredation provisions.

In response to a question by Representative Turner, Ms. Waldrop stated that Zone 1 had the most liberal hunting provisions pertaining to deer because the population was highest in that zone. Zone 4, on the other hand, usually had only five (5) to ten (10) deer per square mile; therefore, requirements were more restrictive in that zone. Last year, Eastern Kentucky experienced an outbreak of Epizootic Hemorrhagic Disease (blue-tongue disease), which greatly diminished the population. The deer bag limit in Zone 4 was being reduced from four (4) to two (2), and only one (1) doe may be harvested. That doe may only be harvested using archery equipment, during youth hunts, or during the last three (3) days of the muzzleloader season. A hunter could take up to four (4) deer in Zone 3; however, a firearm could only be used to take up to one (1) doe.

Dr. Carloss stated that there was a significant overpopulation problem with nuisance deer in Zone 1, resulting in damage to agricultural crops and vehicle collisions, which resulted in monetary expense and sometimes loss of life. The spread of chronic wasting disease was directly proportional to deer overpopulation. Most hunters preferred to hunt bucks rather than does. The September deer hunt was limited to only does. Dr. Carloss stated that he was also opposed to the loss of fees, but studies demonstrated that the biggest deterrent to harvesting does was the inconvenience of having to go through the process of purchasing additional licenses. It was common practice for deer destroyed because of crop depredation to be left to decompose, as required by law. If more deer were harvested, that meat could be used for projects like Hunters for the Hungry.

Mr. Bevins stated that the objectives of the September deer season were to encourage the harvesting of does as a population management tool and to provide hunting opportunities for sportsmen. There was consensus among the nine (9) member Kentucky Fish and Wildlife Commission to retain the September deer season as originally proposed by the department. The process for farmers to get permits related to deer depredation was tedious for both the department and the farmers. This administrative regulation could always be amended in the future if the provisions proved to be problematic.

Mr. Hayes stated that the League of Kentucky Sportsmen requested that this administrative regulation become effective as submitted, without the subcommittee amendments. Concerned stakeholders who were now commenting did not comment during the earlier stages of the development of these requirements. The development of these requirements was diverse, open, and transparent.

Co-Chair Hale thanked the commissioners for their service to the Commonwealth.

Mr. Ohlmann stated that Safari Club International, Kentuckiana Chapter, was opposed to the subcommittee amendments. The costs of damage from deer overpopulation were greater than the fees lost pursuant to the original proposal. A September deer hunt was a potential recruiting tool. Nuisance tags did allow farmers to address deer depredation; however, most tags went to waste because farmers did not have the time to have the meat processed and processors were not usually open except during deer season. An organized nuisance hunt in September would allow processors to open.

Mr. Zimmer, representing the Fifth District Federation of the Kentucky League of Sportsmen, stated that his district was the most active in the league, representing thirteen (13) counties of sportsmen. The Fifth District Federation supported this administrative regulation without the subcommittee amendments, to which it was opposed. Human encroachment on deer habitat, along with overpopulation, was causing damage to property and health.

Mr. Blanford stated that the Zone 1 September hunt should remain because it was a time-tested deer management technique to remove does, which ate more and thus did more property damage. Current control measures had failed.

In response to a question by Senator Raque Adams, Mr. Ohlmann stated that there was an administrative regulation for farmers to address deer depredation; however, any harvest that resulted from killing the deer was wasted.

Mr. Roberts stated that these drastic changes to deer hunting requirements were developed with little public input and with vague data. Deer populations could be depleted quickly, but might take years to recover. Mr. Roberts requested that the subcommittee amendments be approved.

Mr. Strader thanked Co-Chair Hale, Representative Turner, and the agency for their work for sportsmen. It was unclear if the Kentucky League of Sportsmen voted in opposition to the subcommittee amendments. Farmers had remedies for deer depredation. The September deer season, by harvesting does early, might cut short the time fawns had with their mother to learn to survive. Mr. Strader stated that he supported the subcommittee amendments and believed that most of his followers would do the same. A doe season was necessary, but September was a bad

time of year for that season.

Mr. Morris stated that he supported the subcommittee amendments. The September deer hunt was too drastic of a change and threatened herd management. Most sportsmen were unaware of these proposed changes. Additional deer tags could be purchased online via smart phone within approximately two (2) minutes.

In response to a question by Co-Chair Hale, Ms. Stivers stated that the cabinet accepted the subcommittee amendments. Mr. Jemley stated that the department agreed to the subcommittee amendments. Ms. Waldrop stated that it was the consensus of the cabinet and the department to agree to the subcommittee amendments.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 9 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 1 to: (a) reinsert the definition for "additional deer permit;" (b) delete the definition for "deer management permit;" and (c) modify the definition for "special deer hunt;" (3) to amend Sections 2 and 7 to delete references to deer management permits; (4) to amend Section 5 to delete the additional two (2) Zone 1 modern gun hunt days in September; and (5) to amend Section 12 to clarify that the special deer hunt shall only be overseen and sponsored by the department. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:176. Deer control tags, deer destruction permits, and landowner designees.

DEPARTMENT OF AGRICULTURE: Structural Pest Control

302 KAR 29:020. General provisions for structural pest control. Steve Sims, structural branch manager, and David Wayne, division director, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 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.

ENERGY AND ENVIRONMENT: Department of Natural Resources: Division of Mine Permits: Strip Mining of Coal

405 KAR 1:011. Repeal of 405 KAR Chapter 1. Michael Mullins, regulation coordinator, and George Seay, Jr., deputy commissioner, represented the division.

Surface Effects of Underground Coal Mining

405 KAR 3:011. Repeal of 405 KAR Chapter 3.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Criminal Justice Training: Law Enforcement Foundation Program Fund

503 KAR 5:090. Participation: requirements; application; withdrawal. Deandra Douglas, assistant general counsel, represented the department.

In response to questions by Senator Clark, Ms. Douglas stated that training changes applied to new recruits going through basic training. Training changes were tracking revisions made by the Kentucky Law Enforcement Council. Training was reduced by approximately six (6) weeks, but the curriculum retained all of the necessary components.

Department of Juvenile Justice: Child Welfare

505 KAR 1:120. Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services. William Codell, attorney; Dr. Wael Ghanim, MD, medical director; and Kris Mann, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

505 KAR 1:140. Department of Juvenile Justice Policies and Procedures Manual: detention services.

PUBLIC PROTECTION CABINET: Department of Insurance: Agents, Consultants, Solicitors, and Adjusters

806 KAR 9:360. Pharmacy benefit manager license. Patrick O'Connor, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Occupations and Professions: Secondary Metals Recyclers

830 KAR 1:010. Application, certification of registration, and fees. David Trimble, general counsel, represented the office.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Aging and Independent Living: Aging Services

910 KAR 1:090. Personal care attendant program and assistance services. Jennifer Dudinskie, assistant director; Janet Hall, director, Division of Operations and Support; Jennifer Rosenberg, branch manager; and Phyllis Sosa, staff assistant, represented the department.

In response to a question by Senator Clark, Ms. Dudinskie stated that natural supports were not paid.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3, 6, 10, and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Guardianship

910 KAR 2:030. Accounting provisions for adult guardianship.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 12, and 13 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

910 KAR 2:052. Repeal of 910 KAR 2:050.

Department for Community Based Services: Department for Income Support: Child Support Enforcement: Family Support

921 KAR 1:380. Child Support Enforcement Program application and intergovernmental process. Mary Sparrow, internal policy analyst, represented the department.

Division of Family Support: Supplemental Nutrition Assistance Program

921 KAR 3:030. Application process. Krista Quarles, branch manager, and Maribeth Schneber-Rhemrev, director, represented the division.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 6, and 7 to make technical changes. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the August 14, 2018, subcommittee agenda:

BOARDS AND COMMISSIONS: Board of Cosmetology

201 KAR 12:251. Repeal of 201 KAR 12:085, 201 KAR 12:088, 201 KAR 12:120, 201 KAR 12:180, and 201 KAR 12:250.

201 KAR 12:280. Esthetic practices restrictions.

Board of Podiatry

201 KAR 25:090. Prescribing and dispensing controlled substances.

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.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Administration

601 KAR 2:030 & E. Ignition interlock.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Office of Instruction

704 KAR 3:015. Kentucky All STARS for Preschool Programs.

Office of Instruction

704 KAR 3:306. Kentucky Academic Standards for Historical and Cultural Influences of the Bible Elective Social Studies Course.

LABOR CABINET: Department of Workers' Claims

803 KAR 25:089 & E. Workers' Compensation Medical Fee Schedule for Physicians.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Conduct of Business; Employees

804 KAR 5:080. Vintage distilled spirits.

Department of Insurance: Health Insurance Contracts

806 KAR 17:570. Minimum standards for Medicare supplement insurance policies and certificates.

Department of Charitable Gaming

820 KAR 1:001. Definitions.

VOLUME 45, NUMBER 3 – SEPTEMBER 1, 2018

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.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General

906 KAR 1:190. Kentucky National Background Check Program (NBCP).

Division of Family Support: Supplemental Nutrition Assistance Program

921 KAR 3:025. Technical requirements.

921 KAR 3:035. Certification process.

The subcommittee adjourned at 2:50 p.m. The next meeting of the subcommittee is tentatively scheduled for September 11, 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 August 6, 2018

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Energy for its meeting of 08/06/18, having been referred to the Committee on 08/01/18, pursuant to KRS 13A.290(6):

301 KAR 1:130 - Live bait for personal use
301 KAR 2:228 - Sandhill crane hunting requirements
807 KAR 5:022 - Gas service
807 KAR 5:026 - Gas service; gathering systems

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

C - 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

C - 9

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

C - 16

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

C - 22

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

C - 23

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.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	44 Ky.R. Page No.	Effective Date	Regulation Number	44 Ky.R. Page No.	Effective Date
VOLUME 44					
The administrative regulations listed under VOLUME 43 are those administrative regulations that were originally published in Volume year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2017 Kentucky Administrative Re Service</i> was published.					
SYMBOL KEY:			201 KAR 3:006(r)	2703	
* Statement of Consideration not filed by deadline			201 KAR 3:045		
** Withdrawn, not in effect within 1 year of publication			Amended	2544	See 44 Ky.R.
*** Withdrawn before being printed in Register			201 KAR 3:090		
‡ Withdrawn deferred more than twelve months (KRS			Amended	2546	
13A.300(2)(e) and 13A.315(1)(d))			201 KAR 3:100	2705	
IJC Interim Joint Committee			201 KAR 5:090		
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of			Amended	2548	See 44 Ky.R.
an administrative regulation that repeals another, the			201 KAR 5:130		
regulations compiler shall delete the repealed administrative			Amended	2549	
regulation and the repealing administrative regulation.			201 KAR 6:020		
			Amended	2552	
EMERGENCY ADMINISTRATIVE REGULATIONS:			201 KAR 6:050		
(Note: Emergency regulations expire 180 days from the date filed;			Amended	2554	See 44 Ky.R.
or 180 days from the date filed plus number of days of requested			201 KAR 9:021		
extension, or upon replacement or repeal, whichever occurs first.)			Amended	2361	7-18-2018
EMERGENCY ADMINISTRATIVE REGULATIONS:			201 KAR 9:031		
(Note: Emergency regulations expire 180 days from the date filed;			Amended	2363	7-18-2018
or 180 days from the date filed plus number of days of requested			As Amended		See 45 Ky.R.
extension, or upon replacement or repeal, whichever occurs first.)			201 KAR 9:310		
201 KAR 12:082E	2303	4-13-2018	Amended	1871	
Replaced	2364	8-6-2018	201 KAR 9:480	1725	5-4-2018
201 KAR 22:020E	2180	3-14-2018	As Amended	1970	3-15-2018
Replaced	2486	6-20-2018	201 KAR 12:010		
201 KAR 22:040E	2182	3-14-2018	Amended	2556	See 44 Ky.R.
Replaced	2487	6-20-2018	201 KAR 12:030		
201 KAR 22:070E	2184	3-14-2018	Amended	2557	See 44 Ky.R.
Replaced	2487	6-20-2018	201 KAR 12:082		
921 KAR 2:015E	1799	12-28-2017	Amended	2364	8-6-2018
Replaced	1899	6-20-2018	As Amended		See 45 Ky.R.
922 KAR 2:090E	1916	2-14-2018	201 KAR 12:140		
Replaced	2513	7-18-2018	Amended	2561	See 44 Ky.R.
922 KAR 2:100E	1925	2-14-2018	201 KAR 12:190		
Replaced	2522	7-18-2018	Amended	2563	See 44 Ky.R.
922 KAR 2:111E	1936	2-14-2018	201 KAR 12:230		
Expires		8-13-2018	Amended	2565	See 44 Ky.R.
922 KAR 2:120E	1937	2-14-2018	201 KAR 12:260		
Replaced	2533	7-18-2018	Amended	2368	8-6-2018
922 KAR 2:171E(r)	2306	4-13-2018	As Amended		See 45 Ky.R.
Expires	2308	10-10-2018	201 KAR 14:180		
922 KAR 2:180E	1946	2-14-2018	Amended	2566	
Replaced	2138	7-18-2018	201 KAR 20:056		
922 KAR 2:190E	1952	2-14-2018	Amended	2237	
Replaced	2144	7-18-2018	As Amended	2473	6-20-2018
922 KAR 2:270E	2308	4-13-2018	201 KAR 20:070		
Replaced	2459	7-18-2018	Amended	2239	
			As Amended	2475	6-20-2018
			201 KAR 20:110		
			Amended	2241	
			As Amended	2476	6-20-2018
ORDINARY ADMINISTRATIVE REGULATIONS:			201 KAR 20:225		
13 KAR 3:060	2702		Amended	2244	
16 KAR 2:010			As Amended	2477	6-20-2018
Amended	1584		201 KAR 20:370		
Am Comments	2033	See 44 Ky.R.	Amended	2246	
16 KAR 5:030			As Amended	2478	6-20-2018
Amended	1589		201 KAR 20:411		
Am Comments	2039	See 44 Ky.R.	Amended	2247	
101 KAR 1:325			As Amended	2479	6-20-2018
Amended	2542		201 KAR 20:470		
103 KAR 16:360			Amended	2250	
Amended	1094		As Amended	2481	6-20-2018
103 KAR 26:120			201 KAR 22:020		
As Amended	1494		Amended	2255	
103 KAR 41:120			As Amended	2486	6-20-2018
Amended	1112				

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
201 KAR 22:040			AmComments	2507	
Amended	2257		401 KAR 51:260	2288	
As Amended	2487	6-20-2018	AmComments	2509	
201 KAR 22:070			405 KAR 1:011(r)	2708	
Amended	2259		405 KAR 3:011(r)	2709	
As Amended	2487	6-20-2018	501 KAR 6:030		
201 KAR 25:090			Amended	2269	
Amended	1623		AmComments	2511	8-6-2018
201 KAR 34:060			501 KAR 6:070		
Amended	2568	See 44 Ky.R.	Amended	2635	See 44 Ky.R.
201 KAR 41:100			501 KAR 6:170		
Amended	2572	See 44 Ky.R.	Amended	2270	
301 KAR 1:130			501 KAR 6:270		
Amended	2574		Amended	2097	
301 KAR 2:049			As Amended	2494	
Amended	2260		501 KAR 16:290		
As Amended	2488	6-7-2018	Amended	1884	
301 KAR 2:172			Am Comments	2337	
Amended	2370		As Amended	2494	
As Amended		See 45 Ky.R.	501 KAR 16:300		
301 KAR 2:176			Amended	1887	
Amended	2576		Am Comments	2339	
301 KAR 2:221			As Amended	2496	
Amended	2374		501 KAR 16:310		
As Amended		See 45 Ky.R.	Amended	1891	
301 KAR 2:222			Am Comments	2343	
Amended	2376		As Amended	2498	
As Amended		See 45 Ky.R.	501 KAR 16:330		
301 KAR 2:228			Amended	1893	
Amended	2380	See 44 Ky.R.	Am Comments	2345	
302 KAR 16:020			As Amended	2499	
Amended	2265		501 KAR 16:340		
As Amended	2492		Amended	1897	
302 KAR 16:081(r)	2283		Am Comments	2349	
302 KAR 16:091			503 KAR 5:090		
Amended	2267		Amended	2637	
As Amended	2493		505 KAR 1:120		
302 KAR 50:050	1768		Amended	2384	
Amended	2383	7-24-2018	As Amended		See 45 Ky.R.
401 KAR 5:002			505 KAR 1:140		
Amended	2578		Amended	2386	
401 KAR 5:005			600 KAR 4:010		
Amended	2585		Amended	2272	
401 KAR 5:006			As Amended	2501	
Amended	2598		601 KAR 2:030		
401 KAR 5:015			Amended	1651	
Amended	2602		Withdrawn		6-13-2018
401 KAR 5:037			603 KAR 2:015		
Amended	2604		Amended	2640	
401 KAR 5:039(r)	2707		Withdrawn		7-24-2018
401 KAR 5:045			703 KAR 5:190		
Amended	2610		Repealed	2157	6-17-2018
401 KAR 5:050			703 KAR 5:191(r)	2157	6-17-2018
Amended	2612		703 KAR 5:225		
401 KAR 5:052			Amended	2101	
Amended	2615		As Amended		See 45 Ky.R.
401 KAR 5:055			703 KAR 5:260		
Amended	2616		Repealed	2157	6-17-2018
401 KAR 5:060			703 KAR 5:280	2158	
Amended	2620		Am Comments	2351	6-17-2018
401 KAR 5:065			As Amended		See 45 Ky.R.
Amended	2623		704 KAR 7:090		
401 KAR 5:075			Amended	1658	
Amended	2625		As Amended	2015	
401 KAR 5:080			735 KAR 1:010		
Amended	2628		Amended	2388	
401 KAR 5:320			As Amended		See 45 Ky.R.
Amended	2631		735 KAR 1:020		
401 KAR 51:240	2284		Amended	2391	
AmComments	2505		As Amended		See 45 Ky.R.
401 KAR 51:250	2286		735 KAR 2:010		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
Amended	2394		820 KAR 1:125		
As Amended		See 45 Ky.R.	Amended	2691	
735 KAR 2:020			820 KAR 1:130		
Amended	2396		Amended	2693	
As Amended		See 45 Ky.R.	820 KAR 1:135	2721	
735 KAR 2:030			902 KAR 2:055		
Amended	2398		Amended	2695	See 44 Ky.R.
As Amended		See 45 Ky.R.	902 KAR 10:040		
735 KAR 2:040			Amended	2277	See 44 Ky.R.
Amended	2399		902 KAR 20:016		
As Amended		See 45 Ky.R.	Amended	1415	
735 KAR 2:050			Am Comments	2054	See 44 Ky.R.
Amended	2401		902 KAR 20:058		
As Amended		See 45 Ky.R.	Amended	1714	
735 KAR 2:060			906 KAR 1:200		
Amended	2403		Amended	2454	
As Amended		See 45 Ky.R.	As Amended		See 45 Ky.R.
804 KAR 9:051(r)	1774		910 KAR 2:030		
807 KAR 5:022			Amended	2698	
Amended	2405		As Amended		See 45 Ky.R.
807 KAR 5:026			910 KAR 2:052(r)	2723	
Amended	2436		921 KAR 2:015		
810 KAR 1:111(r)	2711		Amended	1899	6-20-2018
Withdrawn		7-18-2018	922 KAR 2:090		
810 KAR 8:040	2712		Amended	2109	
Withdrawn		7-18-2018	AmComments	2513	7-18-2018
811 KAR 1:241(r)	2717		922 KAR 2:100		
Withdrawn		7-18-2018	Amended	2118	
811 KAR 2:151(r)	2718		AmComments	2522	7-18-2018
Withdrawn		7-18-2018	922 KAR 2:110		
815 KAR 7:110			Repealed	2306	7-18-2018
Amended	2439	See 44 Ky.R.	922 KAR 2:120		
815 KAR 7:120			Amended	2129	
Amended	2442		AmComments	2533	
815 KAR 7:125			As Amended		See 45 Ky.R.
Amended	2445		922 KAR 2:170		
815 KAR 8:011(r)	2458		Repealed	2308	7-18-2018
815 KAR 8:070			922 KAR 2:180		
Amended	2446	See 44 Ky.R.	Amended	2138	
815 KAR 8:080			As Amended		See 45 Ky.R.
Amended	2449	See 44 Ky.R.	922 KAR 2:190		
815 KAR 8:100			Amended	2144	
Amended	2451	See 44 Ky.R.	As Amended		See 45 Ky.R.
820 KAR 1:001			922 KAR 2:210		
Amended	2646		Repealed	2308	7-18-2018
820 KAR 1:005			922 KAR 2:270	2459	
Amended	2650		As Amended		See 45 Ky.R.
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				

SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, not in effect within 1 year of publication
- *** Withdrawn before being printed in Register
- ‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
VOLUME 45					
EMERGENCY ADMINISTRATIVE REGULATIONS			12 KAR 2:006		
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)			Amended	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	
			As Amended	628	
			12 KAR 3:012		
			Amended	109	
			As Amended	628	
			12 KAR 3:017		
			Amended	112	
			As Amended	630	
			12 KAR 3:022		
			Amended	114	
			As Amended	631	
			12 KAR 3:027		
			Amended	116	
			As Amended	633	
			12 KAR 3:028		
			As Amended	634	
			12 KAR 3:032		
			Amended	118	
			As Amended	635	
			12 KAR 3:037		
			Amended	119	
			As Amended	635	
			12 KAR 3:039		
			As Amended	636	
			12 KAR 3:042		
			Amended	120	
			As Amended	637	
			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	
			As Amended	638	
			31 KAR 4:100		
ORDINARY ADMINISTRATIVE REGULATIONS					
9 KAR 1:015					
Amended	376				
9 KAR 1:030					
Amended	377				
11 KAR 5:145					
Amended	105				
As Amended	626				
11 KAR 15:010					
Amended	106				
As Amended	626				
11 KAR 15:110					
As Amended	207				
	627				

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
Amended	124		As Amended	334	
Amended	408		201 KAR 12:190		See 44 Ky.R.
31 KAR 4:120			As Amended	335	
Amended	125		201 KAR 12:230		See 44 Ky.R.
Amended	409		As Amended	337	
40 KAR 2:345	557		201 KAR 12:251(r)	212	
45 KAR 1:050			201 KAR 12:260		See 44 Ky.R.
Withdrawn		8-23-2018	As Amended	20	8-6-2018
101 KAR 2:020			201 KAR 12:280	213	
Amended	127		201 KAR 20:057		
101 KAR 2:034			Amended	411	
Amended	139		201 KAR 20:490		
As Amended	639		Amended	415	
101 KAR 2:076			201 KAR 22:020		
Amended	133		Amended	4148	
101 KAR 2:095			201 KAR 22:040		
Amended	135		Amended	420	
As Amended	643		201 KAR 22:170		
101 KAR 3:045			Amended	422	
Amended	139		201 KAR 34:060		See 44 Ky.R.
As Amended	646		As Amended	337	
101 KAR 3:050			201 KAR 41:100		See 44 Ky.R.
Amended	144		As Amended	340	
103 LAR 15:041(r)	859		301 KAR 1:015		
103 KAR 15:110			Amended	748	
Amended	727		301 KAR 1:115		
103 KAR 15:120			Amended	148	
Amended	728		As Amended	651	
103 KAR 15:140			301 KAR 1:132		
Amended	730		Amended	750	
103 LAR 16:011(r)	860		301 KAR 1:201		
103 KAR 16:352			Amended	423	
Amended	732		301 KAR 1:410		
103 LAR 17:042(r)	861		Amended	428	
103 KAR 17:100			301 KAR 2:172		See 44 Ky.R.
Amended	734		As Amended	652	
103 KAR 17:130			301 KAR 2:221		See 44 Ky.R.
Amended	735		As Amended	21	
103 KAR 17:140			301 KAR 2:222		See 44 Ky.R.
Amended	736		As Amended	22	
103 KAR 18:180			301 KAR 2:225		
Amended	738		Amended	752	
103 LAR 18:191(r)	862		301 KAR 2:228		See 44 Ky.R.
200 KAR 30:011(r)	558		As Amended	341	
201 KAR 2:015			301 KAR 3:022		
Amended	146		Amended	755	
As Amended	650		301 KAR 4:090		
201 KAR 2:370			Amended	758	
Amended	740		302 KAR 20:211(r)	863	
201 KAR 3:045		See 44 Ky.R.	302 KAR 20:221(r)	864	
As Amended	327		302 KAR 20:231(r)	865	
201 KAR 3:090		See 44 Ky.R.	302 KAR 20:541(r)	866	
As Amended	327		302 KAR 20:561(r)	867	
201 KAR 3:100		See 44 Ky.R.	302 KAR 20:571(r)	868	
As Amended	328		302 KAR 20:581(r)	869	
201 KAR 5:090		See 44 Ky.R.	302 KAR 29:020		
As Amended	330		Amended	150	
201 KAR 6:050		See 44 Ky.R.	As Amended	655	
As Amended	330		302 KAR 100:011(r)	870	
201 KAR 9:031		See 44 Ky.R.	302 KAR 100:021(r)	827	
As Amended	17		400 KAR 1:001		
201 KAR 9:260			Amended	431	
Amended	743		400 KAR 1:040		
201 KAR 12:010		See 44 Ky.R.	Amended	433	
As Amended	330		400 KAR 1:090		
201 KAR 12:030		See 44 Ky.R.	Amended	439	
As Amended	331		400 KAR 1:100		
201 KAR 12:082		See 44 Ky.R.	Amended	448	
As Amended	17	8-6-2018	400 KAR 1:110		
201 KAR 12:140		See 44 Ky.R.	Amended	453	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
401 KAR 5:002			Amended	437	
Am Comments	667		806 KAR 17:360		
401 KAR 5:005			Amended	470	
Am Comments	675		806 KAR 17:570		
401 KAR 5:015			Amended	161	
Am Comments	687		807 KAR 5:022		
401 KAR 5:037			AmComments	62	
Am Comments	690		807 KAR 5:026		
401 KAR 5:320			AmComments	92	
Am Comments	696		815 KAR 2:010	874	
401 KAR 52:050			815 KAR 2:020	876	
Amended	759		815 KAR 2:030	879	
401 KAR 52:070			815 KAR 2:040	881	
Amended	761		815 KAR 4:030		
501 KAR 6:020			Amended	790	
Amended	764		815 KAR 4:071(r)	882	
501 KAR 6:070		See 44 Ky.R.	815 KAR 7:070		
As Amended	342		Amended	794	
503 KAR 1:110			815 KAR 7:110		See 44 Ky.R.
Amended	462		As Amended	343	
505 KAR 1:120			815 KAR 7:120		
Am Comments	368		AmComments	96	
As Amended	656		815 KAR 7:125		
505 KAR 1:140			AmComments	98	
Am Comments	369		815 KAR 8:010		
601 KAR 2:030			Amended	800	
Amended	152		815 KAR 8:030		
701 KAR 5:140			Amended	804	
Amended	766		815 KAR 8:070		See 44 Ky.R.
702 KAR 7:065			As Amended	345	
Amended	770		815 KAR 8:080		See 44 Ky.R.
703 KAR 5:225		See 44 Ky.R.	As Amended	347	
As Amended	26		815 KAR 8:091(r)	883	
703 KAR 5:280		See 44 Ky.R.	815 KAR 8:100		See 44 Ky.R.
As Amended	29		As Amended	348	
704 KAR 3:015	215		815 KAR 15:080		
704 KAR 3:306	217		Amended	805	
Am Comments	700		815 KAR 20:030		
735 KAR 1:010		See 44 Ky.R.	Amended	808	
As Amended	34	8-6-2018	815 KAR 20:041(r)	885	
735 KAR 1:020		See 44 Ky.R.	815 KAR 22:011(r)	886	
As Amended	36	8-6-2018	815 KAR 25:001		
735 KAR 2:010		See 44 Ky.R.	815 KAR 25:020		
As Amended	38	8-6-2018	Amended	813	
735 KAR 2:020		See 44 Ky.R.	815 KAR 25:040		
As Amended	39	8-6-2018	Amended	821	
735 KAR 2:030		See 44 Ky.R.	815 KAR 25:050		
As Amended	39	8-6-2018	Amended	822	
735 KAR 2:040		See 44 Ky.R.	815 KAR 25:060		
As Amended	40	8-6-2018	Amended	827	
735 KAR 2:050		See 44 Ky.R.	815 KAR 25:081(r)	889	
As Amended	40	8-6-2018	815 KAR 25:090		
735 KAR 2:060		See 44 Ky.R.	Amended	832	
As Amended	41	8-6-2018	815 KAR 25:100		
803 KAR 25:089			Amended	835	
Amended	158		815 KAR 35:015		
803 KAR 30:010			Amended	837	
Amended	774		815 KAR 35:020		
803 KAR 30:021(r)	873		Amended	841	
803 KAR 50:010			815 KAR 35:060		
Amended	780		Amended	845	
804 KAR 5:080	219		815 KAR 35:080		
805 KAR 1:210	560		Amended	849	
806 KAR 9:360			815 KAR 35:090		
Amended	159		Amended	850	
As Amended	656		815 KAR 35:101(r)	890	
806 KAR 17:020			820 KAR 1:032		
Amended	446		Am Comments	702	
806 KAR 17:091(r)	561		820 KAR 1:050		
806 KAR 17:300			Am Comments	715	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
820 KAR 1:057			921 KAR 3:030		
Am Comments	718		Amended	200	
820 KAR 1:060			As Amended	664	
Am Comments	724		921 KAR 3:035		
830 KAR 1:010			Amended	202	
Amended	180		922 KAR 1:360		
830 KAR 2:001	563		Amended	853	
830 KAR 2:010	564		922 KAR 1:560	600	
830 KAR 2:020	566		922 KAR 2:120		See 44 Ky.R.
895 KAR 1:001	567		As Amended	43	7-18-2018
895 KAR 1:010	570		922 KAR 2:180		See 44 Ky.R.
895 KAR 1:015	573		As Amended	51	7-18-2018
895 KAR 1:020	576		922 KAR 2:190		See 44 Ky.R.
895 KAR 1:025	579		As Amended	56	7-18-2018
895 KAR 1:030	581		922 KAR 2:270		See 44 Ky.R.
895 KAR 1:035	583		As Amended	57	7-18-2018
895 KAR 1:040	585				
895 KAR 1:045	587				
895 KAR 1:050	589				
895 KAR 1:055	591				
900 KAR 1:091(r)	891				
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 1:121(r)	892				
907 KAR 1:642	598				
910 KAR 1:090					
Amended	187				
As Amended	657				
910 KAR 2:030		See 44 Ky.R.			
Am Comments	371				
As Amended	662				
921 KAR 1:380					
Amended	193				
921 KAR 3:025					
Amended	196				

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.

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
11A.080	9 KAR 1:015	141.215	103 KAR 17:042
	9 KAR 1:030	141.235	103 KAR 15:041
11A.100	9 KAR 1:030	141.300	103 KAR 17:100
12.040	101 KAR 3:050	141.305	103 KAR 17:100
12.050	101 KAR 3:050	141.347	103 KAR 18:180
13B	902 KAR 45:160		103 KAR 18:191
	906 KAR 1:190	141.400	103 KAR 18:180
	910 KAR 1:090		103 KAR 18:191
	922 KAR 1:360	141.401	103 KAR 18:180
15.330	503 KAR 1:110		103 KAR 18:191
15.386	503 KAR 1:110	141.402	103 KAR 18:180
15.404	503 KAR 1:110	141.403	103 KAR 18:180
15.440	503 KAR 1:110	141.407	103 KAR 18:180
18A.005	101 KAR 2:020		103 KAR 18:191
	101 KAR 2:076	141.415	103 KAR 18:180
18A.030	101 KAR 2:020	141.422	103 KAR 15:110
	101 KAR 2:034		103 KAR 15:120
	101 KAR 2:095		103 KAR 15:140
18A.032	101 KAR 2:020	141.423	103 KAR 15:140
18A.110	101 KAR 2:020	141.424	103 KAR 15:140
	101 KAR 2:034	141.990	103 KAR 16:352
	101 KAR 2:076		103 KAR 17:042
	101 KAR 2:095	141.0401	103 KAR 15:110
	101 KAR 3:045		103 KAR 15:120
	101 KAR 3:050		103 KAR 15:140
18A.115	101 KAR 2:076	141.4242	103 KAR 15:110
	101 KAR 3:050		103 KAR 15:120
18A.120	101 KAR 2:076	141.4246	103 KAR 15:110
18A.155	101 KAR 3:045		103 KAR 15:120
	101 KAR 3:050	141.4248	103 KAR 15:110
18A.165	101 KAR 2:034		103 KAR 15:120
18A.202	101 KAR 3:045	146.200 - 146.360	400 KAR 1:001
45A	601 KAR 2:030		400 KAR 1:040
49.220	803 KAR 30:010		400 KAR 1:090
61.805 - 61.850	702 KAR 7:065		400 KAR 1:100
116.048	921 KAR 3:030	146.450	400 KAR 1:001
116.085	31 KAR 3:010		400 KAR 1:090
116.155	31 KAR 3:010	146.530	400 KAR 1:001
117.015	31 KAR 4:120		400 KAR 1:090
117.025	31 KAR 3:010	146.990	400 KAR 1:001
117.045	31 KAR 4:100		400 KAR 1:040
	31 KAR 4:120		400 KAR 1:090
117.225	31 KAR 3:010		400 KAR 1:100
131.130	103 KAR 16:352	149.344	400 KAR 1:001
131.183	103 KAR 15:041		400 KAR 1:090
134.580	103 KAR 15:041		400 KAR 1:100
141.010	103 KAR 15:110	149.346	400 KAR 1:001
	103 KAR 15:120		400 KAR 1:090
	103 KAR 15:140		400 KAR 1:100
	103 KAR 16:011	149.348	400 KAR 1:001
	103 KAR 16:352		400 KAR 1:090
141.020	103 KAR 15:110		400 KAR 1:100
	103 KAR 15:120	150.010	301 KAR 1:201
	103 KAR 15:140		301 KAR 1:410
	103 KAR 17:100		301 KAR 4:090
	103 KAR 17:130	150.025	301 KAR 3:022
141.030	103 KAR 15:110	150.090	301 KAR 1:015
	103 KAR 15:120	150.170	301 KAR 1:201
	103 KAR 15:140		301 KAR 1:410
141.040	103 KAR 15:110	150.175	301 KAR 1:132
	103 KAR 15:120		301 KAR 1:201
	103 KAR 15:140		301 KAR 1:410
141.070	103 KAR 16:352		301 KAR 4:090
141.120	103 KAR 17:140	150.180	301 KAR 1:132
141.160	103 KAR 16:352		301 KAR 3:022
141.170	103 KAR 16:352		301 KAR 4:090
141.200	103 KAR 16:352	150.183	301 KAR 3:022
141.206	103 KAR 16:352		301 KAR 4:090
141.210	103 KAR 15:041	150.235	301 KAR 1:410
	103 KAR 16:352	150.240	301 KAR 3:022
		150.275	301 KAR 3:022

KRS SECTION	REGULATION	KRS SECTION	REGULATION
150.280	301 KAR 1:132	156.160	13 KAR 2:020
	301 KAR 3:022		701 KAR 5:140
150.290	301 KAR 1:115		704 KAR 3:306
	301 KAR 3:022	156.162	704 KAR 3:306
150.305	301 KAR 4:090	157.3175	704 KAR 3:015
150.330	301 KAR 2:225	158.197	704 KAR 3:306
	301 KAR 4:090	158.6451	13 KAR 2:020
150.340	301 KAR 1:201		704 KAR 3:306
	301 KAR 2:225	158.6453	13 KAR 2:020
150.370	301 KAR 4:090	160.107	701 KAR 5:140
150.411	301 KAR 4:090	160.290	704 KAR 3:306
150.445	301 KAR 1:410	160.380	702 KAR 7:065
150.450	301 KAR 1:132	160.445	702 KAR 7:065
	301 KAR 3:022	164.001	13 KAR 2:020
150.485	301 KAR 1:115	164.020	13 KAR 2:020
	301 KAR 1:132	164.030	13 KAR 2:020
	301 KAR 3:022	164.744	11 KAR 5:145
150.520	301 KAR 3:022	164.753	11 KAR 5:145
150.525	301 KAR 3:022	164.772	201 KAR 22:020
150.600	301 KAR 3:022		201 KAR 22:040
150.603	301 KAR 2:225		815 KAR 35:060
	301 KAR 3:022	164.6901 - 164.6935	200 KAR 30:011
150.620	301 KAR 1:201		830 KAR 2:001
	301 KAR 1:410	164.6907	830 KAR 2:010
150.625	301 KAR 1:015	164.6909	830 KAR 2:010
150.660	301 KAR 3:022	164.6911	830 KAR 2:010
150.720	301 KAR 3:022	164.6913 - 164.6933	830 KAR 2:020
150.990	301 KAR 1:015	164.6915	830 KAR 2:010
	301 KAR 1:201	164.7535	11 KAR 5:145
	301 KAR 1:410	164.7871 - 164.7885	11 KAR 15:010
	301 KAR 4:090		11 KAR 15:110
151.125	400 KAR 1:001	164.7889	11 KAR 5:145
	400 KAR 1:090	186.010	601 KAR 2:030
151.182	400 KAR 1:001	186.440	601 KAR 2:030
	400 KAR 1:040	186.442	601 KAR 2:030
	400 KAR 1:090	186.480	601 KAR 2:030
	400 KAR 1:100	186.531	601 KAR 2:030
151.184	400 KAR 1:001	186.560	601 KAR 2:030
	400 KAR 1:040	186.570	601 KAR 2:030
	400 KAR 1:090	189A.005	601 KAR 2:030
	400 KAR 1:100	189A.010	601 KAR 2:030
151.297	400 KAR 1:001	189A.040	601 KAR 2:030
	400 KAR 1:040	189A.070	601 KAR 2:030
	400 KAR 1:090	189A.085	601 KAR 2:030
	400 KAR 1:100	189A.090	601 KAR 2:030
151.990	400 KAR 1:001	189A.103	601 KAR 2:030
	400 KAR 1:040	189A.105	601 KAR 2:030
	400 KAR 1:090	189A.107	601 KAR 2:030
	400 KAR 1:100	189A.200	601 KAR 2:030
154.22-010	103 KAR 18:180	189A.240	601 KAR 2:030
	103 KAR 18:191	189A.250	601 KAR 2:030
154.22-070	103 KAR 18:180	189A.340	601 KAR 2:030
	103 KAR 18:191	189A.345	601 KAR 2:030
154.23-010	103 KAR 18:180	189A.400	601 KAR 2:030
	103 KAR 18:191	189A.410	601 KAR 2:030
154.23-055	103 KAR 18:180	189A.420	601 KAR 2:030
	103 KAR 18:191	189A.440	601 KAR 2:030
154.24-010	103 KAR 18:180	189A.500	601 KAR 2:030
	103 KAR 18:191	194A.005	902 KAR 100:022
154.24-110	103 KAR 18:180		902 KAR 100:070
	103 KAR 18:191		902 KAR 100:142
154.25-010	103 KAR 18:180	194A.060	922 KAR 1:560
154.25-040	103 KAR 18:180	196	501 KAR 6:020
154.26-010	103 KAR 18:180	197	501 KAR 6:020
154.26-100	103 KAR 18:180	198B.010	815 KAR 7:070
154.28-010	103 KAR 18:180	198B.040	815 KAR 7:070
	103 KAR 18:191	198B.050	815 KAR 7:070
154.28-110	103 KAR 18:180		815 KAR 35:020
	103 KAR 18:191	198B.060	815 KAR 7:070
154.32-010	103 KAR 18:180		815 KAR 35:015
154.32-090	103 KAR 18:180	198B.090	815 KAR 2:010
156.070	702 KAR 7:065		815 KAR 2:020
	704 KAR 3:306		815 KAR 7:070
156.108	701 KAR 5:140		815 KAR 35:015

KRS SECTION	REGULATION	KRS SECTION	REGULATION
198B.095	815 KAR 2:010		895 KAR 1:040
	815 KAR 2:020		895 KAR 1:045
	815 KAR 7:070		895 KAR 1:050
198B.260	902 KAR 20:260		895 KAR 1:055
198B.4003	815 KAR 4:030		907 KAR 1:121
198B.4009	815 KAR 2:010		907 KAR 1:642
	815 KAR 2:020	205.560	907 KAR 1:121
	815 KAR 4:030	205.622	895 KAR 1:035
	815 KAR 4:071	205.705	921 KAR 1:380
198B.4011	815 KAR 2:010	205.712	601 KAR 2:030
	815 KAR 4:030	205.710 - 205.800	921 KAR 1:380
198B.4013	815 KAR 2:010	205.900 - 205.925	910 KAR 1:090
	815 KAR 4:030	205.992	921 KAR 1:380
198B.4023	815 KAR 2:010	205.2005	921 KAR 3:025
	815 KAR 2:020	205.6328	900 KAR 1:091
	815 KAR 4:030	205.8451	895 KAR 1:001
198B.4025	815 KAR 2:010	211.025	902 KAR 10:051
	815 KAR 2:020	211.090	902 KAR 10:051
	815 KAR 4:030		902 KAR 47:071
198B.4027	815 KAR 4:030	211.180	902 KAR 10:051
198B.4033	815 KAR 4:030		902 KAR 47:071
198B.4037	815 KAR 2:040		902 KAR 100:022
198B.615	815 KAR 2:040		902 KAR 100:070
198B.6405	815 KAR 2:010		902 KAR 100:100
198B.6409	815 KAR 2:010		902 KAR 100:142
	815 KAR 2:020	211.350	815 KAR 35:015
	815 KAR 22:011		815 KAR 35:020
	815 KAR 25:081	211.842 - 211.852	902 KAR 20:275
198B.645	815 KAR 2:010		902 KAR 100:018
198B.650	815 KAR 8:010		902 KAR 100:022
198B.654	815 KAR 2:010		902 KAR 100:052
	815 KAR 2:020		902 KAR 100:070
	815 KAR 8:010		902 KAR 100:072
	815 KAR 8:091		902 KAR 100:100
198B.656	815 KAR 8:010		902 KAR 100:142
	815 KAR 8:030	211.990	902 KAR 100:018
198B.658	815 KAR 2:010		902 KAR 100:022
	815 KAR 8:010		902 KAR 100:052
	815 KAR 8:030		902 KAR 100:070
	815 KAR 8:091		902 KAR 100:072
198B.659	815 KAR 8:010		902 KAR 100:100
198B.6504	815 KAR 2:020		902 KAR 100:142
198B.660	815 KAR 2:010	213.046	921 KAR 1:380
	815 KAR 8:010	216.530	902 KAR 20:008
	815 KAR 8:030	216.860	906 KAR 1:071
198B.662	815 KAR 8:030	216.865	906 KAR 1:071
198B.664	815 KAR 2:010	216.900 - 216.915	906 KAR 1:071
	815 KAR 2:020	216.930	906 KAR 1:071
	815 KAR 8:010	216.2925	902 KAR 20:008
	815 KAR 8:030	216B.010	902 KAR 20:008
198B.668	815 KAR 8:010	216B.010 - 216B.130	900 KAR 5:020
198B.670	815 KAR 2:030	216B.010 - 216B.131	902 KAR 20:260
198B.672	815 KAR 2:010	216B.010 - 216B.170	902 KAR 20:275
	815 KAR 8:010	216B.015	902 KAR 20:008
198B.676	815 KAR 2:040	216B.020	902 KAR 20:008
	815 KAR 8:010		902 KAR 20:251
198B.684	815 KAR 2:020	216B.040	902 KAR 20:008
199.011	922 KAR 1:360	216B.042	902 KAR 20:008
	922 KAR 1:560	216B.045 - 216B.055	902 KAR 20:008
199.480	922 KAR 1:560	216B.075	902 KAR 20:008
199.505	922 KAR 1:560	216B.105 - 216B.131	902 KAR 20:008
199.555	101 KAR 3:045	216B.176	902 KAR 20:401
199.640 - 199.680	922 KAR 1:360	216B.177	902 KAR 20:401
199.801	922 KAR 1:360	216B.185	902 KAR 20:008
199.8943	704 KAR 3:015	216B.990	902 KAR 20:008
199.990	922 KAR 1:560		902 KAR 20:260
205.455	910 KAR 1:090		902 KAR 20:275
205.520	895 KAR 1:001	217.005 - 217.205	902 KAR 45:160
	895 KAR 1:010	217.290 - 217.390	902 KAR 45:160
	895 KAR 1:015	217.801	902 KAR 47:071
	895 KAR 1:020	217.990 - 217.992	902 KAR 45:160
	895 KAR 1:025	217B	302 KAR 29:020
	895 KAR 1:030	218A.160	902 KAR 55:011
	895 KAR 1:035	218A.172	201 KAR 9:260

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	201 KAR 20:057		815 KAR 2:020
218A.175	902 KAR 20:260		815 KAR 35:080
218A.205	201 KAR 9:260		815 KAR 35:090
	201 KAR 20:057		815 KAR 35:101
	902 KAR 20:260	227A.060	815 KAR 35:060
219.310 - 219.410	815 KAR 25:040		815 KAR 35:080
223	400 KAR 1:001		815 KAR 35:090
	400 KAR 1:040	227A.100	815 KAR 2:010
	400 KAR 1:090		815 KAR 2:020
	400 KAR 1:100		815 KAR 35:060
224	400 KAR 1:001	227A.110	815 KAR 35:080
	400 KAR 1:040	235.010	301 KAR 1:015
	400 KAR 1:090	235.990	301 KAR 1:015
	400 KAR 1:100	236.097	815 KAR 15:080
224.1-010	401 KAR 5:002	236.210	815 KAR 15:080
224.1-070	401 KAR 5:002	241.010	804 KAR 5:080
224.1-400	401 KAR 5:002	243.232	804 KAR 5:080
224.10-100	401 KAR 52:050	246.210	302 KAR 20:221
	401 KAR 52:070	250.491 - 250.631	12 KAR 2:006
224.10-410	400 KAR 1:110		12 KAR 2:011
224.20-100	401 KAR 52:050		12 KAR 2:016
	401 KAR 52:070		12 KAR 2:017
224.20-110	401 KAR 52:050		12 KAR 2:018
	401 KAR 52:070		12 KAR 2:021
224.20-120	401 KAR 52:050		12 KAR 2:026
	401 KAR 52:070		12 KAR 2:036
224.70-100	401 KAR 5:002		12 KAR 2:056
224.70-120	401 KAR 5:002		12 KAR 3:007
224.99-010	401 KAR 5:002		12 KAR 3:032
227.450	815 KAR 35:015	250.501	12 KAR 2:031
227.460	815 KAR 35:020		12 KAR 2:041
227.480	815 KAR 35:015		12 KAR 2:046
	815 KAR 35:020		12 KAR 2:051
227.487	815 KAR 35:020		12 KAR 2:061
227.489	815 KAR 35:015		12 KAR 3:012
227.491	815 KAR 35:015		12 KAR 3:017
	815 KAR 35:020		12 KAR 3:022
227.492	815 KAR 35:015		12 KAR 3:027
227.495	815 KAR 35:015		12 KAR 3:028
227.550	815 KAR 25:050		12 KAR 3:037
	815 KAR 25:060		12 KAR 3:039
	815 KAR 25:090		12 KAR 3:042
	815 KAR 25:100	250.511	12 KAR 2:041
227.550 - 227.660	815 KAR 25:020		12 KAR 2:051
227.550 - 227.665	815 KAR 25:001		12 KAR 2:061
227.555	815 KAR 25:050		12 KAR 3:037
227.560	815 KAR 25:060	250.521	12 KAR 2:061
227.570	815 KAR 2:010		12 KAR 3:012
	815 KAR 2:020		12 KAR 3:017
	815 KAR 25:050		12 KAR 3:022
	815 KAR 25:060		12 KAR 3:027
	815 KAR 25:090		12 KAR 3:028
227.580	815 KAR 25:050		12 KAR 3:039
	815 KAR 25:060		12 KAR 3:042
227.590	815 KAR 2:010	250.531	12 KAR 2:031
	815 KAR 2:020		12 KAR 3:017
	815 KAR 25:040	250.541	12 KAR 2:041
	815 KAR 25:050		12 KAR 2:051
	815 KAR 25:060		12 KAR 2:046
	815 KAR 25:090		12 KAR 2:066
227.600	815 KAR 25:050		12 KAR 3:037
	815 KAR 25:060	250.551	12 KAR 2:031
227.610	815 KAR 25:060		12 KAR 2:046
227.620	815 KAR 25:060		12 KAR 2:051
227.630	815 KAR 25:060	250.561	12 KAR 2:061
227.640	815 KAR 25:100	250.581	12 KAR 2:051
227.660	815 KAR 25:090	257	302 KAR 20:211
227.990	815 KAR 25:050		302 KAR
	815 KAR 25:060	20:231	
	815 KAR 25:090		302 KAR 20:541
227.992	815 KAR 25:050		302 KAR 20:581
227A.010	815 KAR 35:060	257.020	302 KAR 20:561
227A.020	815 KAR 2:030		302 KAR 20:571
227A.040	815 KAR 2:010	257.030	302 KAR 20:561

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	302 KAR 20:571	304.17A-530	806 KAR 17:300
257.040	302 KAR 20:571	304.17A-532	806 KAR 17:300
257.050	302 KAR 20:221	304.17A.540	806 KAR 17:091
	302 KAR 20:571	304.17A.545	806 KAR 17:091
257.080	302 KAR 20:221	304.17A-560	806 KAR 17:300
257.110	302 KAR 20:561	304.17A-575	806 KAR 17:300
257.120	302 KAR 20:561	304.17A-577	806 KAR 17:300
257.110 - 257.170	302 KAR 20:221	304.17A-578	806 KAR 17:300
257.140	302 KAR 20:561	304.17A.647	806 KAR 17:091
257.480	302 KAR 20:221	304.17A-700	806 KAR 17:360
262.902	302 KAR 100:011	304.17A-702	806 KAR 17:360
	302 KAR 100:021	304.17A-704	806 KAR 17:360
262.904	302 KAR 100:011	304.17A-706	806 KAR 17:360
	302 KAR 100:021	304.17A-708	806 KAR 17:360
262.908	302 KAR 100:011	304.17A-720	806 KAR 17:360
	302 KAR 100:021	304.17A-728	806 KAR 17:300
304.1 - 050	806 KAR 9:360	304.17A-730	806 KAR 17:360
304.2 - 310	806 KAR 17:091	304.17B.001 - 304.17B.033	806 KAR 17:091
	806 KAR 17:091	304.17C-060	806 KAR 17:091
	806 KAR 17:570		806 KAR 17:300
304.3 - 240	806 KAR 17:570	304.17C-090	806 KAR 17:360
304.9 - 020	806 KAR 17:091	304.18 - 032	806 KAR 17:091
304.9 - 053	806 KAR 9:360	304.18 - 034	806 KAR 17:570
304.9 - 054	806 KAR 9:360	304.18 - 110	806 KAR 17:091
304.12-013	806 KAR 17:091	304.18 - 0365	806 KAR 17:091
304.12 - 020	806 KAR 17:570	304.18-0365 - 304.18-037	806 KAR 17:091
304.12 - 190	806 KAR 17:091	304.18-0985	806 KAR 17:091
304.14-020	806 KAR 17:091	304.32-153	806 KAR 17:091
304.14-120	806 KAR 17:020	304.32 - 275	806 KAR 17:570
	806 KAR 17:091	304.32-280	806 KAR 17:091
	806 KAR 17:570	304.32-1585	806 KAR 17:091
304.14-140	806 KAR 17:091	304.32-1595	806 KAR 17:091
304.14-150	806 KAR 17:091	304.33 - 030	806 KAR 17:570
304.14-180	806 KAR 17:091	304.38-199	806 KAR 17:091
304.14-210	806 KAR 17:091	304.38 - 205	806 KAR 17:570
304.14-360	806 KAR 17:091	304.38 - 210	806 KAR 17:091
304.14-430	806 KAR 17:091	304.38-1935 - 304.38-1937	806 KAR 17:091
304.14-440	806 KAR 17:091	304.38 - 1937	806 KAR 17:091
304.14-450	806 KAR 17:091	304.99	806 KAR 17:300
304.14-500 - 304.14-550	806 KAR 17:570	304.99-123	806 KAR 17:360
304.17 - 030	806 KAR 17:091	311	902 KAR 20:260
304.17 - 042	806 KAR 17:091	311.530 - 311.620	201 KAR 9:260
304.17 - 070	806 KAR 17:091	311.990	201 KAR 9:260
304.17 - 310	806 KAR 17:091	314	902 KAR 20:260
304.17 - 311	806 KAR 17:570	314.011	201 KAR 20:057
304.17 -313	806 KAR 17:091		201 KAR 20:490
304.17 - 319	806 KAR 17:091	314.042	201 KAR 20:057
304.17 - 415	806 KAR 17:091	314.193	201 KAR 20:057
304.17-3165	806 KAR 17:091	314.195	201 KAR 20:057
304.17A.005	806 KAR 17:091	314.196	201 KAR 20:057
	806 KAR 17:360	315.010	201 KAR 2:370
	806 KAR 17:570	315.020	201 KAR 2:370
304.17A-095 - 304.17A-0954	806 KAR 17:091	315.030	201 KAR 2:370
304.17A-096 - 304.17A-132	806 KAR 17:091	315.036	902 KAR 55:011
304.17A.132	806 KAR 17:091	315.065	201 KAR 2:015
304.17A.134	806 KAR 17:091	315.120	201 KAR 2:015
304.17A-135 - 304.17A-145	806 KAR 17:091	315.121	201 KAR 2:370
304.17A.139	806 KAR 17:091	315.191	902 KAR 55:011
304.17A.140	806 KAR 17:091	315.402	902 KAR 55:011
304.17A.142	806 KAR 17:091	315.406	902 KAR 55:011
304.17A-148 - 304.17A-149	806 KAR 17:091	317A.060	201 KAR 12:251
304.17A.149	806 KAR 17:091	317A.130	201 KAR 12:280
304.17A-150	806 KAR 17:300	318.010	815 KAR 20:030
304.17A.155	806 KAR 17:091	318.020	815 KAR 20:030
304.17A.171	806 KAR 17:091	318.030	815 KAR 20:030
304.17A.200	806 KAR 17:091	318.040	815 KAR 20:030
304.17A.230	806 KAR 17:091	318.050	815 KAR 2:040
304.17A.243	806 KAR 17:091		815 KAR 20:030
304.17A.245	806 KAR 17:091	318.054	815 KAR 2:010
304.17A.250	806 KAR 17:091		815 KAR 2:020
304.17A.258	806 KAR 17:091		815 KAR 2:040
304.17A-500	806 KAR 17:300		815 KAR 20:030
304.17A.520	806 KAR 17:091	318.060	815 KAR 20:030
304.17A-527	806 KAR 17:300	318.080	815 KAR 20:030

KRS SECTION	REGULATION	KRS SECTION	REGULATION
318.100	815 KAR 2:030		400 KAR 1:110
318.130	815 KAR 2:010	350.0301	400 KAR 1:001
	815 KAR 2:020		400 KAR 1:090
	902 KAR 45:160		400 KAR 1:110
318.134	815 KAR 2:040	350.0305	400 KAR 1:001
318.170	815 KAR 2:030		400 KAR 1:090
	815 KAR 20:041	351.315	400 KAR 1:001
327.010	201 KAR 22:020		400 KAR 1:040
327.050	201 KAR 22:020		400 KAR 1:090
	201 KAR 22:040		400 KAR 1:110
327.060	201 KAR 22:020	351.345	400 KAR 1:001
327.070	201 KAR 22:040		400 KAR 1:040
327.075	201 KAR 22:020		400 KAR 1:090
327.080	201 KAR 22:020		400 KAR 1:110
327.300	201 KAR 22:170	351.350	400 KAR 1:001
327.310	201 KAR 22:020		400 KAR 1:040
338	803 KAR 50:010		400 KAR 1:090
339.230	815 KAR 35:060		400 KAR 1:110
342.0011	803 KAR 25:089	353	400 KAR 1:100
	803 KAR 30:010	353.060	400 KAR 1:001
342.019	803 KAR 25:089		400 KAR 1:040
342.020	803 KAR 25:089		400 KAR 1:090
342.035	803 KAR 25:089	353.200	400 KAR 1:001
342.122	803 KAR 30:010		400 KAR 1:040
	803 KAR 30:021		400 KAR 1:090
342.1221	803 KAR 30:010	353.510	805 KAR 1:210
342.1222	803 KAR 30:010	353.590	400 KAR 1:001
342.1223	803 KAR 30:010		400 KAR 1:040
342.1231	803 KAR 30:010		400 KAR 1:090
	803 KAR 30:021	353.620	400 KAR 1:001
342.340	803 KAR 30:010		400 KAR 1:040
342.650	803 KAR 30:010		400 KAR 1:090
350.010	400 KAR 1:110	353.630	400 KAR 1:001
350.028	400 KAR 1:001		400 KAR 1:040
	400 KAR 1:040		400 KAR 1:090
	400 KAR 1:090		805 KAR 1:210
	400 KAR 1:110	353.640	400 KAR 1:001
350.029	400 KAR 1:090		400 KAR 1:040
350.032	400 KAR 1:001		400 KAR 1:090
	400 KAR 1:090		805 KAR 1:210
350.060	400 KAR 1:090	353.700	400 KAR 1:001
350.070	400 KAR 1:001		400 KAR 1:040
	400 KAR 1:040		400 KAR 1:090
	400 KAR 1:090	353.5901	400 KAR 1:001
	400 KAR 1:110		400 KAR 1:040
350.085	400 KAR 1:001		400 KAR 1:090
	400 KAR 1:040	367.680	40 KAR 2:345
	400 KAR 1:090	367.686	40 KAR 2:345
350.090	400 KAR 1:001	367.688	40 KAR 2:345
	400 KAR 1:090	367.689	40 KAR 2:345
	400 KAR 1:110	367.690	40 KAR 2:345
350.093	400 KAR 1:001	369.101 - 369.120	895 KAR 1:035
	400 KAR 1:040	403.211	921 KAR 1:380
	400 KAR 1:090	405.430	921 KAR 1:380
	400 KAR 1:110	405.467	921 KAR 1:380
350.130	400 KAR 1:001	405.520	921 KAR 1:380
	400 KAR 1:040	406.021	921 KAR 1:380
	400 KAR 1:090	406.025	921 KAR 1:380
	400 KAR 1:110	407.5101 - 407.5903	921 KAR 1:380
350.240	400 KAR 1:090	433.900 - 433.906	830 KAR 1:010
350.255	400 KAR 1:001	439	501 KAR 6:020
	400 KAR 1:090	600.020	922 KAR 1:360
	400 KAR 1:110	605.090	922 KAR 1:360
350.300	400 KAR 1:090	610.110	922 KAR 1:360
350.305	400 KAR 1:090	610.170	921 KAR 1:380
350.465	400 KAR 1:001	620.020	922 KAR 1:560
	400 KAR 1:040	625.065	922 KAR 1:560
	400 KAR 1:090	7 C.F.R.	921 KAR 3:025
	400 KAR 1:110		921 KAR 3:030
350.610	400 KAR 1:001		921 KAR 3:035
	400 KAR 1:090	10 C.F.R.	902 KAR 100:022
350.990	400 KAR 1:001		902 KAR 100:052
	400 KAR 1:040		902 KAR 100:070
	400 KAR 1:090		902 KAR 100:072

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	902 KAR 100:100		895 KAR 1:020
	902 KAR 100:142		895 KAR 1:025
20 C.F.R.	895 KAR 1:001		895 KAR 1:030
21 C.F.R.	12 KAR 2:031		895 KAR 1:035
	12 KAR 2:041		895 KAR 1:040
	12 KAR 2:051		895 KAR 1:045
	12 KAR 3:037		895 KAR 1:050
	902 KAR 45:160		895 KAR 1:055
24 C.F.R.	815 KAR 25:090		902 KAR 20:260
29 C.F.R.	806 KAR 17:091		902 KAR 20:275
	815 KAR 35:060		902 KAR 100:022
	902 KAR 20:260		902 KAR 100:052
	902 KAR 20:275		902 KAR 100:070
30 C.F.R.	400 KAR 1:001		902 KAR 100:072
	400 KAR 1:040		902 KAR 100:100
	400 KAR 1:090		902 KAR 100:142
	400 KAR 1:110		906 KAR 1:190
39 C.F.R.	400 KAR 1:090		907 KAR 1:642
40 C.F.R.	401 KAR 5:002		921 KAR 1:380
	401 KAR 52:050		921 KAR 3:030
	401 KAR 52:070		921 KAR 3:035
	902 KAR 100:022		922 KAR 1:360
42 C.F.R.	806 KAR 17:570	49 U.S.C.	302 KAR 29:020
	895 KAR 1:001	50 U.S.C.	103 KAR 17:130
	895 KAR 1:010	52 U.S.C.	921 KAR 3:030
	895 KAR 1:015	2012 Ky Acts ch. 144, Part XII	806 KAR 17:091
	895 KAR 1:030	Pres. EO 13166	921 KAR 3:030
	895 KAR 1:035	Pub. L 108-173	806 KAR 17:570
	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		
	401 KAR 5:002		
18 U.S.C.	601 KAR 2:030		
20 U.S.C.	11 KAR 15:010		
	702 KAR 7:065		
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		
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		
	803 KAR 30:010		
31 U.S.C.	45 KAR 1:050		
33 U.S.C.	401 KAR 5:002		
	803 KAR 30:010		
42 U.S.C.	401 KAR 5:002		
	401 KAR 52:050		
	806 KAR 17:091		
	806 KAR 17:570		
	815 KAR 25:050		
	895 KAR 1:001		
	895 KAR 1:010		
	895 KAR 1:015		

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	First Effective Date	Previous Last Effective Date*	Letter Filed Date	Action
201 KAR 009:051	10-09-1984	03-14-1994	07-06-2018	Remain in Effect without Amendment
201 KAR 009:061	10-09-1984	03-14-1994	07-06-2018	Remain in Effect without Amendment
201 KAR 009:071	10-09-1984	10-09-1984	07-07-2018	Remain in Effect without Amendment
201 KAR 022:001	01-04-2005	06-06-2014	06-04-2018	Remain in Effect without Amendment
201 KAR 022:010	09-10-1975	12-02-1986	06-04-2018	Remain in Effect without Amendment
201 KAR 022:035	11-06-1980	05-31-2013	06-04-2018	Remain in Effect without Amendment
201 KAR 022:045	01-04-2005	10-19-2016	06-04-2018	Remain in Effect without Amendment
201 KAR 022:052	06-03-1981	01-04-2005	06-04-2018	Remain in Effect without Amendment
201 KAR 022:053	08-17-1990	06-02-2017	06-04-2018	Remain in Effect without Amendment
201 KAR 022:130	01-06-1983	09-18-2013	06-04-2018	Remain in Effect without Amendment
201 KAR 022:135	07-02-1987	07-21-2010	06-04-2018	Remain in Effect without Amendment
201 KAR 022:140	07-02-1987	11-15-2006	06-04-2018	Remain in Effect without Amendment
201 KAR 022:150	12-19-2001	01-04-2005	06-04-2018	Remain in Effect without Amendment
201 KAR 022:160	08-01-2014	08-01-2014	06-04-2018	Remain in Effect without Amendment
402 KAR 003:010	11-13-1984	11-02-2017	07-03-2018	Remain in Effect without Amendment
402 KAR 003:020	05-19-1999	05-05-2006	07-03-2018	Remain in Effect without Amendment
402 KAR 003:030	05-19-1999	11-02-2017	07-03-2018	Remain in Effect without Amendment
402 KAR 003:040	05-05-2006	05-05-2006	07-03-2018	Remain in Effect without Amendment
402 KAR 003:050	09-03-2015	09-03-2015	07-03-2018	Remain in Effect without Amendment
405 KAR 002:010	08-11-1982	08-11-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 005:002	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:015	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:021	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:032	08-26-2004	03-08-2013	07-03-2018	Remain in Effect without Amendment
405 KAR 005:036	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:040	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:042	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:048	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:050	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:055	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:062	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:065	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:070	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:078	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:082	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:085	02-22-1995	02-03-2012	07-03-2018	Remain in Effect without Amendment
405 KAR 007:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 007:015	08-07-1984	12-12-1994	07-03-2018	Remain in Effect without Amendment
405 KAR 007:030	02-02-1983	11-09-1992	07-03-2018	Remain in Effect without Amendment
405 KAR 007:035	11-26-1991	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 007:040	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 007:050	05-04-1983	05-04-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 007:060	01-06-1983	02-04-1986	07-03-2018	Remain in Effect without Amendment
405 KAR 007:070	05-14-1985	09-10-1987	07-03-2018	Remain in Effect without Amendment
405 KAR 007:080	01-06-1983	09-28-1994	07-03-2018	Remain in Effect without Amendment
405 KAR 007:095	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment

CERTIFICATION LETTER SUMMARIES

[illegible]

CERTIFICATION LETTER SUMMARIES

405 KAR 018:070	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 018:080	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 018:090	01-06-1983	10-09-2002	07-03-2018	Remain in Effect without Amendment
405 KAR 018:100	01-06-1983	06-10-1998	07-03-2018	Remain in Effect without Amendment
405 KAR 018:110	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 018:120	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 018:130	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 018:140	01-06-1983	11-17-2009	07-03-2018	Remain in Effect without Amendment
405 KAR 018:150	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 018:160	01-06-1983	06-10-1998	07-03-2018	Remain in Effect without Amendment
405 KAR 018:170	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 018:180	01-06-1983	06-24-1992	07-03-2018	Remain in Effect without Amendment
405 KAR 018:190	01-06-1983	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 018:200	01-06-1983	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 018:210	01-06-1983	06-08-2001	07-03-2018	Remain in Effect without Amendment
405 KAR 018:220	01-06-1983	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 018:230	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 018:260	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 020:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 020:010	01-06-1983	12-17-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 020:030	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 020:040	01-06-1983	02-04-1986	07-03-2018	Remain in Effect without Amendment
405 KAR 020:050	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 020:060	01-06-1983	05-22-2000	07-03-2018	Remain in Effect without Amendment
405 KAR 020:070	01-06-1983	02-04-1986	07-03-2018	Remain in Effect without Amendment
405 KAR 020:080	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 020:090	01-05-2018	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 024:001	04-03-1992	04-03-1992	07-03-2018	Remain in Effect without Amendment
405 KAR 024:020	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 024:030	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 024:040	01-06-1983	06-28-1989	07-03-2018	Remain in Effect without Amendment
405 KAR 026:001	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:010	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:015	08-07-1984	08-07-1984	07-03-2018	Remain in Effect without Amendment
405 KAR 030:020	03-01-1982	11-02-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:025	06-25-1983	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:035	06-25-1982	06-25-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:040	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:050	06-02-1982	06-02-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:060	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:070	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:080	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:090	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:100	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:110	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:121	06-02-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:125	06-02-1982	06-02-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:130	08-02-1981	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:140	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:150	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:160	11-02-1983	11-02-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:170	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:180	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:210	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment

CERTIFICATION LETTER SUMMARIES

405 KAR 030:220	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:230	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:240	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:250	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:260	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:270	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:280	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:290	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:300	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:310	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:320	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:330	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:340	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:350	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:360	11-02-1983	11-02-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:370	10-05-1983	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:390	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:400	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:410	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
805 KAR 001:020	08-02-1978	09-25-1991	07-03-2018	Remain in Effect without Amendment
805 KAR 001:030	11-13-1975	10-23-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 001:040	04-09-1975	04-09-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 001:050	04-09-1975	09-25-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 001:060	06-11-1975	12-07-2017	06-27-2018	Remain in Effect without Amendment
805 KAR 001:080	06-11-1975	06-11-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 001:100	08-13-1975	09-03-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:110	09-01-1984	04-04-2008	06-27-2018	Remain in Effect without Amendment
805 KAR 001:120	09-25-1991	09-25-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 001:130	09-25-1991	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:140	09-25-1991	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:160	07-09-1997	07-09-1997	06-27-2018	Remain in Effect without Amendment
805 KAR 001:170	07-09-1997	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:180	11-12-1997	11-12-1997	06-27-2018	Remain in Effect without Amendment
805 KAR 001:190	03-18-2004	11-17-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 001:200	10-23-2009	10-23-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 002:010	12-11-1974	12-11-1974	06-27-2018	Remain in Effect without Amendment
805 KAR 003:010	05-14-1975	09-22-1993	06-27-2018	Remain in Effect without Amendment
805 KAR 003:020	05-14-1975	07-09-1985	06-27-2018	Remain in Effect without Amendment
805 KAR 003:030	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:040	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:060	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:070	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:080	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:090	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:100	05-14-1975	02-05-2016	06-27-2018	Remain in Effect without Amendment
805 KAR 003:110	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:120	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 004:005	09-01-1976	06-07-1993	06-27-2018	Remain in Effect without Amendment
805 KAR 004:010	06-11-1975	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:020	07-02-1975	07-02-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 004:030	07-02-1975	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:040	06-11-1975	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:050	06-11-1975	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:060	06-11-1975	06-26-1991	06-27-2018	Remain in Effect without Amendment

CERTIFICATION LETTER SUMMARIES

805 KAR 004:075	09-01-1976	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:080	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:085	09-01-1976	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 004:087	03-02-1977	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:090	09-01-1976	09-07-1983	06-27-2018	Remain in Effect without Amendment
805 KAR 004:093	12-11-1996	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 004:095	09-01-1976	05-03-1978	06-27-2018	Remain in Effect without Amendment
805 KAR 004:100	09-01-1976	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:105	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:110	09-01-1976	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:115	09-01-1976	05-03-1978	06-27-2018	Remain in Effect without Amendment
805 KAR 004:120	09-01-1976	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:125	09-01-1976	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:130	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:135	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:140	09-01-1976	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 004:145	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:150	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:155	06-26-1991	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:160	06-27-1991	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:165	06-28-1991	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 005:010	09-01-1976	10-14-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 005:030	11-09-1992	12-11-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 005:070	12-11-1996	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 007:010	10-05-1977	08-06-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 007:020	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:030	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:040	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:050	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:060	07-05-1978	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:070	02-07-1979	10-13-1999	06-27-2018	Remain in Effect without Amendment
805 KAR 007:080	12-11-1996	03-06-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 007:090	10-13-1999	10-13-1999	06-27-2018	Remain in Effect without Amendment
805 KAR 007:100	08-06-2007	08-06-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 008:010	09-16-2002	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 008:030	09-16-2002	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 008:040	09-16-2002	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 008:050	09-16-2002	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 008:060	09-16-2002	09-02-2010	06-27-2018	Remain in Effect without Amendment
805 KAR 009:010	06-08-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:020	06-09-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:030	06-10-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:050	06-11-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:060	06-12-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:070	06-13-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:080	06-14-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:090	06-15-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:100	06-16-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 011:001	08-23-2007	08-23-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 011:010	08-23-2007	08-23-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 011:020	08-23-2007	08-23-2007	06-27-2018	Remain in Effect without Amendment
907 KAR 001:260	06-28-1984	01-10-1992	07-23-2018	Remain in Effect without Amendment
907 KAR 001:680	07-26-1995	07-16-2003	07-23-2018	Remain in Effect without Amendment
907 KAR 001:720	11-14-1997	08-12-2002	07-23-2018	Remain in Effect without Amendment

CERTIFICATION LETTER SUMMARIES

907 KAR 001:755	04-21-1999	04-21-1999	07-23-2018	Remain in Effect without Amendment
907 KAR 001:780	08-18-1999	08-18-1999	07-23-2018	Remain in Effect without Amendment
907 KAR 003:100	08-16-1999	12-02-2010	07-23-2018	Remain in Effect without Amendment
907 KAR 003:125	03-06-2001	01-05-2007	07-23-2018	Remain in Effect without Amendment
907 KAR 003:225	11-01-2013	11-01-2013	07-23-2018	Remain in Effect without Amendment
907 KAR 003:230	11-01-2013	11-01-2013	07-23-2018	Remain in Effect without Amendment
907 KAR 005:005	11-05-2010	11-05-2010	07-23-2018	Remain in Effect without Amendment
907 KAR 006:005	05-06-2011	05-06-2011	07-23-2018	Remain in Effect without Amendment
907 KAR 010:815	06-06-2008	06-06-2008	07-23-2018	Remain in Effect without Amendment
907 KAR 014:005	10-21-2009	01-14-2013	07-23-2018	Remain in Effect without Amendment
920 KAR 001:060	08-18-1999	03-01-2007	07-23-2018	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
020 KAR 001:010	08-14-2018		
401 KAR 039:005	07-09-2018		
804 KAR 004:370	08-01-2018		
900 KAR 006:040	02-08-2018		
900 KAR 011:010	07-13-2018		
902 KAR 030:180	07-10-2018		
907 KAR 017:020	06-05-2018		
920 KAR 001:060	07-25-2018		
922 KAR 001:470	08-02-2018		

SUBJECT INDEX

AGING AND INDEPENDENT LIVING

Aging Services

Personal care attendant program and assistance services;
910 KAR 1:090

AGRICULTURE

Livestock Sanitation

Repeal of 302 KAR 020:210; 302 KAR 020:210
Repeal of 302 KAR 020:220; 302 KAR 020:221
Repeal of 302 KAR 020:231; 302 KAR 020:231
Repeal of 302 KAR 020:054; 302 KAR 020:541
Repeal of 302 KAR 020:561; 302 KAR 020:561
Repeal of 302 KAR 020:057; 302 KAR 020:571
Repeal of 302 KAR 020:058; 302 KAR 020:581

Purchase of Agricultural Conservation Easement Corporation

Repeal of 302 KAR 100:010; 302 KAR 100:011
Repeal of 302 KAR 100:020; 302 KAR 100:021

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

AUDITOR OF PUBLIC ACCOUNTS

Audits

Audits and fiscal courts; 045 KAR 001:050

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

Private child care placement, levels of care, and payment;
922 KAR 001:36

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

CORRECTIONS

Corrections policies and procedures; 501 KAR 006:020

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

Board of Education

Office of Chief State School Officer

District of innovation; 701 KAR 005:140

School Terms, Attendance, and Operation

Designation of agent to manage middle and high school
interscholastic athletics; 702 KAR 007:065

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:

Board of Education; KAR Title 701, 702

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*)

SUBJECT INDEX

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

Boat and motor restrictions; 301 KAR 001:015

Sale of live bait; 301 KAR 001:132

Taking of fish by nontraditional fishing methods; 301 KAR 001:410

Taking of fish by traditional fishing methods; 301 KAR 001:201

Game

Dove, wood duck, teal, and other migratory game bird hunting; 301 KAR 002:225

Hunting and Fishing

License, tag, and permit fees; 301 KAR 003:022

Wildlife

Buying and selling of inedible wildlife parts; 301 KAR 004:090

ENERGY AND ENVIRONMENT CABINET

Environmental Protection, KAR Title 401

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

ENVIRONMENTAL PROTECTION

Air Quality

Permit application forms; 401 KAR 052:050

Registration of air contaminant sources; 401 KAR 052:070

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.pdf> Definitions; 11 KAR 15:010

Scholarships for Registered Apprenticeship programs; 11 KAR 15:110

HOUSING, BUILDINGS, AND CONSTRUCTION

Boilers and Pressure Vessels

Boiler and pressure vessel licenses; 815 KAR 015:080

Building Code

The Kentucky Certified Building Inspector Program; 815 KAR 007:070

Electrical

815 KAR 035:015. Certification of electrical inspectors

815 KAR 035:020. Electrical inspections

815 KAR 035:060. Licensing of electrical contractors, master electricians, and electricians

815 KAR 035:080. Electrical code of ethics

815 KAR 035:090. Electrical Training Program Standards

815 KAR 035:101. Repeal of 815 KAR 035:100

Elevator Safety

Elevator licensing; 815 KAR 004:030.

Repeal of 815 KAR 004:040, 815 KAR 004:050, 815 KAR 004:060, and 815 KAR 004:070; 815 KAR 004:071

Fire Protection, Sprinkler Contractors, and Inspectors

Repeal of 815 KAR 022:010; 815 KAR 022:011

General Section

Continuing education; 815 KAR 002:010

Continuing education course and provider approval; 815 KAR 002:020

Fees and refunds; 815 KAR 002:040

Vehicle identification; 815 KAR 002:030

Heating, Ventilation, and Air Conditioning Licensing Requirements

Apprentice HVAC mechanic registration and certification requirements; 815 KAR 008:030

Licensing requirements for master contractors and journeyman HVAC mechanics; 815 KAR 008:010

Repeal of 815 KAR 008:020, 815 KAR 008:035, 815 KAR 008:050, 815 KAR 008:060, 815 KAR 008:090, and 815 KAR 008:095; 815 KAR 008:091

Manufactured Homes and Recreational Vehicles

Administration and enforcement of manufactured housing construction standards; 815 KAR 025:050

Alternative dispute resolution and mediation program; 815 KAR 025:100.

Definitions for 815 KAR Chapter 025; 815 KAR 025:011

Fire safety requirements in manufactured and mobile homes; 815 KAR 025:040

Licensing and certifications with manufactured homes and mobile homes; 815 KAR 025:060

Recreational vehicles; 815 KAR 025:020

Repeal of 815 KAR 025:070 and 815 KAR 025:080; 815 KAR 025:081

Site preparation, installation, and inspection requirements; 815 KAR 025:090

Plumbing

Plumbing licenses; 815 KAR 020:030

Repeal of 815 KAR 020:012, 815 KAR 020:015, 815 KAR 020:018, 815 KAR 020:032, 815 KAR 020:034, and 815 KAR 020:040; 815 KAR 020:041

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

SUBJECT INDEX

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

Corrections, KAR Title 501

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:

Occupational Safety and Health Review Commission KAR Title 803 Chapter 50

Workplace Standards; KAR Title 803 (*See Workplace Standards*)

Workers' Claims; 803 KAR Chapter 25 (*See Workers' Claims*)

Workers' Compensation Funding Commission, Title 803 Chapter 30

MEDICAID SERVICES

Commissioner's Office

Repeal of 900 KAR 001:090; 900 KAR 001:091

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

Repeal of 907 KAR 001:120 and 907 KAR 001:130; 907 KAR 001:121

MEDICAL LICENSURE

Professional standards for prescribing and dispensing controlled substances; 201 KAR 009:260

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; 201 KAR 020:49

Scope and standards of practice of advanced practice registered nurses; 201 KAR 020:057

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Hearings: procedure, disposition; 803 KAR 050:010

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

Pharmacy services in long-term care facility (LTCF); 201 KAR 002:370

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

SUBJECT INDEX

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*)

REVENUE

Income Tax; Corporations
Corporation income taxes policies and circulars; 103 KAR 016:352
Repeal of 103 KAR 016:010, 103 KAR 016: 210, 103 KAR 016: 310, and 103 KAR 016:360; 103 KAR 016:011

Income Tax; General Administration
Biodiesel tax credit; 103 KAR 015:140
Ethanol tax credit; 103 KAR 015:110
Cellulosic ethanol tax credit; 103 KAR 015:120
Repeal of 103 KAR 15:040 and 103 KAR 15:090; 103 KAR 015:041.

Income Tax; Individual
Division of income between married individuals filing separate tax returns; 103 KAR 017:100
Individual income tax – military personnel – nonresidents; 103 KAR 017:130
Individual income tax – reciprocity – nonresidents; 103 KAR 017:140
Repeal of 103 KAR 017:041; 103 KAR 017:042

Income Tax; Withholding
Kentucky economic development acts wage assessment; 103 KAR 018:180
Repeal of 103 KAR 018:190. 103 KAR 018:200, 103 KAR 018: 210, and 103 KAR 018:220; 103 KAR 018:191

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

WORKERS' COMPENSATION FUNDING

Repeal of 803 KAR 030:020; 803 KAR 030:021
Special fund assessments; 803 KAR 030:010

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*)