



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, September 14, 2018.

MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on October 9, 2018, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - [901](#)

INDEXES & OTHER INFORMATION

Regulation Review Procedure	905
ARRS Report.....	1161
Other Committee Reports	1167
Locator Index - Effective Dates.....	D - 2

KRS Index.....	D - 10
Certifications	D - 19
Technical Amendments	D - 26
Subject Index.....	D - 27

EMERGENCIES

Registry of Election Finance

032 KAR 001:030E . Election finance statement forms; campaign contributions or expenditures in excess of \$3,000.	906
--	-----

Personnel Cabinet, Classified

101 KAR 002:210E . Plan Year Handbook for the Public Employee Health Insurance Program.....	908
---	-----

Department of Revenue: Income Tax

103 KAR 018:050E . Withholding statements.	910
---	-----

Department of Fish and Wildlife Resources

301 KAR 002:169E . White-tailed deer hunting requirements.....	912
--	-----

Department of Workforce Investments: Unemployment Insurance

787 KAR 001:010E . Application for employer account; reports.....	915
---	-----

Medical Review Panels

900 KAR 011:010E . Medical review panels.	917
--	-----

Department for Medicaid Services

907 KAR 001:025E . Payment for nursing facility services provided by an intermediate care facility for individuals with an intellectual disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.	922
---	-----

Department for Community Based Services: Child Welfare

922 KAR 001:100E . Public agency adoptions.....	928
---	-----

AS AMENDED

FINANCE AND ADMINISTRATION CABINET

Executive Branch Ethics Commission

009 KAR 1:015 . Pre-administrative proceedings.	933
009 KAR 1:030 . Administrative hearings.....	933

Agricultural Experiment Station

Commercial Feeds

012 KAR 002:016 . Brand and product names.	935
012 KAR 002:018 . Guaranteed analysis.	935
012 KAR 002:021 . Expression of guarantees.	938
012 KAR 002:026 . Ingredients.	940
012 KAR 002:031 . Directions for use and precautionary statements.	940
012 KAR 002:036 . Non-protein.	941
012 KAR 002:056 . List of manufacturers.	941
012 KAR 002:066 . Suitability.	942

Council on Postsecondary Education

013 KAR 002:020 . Guidelines for admission to the state-supported postsecondary education institutions.	942
--	-----

Office of the Attorney General: Consumer Protection

040 KAR 002:345 . Visual aid glasses seller annual registration requirements.	946
--	-----

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.	947
201 KAR 012:280 . Esthetic practices restrictions.	947

Board of Nursing

201 KAR 020:490 . Licensed practical nurse infusion therapy scope of practice.....	948
--	-----

Board of Physical Therapy

201 KAR 022:170 . Physical Therapy Compact Commission.	951
---	-----

Department of Fish and Wildlife Resources

301 KAR 001:201 . Taking of fish by traditional fishing methods.	951
301 KAR 001:410 . Taking of fish by nontraditional fishing methods.	955

Energy and Environment Cabinet: Administration

400 KAR 001:040 . Administrative discovery.	958
400 KAR 001:090 . Administrative hearings practice provisions.....	963

400 KAR 001:100.	General administrative hearing practice provisions relating to matters brought under KRS Chapters 146, 149, 151, 223, 224, and 353.	970
400 KAR 001:110.	Administrative hearings relating to matters brought under KRS Chapter 350.310 through 351.375.	974
Department for Environmental Protection: Division of Water		
401 KAR 005:002.	Definitions for 401 KAR Chapter 5.	982
401 KAR 005:005.	Permits to construct, modify, or operate a facility.	989
401 KAR 005:006.	Wastewater planning requirements for regional planning agencies.	1000
401 KAR 005:015.	Releases to be reported to the division.	1002
401 KAR 005:037.	Groundwater protection plans.	1003
401 KAR 005:045.	Treatment requirements; compliance; biochemically degradable wastes.	1008
401 KAR 005:055.	Scope of applicability of the KPDES program and pretreatment requirements.	1009
401 KAR 005:075.	Cabinet review procedures for KPDES permits and permit timetables for 401 KAR Chapter 5.	1011
401 KAR 005:320.	Wastewater Laboratory Certification Program.	1012
Department of Education: Office of Instruction		
704 KAR 003:015.	Kentucky All STARS for Preschool Programs.	1016
704 KAR 003:306.	Kentucky Academic Standards for Historical and Cultural Influences of the Bible Elective Social Studies Course.	1017
Department of Insurance: Health Insurance Contracts		
806 KAR 017:300.	Provider agreement and risk-sharing agreement filing requirements.	1017
806 KAR 017:360.	Prompt payment of claims.	1020
Athlete Agent Registry		
830 KAR 002:010.	Registration and fees.	1021
830 KAR 002:020.	Complaints.	1022
Office of Inspector General: Health Services and Facilities		
902 KAR 020:008.	License procedures and fee schedule.	1022
902 KAR 020:260.	Hospital-owned pain management clinics.	1026
902 KAR 020:275.	Freestanding or mobile technology.	1031
Department for Public Health: Food and Cosmetics		
902 KAR 045:160.	Kentucky food processing, packaging, storage, and distribution operations.	1040

AMENDED AFTER COMMENTS

Board of Nursing

201 KAR 020:057.	Scope and standards of practice of advanced practice registered nurses.	1044
Kentucky Law Enforcement Council		
503 KAR 001:110.	Department of Criminal justice Training basic training graduation requirements; records.	1047

PROPOSED AMENDMENTS

Registry of Election Finance

032 KAR 001:030.	Election finance statement forms; campaign contributions or expenditures in excess of \$3,000.	1052
Auditor of Public Accounts		
045 KAR 001:050.	Audits of fiscal courts.	1053
Personnel Cabinet, Classified		
101 KAR 002:210.	Plan Year Handbook for the Public Employee Health Insurance Program.	1055

Department of Revenue: Income Tax

103 KAR 015:050.	Filing dates and extensions.	1057
103 KAR 015:060.	Estimated tax; amended declarations; short years.	1059
103 KAR 015:180.	Kentucky new markets development program tax credit.	1060
103 KAR 015:195.	Endow Kentucky Tax Credit.	1062
103 KAR 017:010.	Residence.	1066
103 KAR 017:020.	Combined individual returns.	1068
103 KAR 017:060.	Income subject to taxation; portions. ...	1069
103 KAR 018:050.	Withholding statements.	1070
103 KAR 018:110.	Voluntary withholding.	1073
103 KAR 018:120.	Security for compliance; bonds.	1074
103 KAR 018:150.	Employer's withholding reporting requirements.	1075
103 KAR 019:010.	Computation of income; estates and trusts.	1077

Board of Chiropractic Examiners

201KAR 021:015.	Code of ethical conduct and standards of practice.	1079
201 KAR 021:045.	Specialties.	1080

Department of Fish and Wildlife Resources

301 KAR 002:095.	Importation of cervid carcasses and parts.	1081
301 KAR 003:100.	Special commission permits.	1083

Department of Agriculture: Industrial Hemp

302 KAR 050:080.	Materials incorporated by reference. ...	1085
----------------------------------	--	------

Department of Workforce Investment: Unemployment Insurance

787 KAR 001:010.	Application for employer account; reports.	1087
----------------------------------	---	------

Department of Alcoholic Beverage Control

804 KAR 008:050.	Identification of vehicles used to transport alcoholic beverages.	1088
----------------------------------	--	------

Real Estate Authority: Board of Home Inspectors

815 KAR 006:001.	Definitions for 815 KAR Chapter 6.	1090
815 KAR 006:010.	Licensing requirements.	1091
815 KAR 006:030.	Standards of conduct, complaints, and discipline.	1096
815 KAR 006:040.	Education requirements and providers.	1099

Office of Inspector General Long-term Care

900 KAR 002:040.	Citations and violations; criteria and specific acts.	1103
----------------------------------	--	------

Certificate of Need

900 KAR 006:020.	Certificate of need application fee schedule.	1110
----------------------------------	--	------

Medical Review Panels

900 KAR 011:010.	Medical review panels.	1111
----------------------------------	-----------------------------	------

Department for Public Health: Health Services and Facilities

902 KAR 020:300.	Operation and services; nursing facilities.	1117
----------------------------------	--	------

Food and Cosmetics

902 KAR 045:005.	Kentucky food code.	1127
902 KAR 045:090.	Home-based processors and farmers market home-based microprocessors.	1130

Department for Medicaid Services

907 KAR 001:025.	Payment for nursing facility services provided by an intermediate care facility for individuals with an intellectual disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.	1138
----------------------------------	--	------

Department for Community Based Services: Child Welfare

922 KAR 001:010.	Independent non-relative adoptions.	1142
922 KAR 001:100.	Public agency adoptions.	1147

NEW ADMINISTRATIVE REGULATION

Department of Revenue: Income Tax

[103 KAR 016:381](#). Repeal of 103 KAR 016:380. 1152

[103 KAR 018:081](#). Repeal of 103 KAR 018:080 and
103 KAR 018:160. 1153

Department of Alcoholic Beverage Control

[804 KAR 005:021](#). Repeal of 804 KAR 005:020. 1154

Real Estate Authority: Board of Home Inspectors

[815 KAR 006:101](#). Repeal of 815 KAR 006:020, 815
KAR 006:080, 815 KAR 006:090,
and 815 KAR 006:100. 1155

Office of Inspector General Long-term Care

[900 KAR 002:021](#). Repeal of 900 KAR 002:020. 1156

Department for Public Health: Health Services and Facilities

Food and Cosmetics

[902 KAR 045:007](#). Repeal of 902 KAR 045:006 and
902 KAR 045:140. 1157

Department for Community Based Services: Child Welfare

[922 KAR 001:411](#). Repeal of 922 KAR 001:410. 1159

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

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

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.

Updated: September 24, 2018 at 12 Noon.



Administrative Regulation Review Subcommittee Tentative Meeting Agenda Tuesday, October 9, 2018 1:00 PM Annex Room 149



1. CALL TO ORDER AND ROLL CALL

2. REGULATIONS FOR COMMITTEE REVIEW

FINANCE AND ADMINISTRATION: Department of Revenue

Income Tax; General Administration

[103 KAR 015:041](#). Repeal of 103 KAR 15:040 and 103 KAR 15:090.

[103 KAR 015:110](#). Ethanol tax credit.

[103 KAR 015:120](#). Cellulosic ethanol tax credit.

[103 KAR 015:140](#). Biodiesel tax credit.

Income Tax; Corporations

[103 KAR 016:011](#). Repeal of 103 KAR 016:010, 103 KAR 016: 210, 103 KAR 016: 310, and 103 KAR 016:360.

[103 KAR 016:352](#). Corporation income taxes policies and circulars.

Income Tax; Individual

[103 KAR 017:042](#). Repeal of 103 KAR 017:041.

[103 KAR 017:100](#). Division of income between married individuals filing separate tax returns.

[103 KAR 017:130](#). Individual income tax – military personnel – nonresidents.

[103 KAR 017:140](#). Individual income tax – reciprocity – nonresidents.

Income Tax; Withholding

[103 KAR 018:180](#). Kentucky economic development acts wage assessment.

[103 KAR 018:191](#). Repeal of 103 KAR 018:190, 103 KAR 018:200, 103 KAR 018: 210, and 103 KAR 018:220.

BOARDS AND COMMISSIONS

Board of Pharmacy

[201 KAR 002:370](#). Pharmacy services in long-term care facility (LTCF).

Board of Nursing

[201 KAR 020:057](#). Scope and standards of practice of advanced practice registered nurses. (Amended After Comments)

Board of Podiatry

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

TOURISM, ARTS, AND HERITAGE: Department of Fish and Wildlife Resources

Fish

[301 KAR 001:015](#). Boat and motor restrictions.

[301 KAR 001:132](#). Sale of live bait.

Game

[301 KAR 002:225](#) & E. Dove, wood duck, teal, and other migratory game bird hunting. ("E" expires 1-16-2019)

Hunting and Fishing

[301 KAR 003:022](#). License, tag, and permit fees.

Wildlife

[301 KAR 004:090](#). Buying and selling of inedible wildlife parts.

DEPARTMENT OF AGRICULTURE: Office of the State Veterinarian

Livestock Sanitation

[302 KAR 020:210](#). Repeal of 302 KAR 020:210.

[302 KAR 020:221](#). Repeal of 302 KAR 020:220.

[302 KAR 020:231](#). Repeal of 302 KAR 020:231.

[302 KAR 020:541](#). Repeal of 302 KAR 020:054.

[302 KAR 020:561](#). Repeal of 302 KAR 020:561.

[302 KAR 020:571](#). Repeal of 302 KAR 020:057.

[302 KAR 020:581](#). Repeal of 302 KAR 020:058.

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

Purchase of Agricultural Conservation Easement Corporation

[302 KAR 100:011](#). Repeal of 302 KAR 100:010.

[302 KAR 100:021](#). Repeal of 302 KAR 100:020.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections

Office of the Secretary

[501 KAR 006:020](#) & E. Corrections policies and procedures. ("E" expires 1-15-2019)

[501 KAR 006:999](#). Corrections secured policies and procedures.

Kentucky Law Enforcement Council

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

TRANSPORTATION CABINET: Department of Vehicle Regulation

Administration

[601 KAR 002:030 & E](#). Ignition interlock. ("E" Expires 1-9-2019) (Not Amended After Comments)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education

Office of Chief State School Officer

[701 KAR 005:140](#). District of innovation.

School Terms, Attendance, and Operation

[702 KAR 007:065](#). Designation of agent to manage middle and high school interscholastic athletics.

LABOR CABINET

Department of Workers' Claims

[803 KAR 025:089 & E](#). Workers' Compensation Medical Fee Schedule for Physicians. ("E" Expires 1-7-2019) (Not Amended After Comments)

Workers' Compensation Funding Commission

[803 KAR 030:010](#). Special fund assessments.

[803 KAR 030:021](#). Repeal of 803 KAR 030:020.

Occupational Safety and Health Review Commission

[803 KAR 050:010](#). Hearings: procedure, disposition.

PUBLIC PROTECTION CABINET

Department of Insurance

Health Insurance Contracts

[806 KAR 017:570](#). Minimum standards for Medicare supplement insurance policies and certificates. (Not Amended After Comments)

Department of Housing, Buildings, and Construction

General Section

[815 KAR 002:010](#). Continuing education.

[815 KAR 002:020](#). Continuing education course and provider approval.

[815 KAR 002:030](#). Vehicle identification.

[815 KAR 002:040](#). Fees and refunds.

Building Code Enforcement

Elevator Safety

[815 KAR 004:030](#). Elevator licensing.

[815 KAR 004:071](#). Repeal of 815 KAR 004:040, 815 KAR 004:050, 815 KAR 004:060, and 815 KAR 004:070.

Kentucky Building Code

[815 KAR 007:070](#). The Kentucky Certified Building Inspector Program.

Division of Heating, Ventilation, and Air Conditioning

Heating, Ventilation, and Air Conditioning Licensing Requirements

[815 KAR 008:010](#). Licensing requirements for master contractors and journeyman HVAC mechanics.

[815 KAR 008:030](#). Apprentice HVAC mechanic registration and certification requirements.

[815 KAR 008:091](#). 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.

Division of Plumbing

Boilers and Pressure Vessels

[815 KAR 015:080](#). Boiler and pressure vessel licenses.

Plumbing

[815 KAR 020:030](#). Plumbing licenses.

[815 KAR 020:041](#). 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.

Division of Fire Prevention

Fire Protection, Sprinkler Contractors, and Inspectors

[815 KAR 022:011](#). Repeal of 815 KAR 022:010.

Building Code Enforcement

Manufactured Homes and Recreational Vehicles

[815 KAR 025:001](#). Definitions for 815 KAR Chapter 025.

[815 KAR 025:020](#). Recreational vehicles.

[815 KAR 025:040](#). Fire safety requirements in manufactured and mobile homes.

[815 KAR 025:050](#). Administration and enforcement of manufactured housing construction standards.

[815 KAR 025:060](#). Licensing and certifications with manufactured homes and mobile homes.

[815 KAR 025:081](#). Repeal of 815 KAR 025:070 and 815 KAR 025:080.

[815 KAR 025:090](#). Site preparation, installation, and inspection requirements.

[815 KAR 025:100](#). Alternative dispute resolution and mediation program.

Electrical Division

[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.

Department of 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)

CABINET FOR HEALTH AND FAMILY SERVICES

Commissioner's Office

Administration

[900 KAR 001:091](#). Repeal of 900 KAR 001:090.

Office of Inspector General

[906 KAR 001:190](#). Kentucky National Background Check Program (NBCP). (Not Amended After Comments)

Department for Medicaid Services

[907 KAR 001:121](#). Repeal of 907 KAR 001:120 and 907 KAR 001:130.

Department of 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. (Not Amended After Comments)

Division of Protection and Permanency: Child Welfare

[922 KAR 001:360 & E](#). Private child care placement, levels of care, and payment. ("E" expires 1-28-2019)

3. REGULATIONS REMOVED FROM OCTOBER'S AGENDA

STATE BOARD OF ELECTIONS: Forms and Procedures

[031 KAR 004:100 & E](#). Evaluation of precinct election officers. ("E" expires 12-18-2018) (Deferred from September)

[031 KAR 004:120 & E](#). Additional and emergency precinct officers. ("E" expires 12-18-2018) (Comments Received; SOC ext. due 10-15-2018)

AUDITOR OF PUBLIC ACCOUNTS: Audits

[045 KAR 001:050](#). Audits and fiscal courts. (Withdrawn by agency)

BOARDS AND COMMISSIONS: Board of Medical Licensure

[201 KAR 009:260](#). Professional standards for prescribing and dispensing controlled substances.

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division for Air Quality: Permits, Registrations, and Prohibitory Rules

[401 KAR 052:050](#). Permit application forms. (Comments Received; SOC ext. due 11-15-2018)

[401 KAR 052:070](#). Registration of air contaminant sources. (Comments Received; SOC ext. due 11-15-2018)

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) (Comments Received; SOC ext. due 10-15-2018)

[895 KAR 001:010 & E](#). Eligibility for Kentucky HEALTH program. ("E" withdrawn by agency, 7-2-2018) (Comments Received; SOC ext. due 10-15-2018)

[895 KAR 001:015 & E](#). Premium payments within the Kentucky HEALTH programs. ("E" withdrawn by agency, 7-2-2018) (Comments Received; SOC ext. due 10-15-2018)

[895 KAR 001:020 & E](#). PATH requirement for the Kentucky HEALTH program. ("E" withdrawn by agency, 7-2-2018) (Comments Received; SOC ext. due 10-15-2018)

[895 KAR 001:025 & E](#). Beneficiary premiums. ("E" withdrawn by agency, 7-2-2018) (Comments Received; SOC ext. due 10-15-2018)

[895 KAR 001:030 & E](#). Establishment and use of the MyRewards program. ("E" withdrawn by agency, 7-2-2018) (Comments Received; SOC ext. due 10-15-2018)

[895 KAR 001:035 & E](#). Covered services within the Kentucky HEALTH program. ("E" withdrawn by agency, 7-2-2018) (Comments Received; SOC ext. due 10-15-2018)

[895 KAR 001:040 & E](#). Deductible accounts within the Kentucky HEALTH program. ("E" withdrawn by agency, 7-2-2018) (Comments Received; SOC ext. due 10-15-2018)

[895 KAR 001:045 & E](#). Accommodation, modifications, and appeals for beneficiaries participating in the Kentucky HEALTH program. ("E" withdrawn by agency, 7-2-2018) (Comments Received; SOC ext. due 10-15-2018)

[895 KAR 001:050 & E](#). Enrollment and reimbursement for providers in the Kentucky HEALTH program. ("E" withdrawn by agency, 7-2-2018) (Comments Received; SOC ext. due 10-15-2018)

[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) (Comments Received; SOC ext. due 10-15-2018)

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 ext.) (Comments Received; SOC ext. due 10-15-2018)

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

[902 KAR 100:018](#). Repeal of 902 KAR 100:017, 902 KAR 100:060, and 902 KAR 100:090. (Deferred from September)

[902 KAR 100:022](#). Licensing requirements for land disposal of radioactive waste. (Comments Received; SOC ext. due 10-15-2018)

[902 KAR 100:052](#). Specific domestic licenses of broad scope for by product material. (Deferred from September)

[902 KAR 100:070](#). Packaging and transportation of radioactive material. (Comments Received; SOC ext. due 10-15-2018)

[902 KAR 100:072](#). Medical use of byproduct material. (Comments Received; SOC ext. due 10-15-2018)

[902 KAR 100:100](#). Licenses for industrial radiography and radiation safety requirements for industrial radiographic operations. (Comments Received; SOC ext. due 10-15-2018)

[902 KAR 100:142](#). Licenses and radiation safety requirements for well logging. (Comments Received; SOC ext. due 10-15-2018)

Department for Medicaid Services

[907 KAR 001:121](#). Repeal of 907 KAR 001:120 and 907 KAR 001:130.

[907 KAR 001:642 & E](#). Adult group 07-2018 benefit plan and copayments. ("E" withdrawn by agency, 7-27-2018) (Comments Received; SOC ext. due 10-15-2018)(Withdrawn by Agency; 9-21-2018)

Department of Community Based Services: Division of Protection and Permanency: Child Welfare

[922 KAR 001:560 & E](#). Putative father registry and operating procedures. ("E" expires 2-11-2019 ext.) (Comments Received; SOC ext., due 10-15-2018)

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
32 KAR 1:030E

This emergency administrative regulation is being promulgated to revise and update reporting forms in response to changes to KRS Chapter 121 as a result of 2017 Senate Bill 75 (Acts Chapter 122). The Kentucky Registry of Election Finance ("Registry") is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under KRS 121.120(1)(g) and to prescribe official forms for the making of required reports under KRS 121.120(4)(a). Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety or welfare of Kentucky. An ordinary administrative regulation would not be sufficient because the current Election Finance Statement for candidates (KREF 006 Revised 10/2010) is inconsistent with the changes enacted in 2017 Senate Bill 75. Specifically, the current form KREF 006 does not provide for a report to be filed by candidates, slates of candidates, campaign committees, and political issues committees, on the sixtieth (60th) day preceding a regular (general) election, as now provided by KRS 121.180(3)(b)1. The revised KREF 006 must be made available as soon as possible to ensure a reporting form is in place that recognizes the 60 Day Pre Election Finance Statement in compliance with the law before the 2018 general election campaign finance reporting period. The revised KREF 006 also recognizes that a report is due thirty (30) days prior to the general election. Under prior law, the report was due thirty-two (32) days prior to the primary and general election. 2017 Senate Bill 75 necessitated changes to the current Election Finance Statement forms for executive committees and caucus campaign committees, as reports for these entities are now due on a semi-annual basis instead of thirty (30) days after the primary and general elections (KREF 006/ EC). The law contemplates reports to be filed by contributing organizations on the same reporting schedule as permanent committees. Therefore, contributing organizations have been added to the permanent committee election finance statement form (KREF 006/ PAC CO). Unauthorized Campaign Committees, which may receive corporate contributions and file on the same schedule as candidate-authorized campaign committees, have been placed on a new form with Political Issues Committees (KREF 006/UCC-IC), as these committees are most similar in their operations and reporting requirements. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, as the filing requirements under KRS 121.180 are ongoing.

MATT G. BEVIN, Governor
CRAIG C. DILGER, Registry Chairman

DEPARTMENT OF STATE
Kentucky Registry of Election Finance
(Emergency Amendment)32 KAR 1:030E. Election finance statement forms;
campaign contributions or expenditures in excess of \$3,000.

RELATES TO: KRS 121.180[(4)]

STATUTORY AUTHORITY: KRS 121.120(1)(g), (4)

EFFECTIVE: August 31, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants[authorizes] the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. This administrative regulation specifies the forms to be used by candidates, slates of candidates, contributing organizations, and committees and incorporates those forms by reference. KRS 121.120(4) requires the Registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. [This administrative regulation specifies the forms to be used by candidates, slates of candidates, and committees, and incorporates those forms by reference.]

Section 1. The following candidates, slates of candidates, contributing organizations, and committees shall file the reports required by KRS 121.180 on the forms incorporated by reference in this administrative regulation:

(1) Candidate campaign funds, gubernatorial slate campaign funds, political issues committees, and candidate-authorized campaign committees who register an intent to raise or spend more than \$3,000 or actually receive[receiving] contributions or make[making] expenditures in excess of \$3,000; and

(2) All permanent committees,[political issues committees,] caucus campaign committees, inaugural committees, contributing organizations, unauthorized campaign committees, and political party executive committees regardless of the amount of contributions or expenditures.

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

(a) "Candidate/ Slate of Candidates[Election Finance Statement]", reference KREF 006, revised 08/2018[10/2010];

(b) "Executive Committee/ Caucus Campaign Committee[County Executive and District Committee] Election Finance Statement", reference KREF 006/EC[KREF 006/E-C & D], revised 08/2018[10/2010];

(c) "Unauthorized Campaign Committee/ Political Issues Committee Election Finance Statement", reference KREF 006/UCC-IC, revised 08/2018;[State Executive Committee Election Finance Statement], reference KREF 006/E-S, revised 10/2010;

(d) "Inaugural Committee Election Finance Statement", reference KREF 006/I, revised 08/2018[10/2010]; and

(e) "Permanent Committee (PAC)/ Contributing Organization Election Finance Statement", reference KREF 006/PAC-CO, revised 08/2018,[10/2010]; and

(f) "Caucus Campaign Committee Election Finance Statement", reference KREF 006/C, revised 10/2010.

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

CRAIG C. DILGER, Chairman

APPROVED BY AGENCY: August 22, 2018

FILED WITH LRC: September 31, 2018 at 3 p.m.

CONTACT PERSON: Emily Dennis, General Counsel,
Kentucky Registry of Election Finance, 140 Walnut Street,
Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email Emily.Dennis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Dennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends existing forms for the filing of election finance statements by candidates, slates of candidates, contributing organizations, and committees, which includes the following specific committee types: campaign committees (both candidate- authorized and unauthorized), executive committees (county, district, and state), permanent committees, caucus campaign committees, political issues committees, and inaugural committees.

(b) The necessity of this administrative regulation: KRS 121.120(1)(g) and KRS 121.120(4) require the Registry to promulgate this administrative regulation. Changes to existing forms for the filing of Election Finance Statements were necessitated by the passage of 2017 Senate Bill 75. Specifically, 2017 Senate Bill 75 amended KRS 121.180 to provide for semi-annual campaign finance reports to be filed by executive committees and caucus campaign committees (which were previously required thirty days after each primary and regular election). 2017 Senate Bill 75 changed the 32 day pre-election campaign finance filing requirement to a 30 day pre-election filing requirement, and added an additional 60 day pre-election finance statement filing requirement for the regular election

for candidates, slates of candidates, campaign committees (both candidate-authorized and unauthorized, and political issues committees. Contributing organizations are required by law to report campaign finances on a quarterly basis in the same manner as permanent committees (PACs); therefore, contributing organizations have been added to the PAC reporting form. Unauthorized campaign committees and political issues committees have been grouped on a single reporting form and will no longer report on the election finance statement reserved for candidates and slates of candidates, as these particular types of committees, unlike candidates and slates, may receive corporate contributions. The Registry used this opportunity to update all Election Finance Statement reporting forms, combine forms where possible, and standardize the format for the campaign finance reporting forms.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g), as it promulgates an administrative regulation to carry out the provisions of Chapter 121, and KRS 121.120(4), as it prescribes a form for the making of campaign finance reports.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of the reporting requirements under KRS 121.180, as it brings the Registry's reporting forms into compliance with the provisions of 2017 Senate Bill 75.

(2) If 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 latest version of official reporting forms for the filing of election finance statements by regulated individuals and entities in compliance with 2017 Senate Bill 75.

(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the Registry to adopt official forms and, more specifically, to develop prescribed forms for the making of required reports. Amendment to the administrative regulation is necessary to bring the Registry's forms into compliance with 2017 Senate Bill 75, specifically with reference to new reporting deadlines and additional reporting requirements for candidates in the regular election cycle.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and KRS 121.120(4) by prescribing forms for the making of reports.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the Election Finance Statement reporting forms to be filed by regulated entities and individuals into compliance with changes in KRS 121.180 due to the passage of 2017 Senate Bill 75 and will further assist in the effective administration of the reporting requirements specified in KRS 121.180 by standardizing the reporting forms for regulated individuals and entities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All candidates, slates of candidates, contributing organizations, and committees required to file reports with the Registry will be affected by this administrative regulation. To the extent the public, media, and other interest groups depend on the Registry's disclosure function, they will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will be required of the regulated entities. The Registry will provide the new forms, both in hard copy format and electronically, to the regulated entities. All training materials will be updated to reflect the new forms.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): No cost is anticipated to be incurred by regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The change to the reporting forms will eliminate confusion in the regulated community due to different reporting deadlines and new deadlines imposed as a result of 2017 Senate Bill 75.

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

(a) Initially: Initial costs to implement the administrative regulation are estimated to be no more than \$10,000.

(b) On a continuing basis: Ordinary printing costs are anticipated in the Registry's budget.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all candidates, slates of candidates, contributing organizations, and committees required to file reports with the Registry.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Commonwealth of Kentucky - General Government – Registry of Election Finance

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.120(1)(g) and (4), KRS 121.180 (1)-(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? No revenue will be generated as a result of 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? No revenue will be generated in subsequent years as a result of this administrative regulation.

(c) How much will it cost to administer this program for the first year? Changes to the Registry's "Election Finance Statement" forms necessitated by 2017 Senate Bill 75 will result in an additional cost of \$10,000 to the Registry of Election Finance in year one, for the printing of revised forms and the necessary programming updates to the agency's electronic filing system, to display campaign finance data electronically in the same format as the revised reporting forms.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated in subsequent years, as these costs constitute ongoing administrative costs consistent with the agency's function.

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

Revenues (+/-): None.

Expenditures (+/-): + \$10,000 in year one/ no additional costs in subsequent years.

Other Explanation: N/A

**STATEMENT OF EMERGENCY
101 KAR 2:210E**

This emergency administrative regulation incorporates by reference the 2019 plan year handbook for the self-insured plan offered through the Public Employee Health Insurance Program, commonly known as the Kentucky Employees' Health Plan. KRS 18A.2254(1) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates the plan year handbook by reference and to file the administrative regulation by September 15 of each year. This emergency administrative regulation is necessary to meet the filing deadline established by state law at KRS 18A.2254(1)(a)3. KRS 18A.2254(1)(a) requires the secretary of the Personnel Cabinet to annually promulgate an administrative regulation to incorporate by reference the plan year handbook. The handbook must contain, at a minimum, the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan. The 2019 plan year handbook, or Benefits Selection Guide, contains the required and necessary information for public employees to make health insurance coverage decisions during open enrollment in October 2018. This administrative regulation incorporates by reference the 2019 Benefits Selection Guide that will be distributed by the Personnel Cabinet's Department of Employee Insurance to public employees covered under the self-insured plan. An ordinary administrative regulation is not sufficient due to the statutory filing deadlines and handbook distribution requirements. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation. This emergency administrative regulation will be in effect for part of the current 2018 plan year. The existing language in the Benefits Selection Guide for the 2018 plan year should remain until such time as the ordinary administrative regulation incorporating the Benefits Selection Guide for plan year 2019 replaces this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
THOMAS B. STEPHENS, Secretary

**PERSONNEL CABINET
Office of the Secretary
(Emergency Amendment)**

101 KAR 2:210E. 2018 and 2019 Plan Year Handbooks [Handbook] for the Public Employee Health Insurance Program.

RELATES TO: KRS 18A.030, 18A.225, 18A.2254
STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)
EFFECTIVE: September 14, 2018
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2018 and 2019 Plan Years[Year] as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2018 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

Section 2. (1) The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2019 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

(2) The 2019 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide shall govern the health plan benefits for public employees covered under the self-insured plan beginning January 1, 2019.

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

(a) "2018 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2018 edition; and

(b) "2019 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2019 edition[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, 8:00 a.m. to 4:30 p.m.

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: September 12, 2018

FILED WITH LRC: September 14, 2018 at 9 a.m.

CONTACT PERSON: Sharron Burton, Deputy Executive Director, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email Sharron.Burton@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sharron Burton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2019 plan year handbook containing information about the self-insured health insurance plans offered through the Public Employee Health Insurance Program. The handbook, commonly referred to as the Benefits Selection Guide, is distributed to all plan holders participating in the self-insured program. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees through the self-insured program in 2019.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates by reference the 2019 plan year handbook that will be distributed to the public employees covered by the Public Employee Health Insurance Program. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 18A.2254(1), the statute that establishes the self-insured plan and mandates the promulgation of the administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2019 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

(2) If 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 an amendment. The existing administrative

regulation incorporates by reference the 2018 plan year handbook which constitutes a compilation of the premium rates and contributions, benefit options, eligibility rules, and enrollment information for participants of the Public Employee Health Insurance Program for plan year 2018. The amendment adds and incorporates by reference the 2019 plan year handbook which contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees for plan year 2019.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give notice regarding the premiums, employee contributions, employer contributions, benefits, co-pays, coinsurance, and deductibles for each plan available to public employees under the Public Employee Health Insurance Program for plan year 2019. This amendment is also necessary to comply with the statutory mandate in KRS 18A.2254 to annually update the regulation incorporating the plan year handbook.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2019 plan year handbook by reference in accordance with KRS 18A.2254.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the requirements of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2019 plan year handbook by reference in accordance with KRS 18A.2254.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employees of state and select county and local government entities, including employees of the local school boards and districts. This administrative regulation also affects certain retirees as specified by KRS 18A.225. More specifically, and as defined by KRS 18A.225(1)(a), this administrative regulation affects approximately 182,783 employees and retirees eligible to participate in the Public Employee Health Insurance Program. In total, this administrative regulation affects 303,207 members in the self-insured plan including employees and retirees, qualifying beneficiaries, and dependents.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Affected entities will not be required to take any additional action to comply with this administrative regulation that incorporates the 2019 plan year handbook. The 2019 Benefits Selection Guide will provide information to the public employees covered under the Public Employee Health Insurance Program about the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for the 2019 plan year.

(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 provides employer and employee premium contribution information for health plans available under the Public Employee Health Insurance Program for plan year 2019. There is no direct cost impact to employers participating in the Public Employee Health Insurance Program as a result of incorporating the 2019 plan year handbook into the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): For plan year 2019, participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program will have access to comprehensive health insurance benefits under all plans offered through the self-insured program. For plan year 2019, health coverage will be available to employees with low to no premium increases when compared to the 2018 plan year. Only the employee contributions for the LivingWell CDHP couple and family tiers will increase \$8.00 and \$10.00, respectively. All other premiums remain the same as the 2018 plan year, with no employer contribution increases.

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

(a) Initially: Costs of implementing this administrative regulation initially are believed to be minimal.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust Fund.

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

(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 or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all employees of state and select county and local government entities, including employees of the local school boards and districts that participate in the Public Employee Health Insurance Program. As employers, this administrative regulation will affect state and select county and local government entities as well as local school boards and districts. This administrative regulation also affects certain retirees eligible to participate in the Program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287; 26 U.S.C. 21, 105, 106, 125, 129, 152, and 213 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1 through 7; the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010); and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, school boards 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, school boards or school districts) for the first year? The administrative regulation will not generate any 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? The administrative regulation will not generate any

revenues.

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this program on a continuing basis are believed to be consistent with previous plan years. By law, an amended administrative regulation will be promulgated in 2018 and each subsequent plan year.

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

Revenues (+/-):

Expenditures (+/-)

Other:

STATEMENT OF EMERGENCY 103 KAR 18:050E

This emergency administrative regulation is being promulgated in order to provide Kentucky taxpayers the guidance necessary to comply with Kentucky tax laws. This administrative regulation must be filed as soon as possible in order to comply with the provisions of HB 487 of the 2018 General Assembly, which reduced the number of withholding statements that an employer must submit electronically to the Department of Revenue from 100 to 25. As a result, the department must now implement a new procedure for filing this information, both electronically and manually, to meet the requirements of HB 487. An ordinary administrative regulation is not sufficient at this time because a new form and instructions for filing must be provided to employers and software vendors in a sufficient amount of time before the reporting period begins on January 1, 2019. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
DANIEL P. BORK, Commissioner

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Emergency Amendment)

103 KAR 18:050E. Withholding statements.

RELATES TO: KRS 131.250, 141.330, 141.335

STATUTORY AUTHORITY: KRS 131.130, 131.250, 141.335

EFFECTIVE: September 10, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Kentucky Department of Revenue[Cabinet] to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. KRS 141.335(2) authorizes the department[requires the cabinet] to establish the form and required contents of the withholding statement to be filed pursuant to KRS 141.335(1). KRS 131.250 authorizes the department to establish requirements for electronic filing. This administrative regulation establishes those requirements.

Section 1. Acceptable Forms. Employers shall provide to their employees[The cabinet shall accept] the following forms as withholding statements to report Kentucky withholding, provided that the forms contain the required information listed in subsection (5) of this section:

(1)[Revenue Form K-2, "Withholding Statement"; or

(2)] Federal Form W-2, "Wage and Tax Statement";[.]

(2) Federal Form W-2G, Certain Gambling Winnings;

(3) Federal Form 1099 series; or

(4) Facsimiles of the forms listed in subsections (1), (2), or (3) that are acceptable to the Internal Revenue Service.

(5) Employee statements listed in subsections (1) through (4) shall contain:

(a) The state name;

(b) The employer's Kentucky withholding account number;

(c) The Kentucky taxable wages; and

(d) The Kentucky tax withheld.

Section 2. General. Employers shall furnish to each employee, by January 31 following the close of the calendar year, the designated copies of the withholding statement if:

(1) Tax has been withheld from wages; or

(2) Tax would have been withheld if the employee had[~~claimed no more than one (1) withholding exemption or had~~] not claimed exemption from withholding. [Section 3. Contents. (1) The withholding statement shall contain the following information:

(a) Employer's and employee's name and address;

(b) Employer's Kentucky withholding account number;

(c) Employee's Social Security number;

(d) Total wages paid to employee;

(e) Federal income tax withheld;

(f) Kentucky income tax withheld; and

(g) Federal employer's identification number (FEIN).

~~(2)(a) Withholding statements prepared incorrectly, illegibly, or on unacceptable forms shall be returned to the employer for reissuance.~~

~~(b) Commercially-printed forms shall:~~

~~1. Contain a designated space for state name, employer's Kentucky withholding account number, state wages, and state tax withheld; and~~

~~2. Conform substantially in content and size with the acceptable forms.]~~

Section 3[4]. Interrupted and Terminated Employment. (1)(a) If employment ends before the close of the calendar year, the employer may furnish copies to the employee at any time after employment ends, but no later than January 31 of the following year.

(b) If an employee requests[asks for] the withholding statement, copies shall be provided to the employee within thirty (30) days of the request or within thirty (30) days of the final wage payment, whichever is later.

(2)(a) If the employer terminates its business, the withholding statement shall be provided to its employees for the calendar year of termination within thirty (30) days of termination.

(b) The employer shall submit its final return and withholding statements to the department[cabinet] within the same thirty (30) day period.

Section 4[5]. Incorrect and Duplicate Withholding Statements.

(1) If it is necessary to correct a withholding statement after it has been issued to an employee, the federal Form W-2C or a new withholding statement shall be clearly marked "Corrected[by Employer]", and a copy submitted to the department[cabinet] within thirty (30) days of issuance.

(2) If the withholding statement is lost or destroyed, the employer shall prepare and issue a duplicate copy to the employee that is clearly marked "Duplicate" within thirty (30) days of the request by the employee[, the employer shall prepare and issue duplicate copies to the employee that are clearly marked "Duplicate"].

Section 5[6]. Department[Cabinet] Copy. (1) Employers shall provide withholding statement information to the department in an acceptable format by January 31 following the close of the calendar year[Designated copies of withholding statements issued shall be submitted to the cabinet by each employer with Revenue Form 42A806, Transmitter Report for Filing Kentucky Wage Statement].

(2) An employer who issues twenty-six (26)[400] or more withholding statements annually shall utilize an acceptable form of electronic filing[magnetic media filing].

(3) An employer who issues less than twenty-six (26)[400] withholding statements annually shall file either Form K-5,

"Kentucky Employer's Report of Withholding Tax Statements," Revenue Form 42A805 with the department or utilize another acceptable form of electronic filing~~[may utilize magnetic media filing]~~.

(4)(a) The ~~department~~~~[cabinet]~~ shall provide to employers by October 31 of each year information about the types of electronic filing methods~~[magnetic media that shall be]~~ acceptable to the ~~department~~~~[cabinet]~~.

(b) Acceptable ~~electronic filing methods~~~~[magnetic media]~~ shall include all of the acceptable methods utilized by the Social Security Administration and the Internal Revenue Service that can be supported by the ~~department's processes~~~~[cabinet's equipment]~~.

(c) Withholding statement information submitted~~[transmitted] electronically to the department via a physical media device (e.g., CD, USB, external hard drive, etc.) shall be accompanied by Form 42A806 "Transmitter Report" upon submission.~~

(5) If an employer is required to utilize an electronic method ~~of~~~~[magnetic media]~~ filing, it shall file the withholding statements in an acceptable electronic format~~[on magnetic media]~~ unless the ~~department~~~~[cabinet]~~ grants a written waiver of the requirement.

Section 6[7]. Penalties. (1) Failure to comply with the provisions of this administrative regulation may result in the issuance of penalties in accordance with KRS 131.180 unless reasonable cause is provided.

(2) Examples. One (1) or more of the penalties may apply if the employer:

(a) Fails to file timely;

(b) Fails to include all information required to be shown on the withholding statement;

(c) Includes incorrect or illegible information on the withholding statement and fails to file corrections;

(d) Files on paper if required to file electronically~~[on magnetic media]~~; or

(e) Fails to provide timely or correct payee statement to employees.

Section 7[8]. The forms and materials prescribed herein may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, at any Kentucky Department of Revenue Taxpayer Service Center during operating hours, and on the department's website at <http://revenue.ky.gov>.~~[Extension. Upon written application to the cabinet, the cabinet may grant employers an extension of time to furnish employees with the designated copy of the withholding statements. The cabinet shall not grant an extension that exceeds thirty (30) days.]~~

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

(a) ~~Revenue Form K-2, "Withholding Statement", 2002; and~~

(b) ~~Revenue Form 42A806, "Transmitter Report for Filing Kentucky Wage Statements", September, 2002.~~

(2) ~~This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, or at any Kentucky Revenue Cabinet Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 10, 2018

FILED WITH LRC: September 10, 2018 at 4 p.m.

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) 564-3874, 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 18:050 to remove

outdated references to the former Revenue "Cabinet"; to remove "magnetic media" as an outdated description for filing forms and statements; and provides new guidance regarding the number of withholding statements that an employer must file electronically per HB 487/2018GA.

(b) The necessity of this administrative regulation: This amendment is necessary to conform to revisions made to authorizing statutes and update outdated guidance so taxpayers have the most up to date information to understand the requirements of the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It explains new rules and requirements outlined in recent statutory changes and removes outdated references and terms that have been removed since this regulation was last promulgated in 2003.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the requirements for filing withholding statements by employers in Kentucky. These changes will replace references to the former Revenue Cabinet with "department"; remove outdated references to "magnetic media"; and change the limit for electronically filing withholding statements for employers with twenty-six (26) or more employees to comply with HB 487/2018GA 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: See 1(d).

(b) The necessity of the amendment to this administrative regulation: To conform to statutory revisions and update outdated language.

(c) How the amendment conforms to the content of the authorizing statutes: By removing outdated references to the former Revenue Cabinet; and updating language to conform to recent statutory changes as described in (1) above.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the department in receiving and processing withholding statements in an efficient and timely manner, saving time and money for employers and the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any business, organization or entity that employs citizens of the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Any entity currently submitting more than 25 withholding statements in paper form will be required to file them electronically. Most employers (87%) currently utilize electronic filing via either electronic filing software or an accounting firm.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The department is developing a free portal for employers to electronically file withholding statements. So there will be no cost to employers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Time and cost savings in submitting withholding statements electronically to the department versus in paper form.

(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. Costs to upgrade department systems to handle Form K-5 are not required by 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: 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 employers required to file withholding statements with the department must adhere to the same guidelines set forth in 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.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130, 131.250, and 141.335.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 affects the number of electronically filed withholding statements the department receives verses a paper copy.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

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

(c) How much will it cost to administer this program for the first year? No additional 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:

STATEMENT OF EMERGENCY

301 KAR 2:169E

This emergency administrative regulation establishes deer hunting seasons and zones, legal methods of taking, and checking and recording requirements for deer hunting. Due to a severe outbreak of Epizootic Hemorrhagic Disease in eastern Kentucky last summer and fall and the subsequent decrease in deer numbers, proposed decreases in the bag limit for Zones 3 and 4 are necessary to protect this valuable component of Kentucky's environment. An ordinary administrative regulation will not suffice because it will not be in place by the beginning of deer season. Thus, an emergency administrative regulation is necessary pursuant to KRS 13A.190(1)(a)4. The Department of Fish and Wildlife Resources is extremely dependent upon the sale of hunting licenses and deer permits in order to operate. Deer hunting also contributes hundreds of millions to the state's economy. If administrative regulations are uncertain for the opening of deer season, then license and permit sales and the state's economy will be negatively impacted. An ordinary administrative regulation will

not suffice because it will not be in place by the beginning of deer season. Thus, an emergency administrative regulation is necessary pursuant to KRS 13A.190(1)(a)2. 301 KAR 2:169E will not be replaced by 301 KAR 2:169.

MATTHEW G. BEVIN, Governor

FRANK JEMLEY III, Acting Commissioner

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (New Emergency Administrative Regulation)

301 KAR 2:169E. White-tailed deer hunting 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)

EFFECTIVE: August 24, 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 150.170 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. This administrative regulation establishes deer hunting seasons and zones, legal methods of taking, and checking and recording requirements for deer hunting.

Section 1. Definitions. (1) "Additional deer permit" means a permit that allows the holder to take up to two (2) additional deer beyond those allowed by the statewide permit in the following combinations:

(a) One (1) antlered deer and one (1) antlerless deer; or

(b) Two (2) antlerless deer.

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

(3) "Air gun" means a pneumatic gun fired by a charge of compressed air.

(4) "Antlered deer" means a male or female deer, excluding male fawns, with a visible antler protruding above the hairline.

(5) "Antlerless deer" means a male or female deer with no visible antler protruding above the hairline.

(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) "Arrow" means the projectile fired from a bow or crossbow.

(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) "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) "Deer" means a member of the species *Odocoileus virginianus*.

(11) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(12) "License year" means the period from March 1 through the 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.

(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) antlerless deer; or

(b) No more than four (4) antlerless deer.

(19) "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) "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 KRS 150.170, a person shall carry proof of purchase of a valid Kentucky hunting license and valid deer permit while hunting.

(2) 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 sixteen (16) consecutive days.

(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 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) Shall comply with this administrative regulation and all other statewide deer hunting requirements.

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, Boyd, Boyle, Breckinridge, Butler, Carter, Casey, Clark, Daviess, Edmonson, Fayette, Fleming, Grayson, Greenup, Hancock, Jessamine, Lawrence, Lewis, Lincoln, Logan, Madison, Marion, Meade, Metcalf, Monroe, Montgomery, Nicholas, Ohio, Taylor, and Warren Counties.

(3) Zone 3 shall consist of Cumberland, Elliott, Estill, Garrard, Johnson, Laurel, Morgan, Powell, Pulaski, Rowan, Simpson,

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

Wayne, and Wolfe Counties.

(4) Zone 4 shall consist of Bell, Breathitt, Clay, Clinton, Floyd, Harlan, Jackson, Knott, Knox, Lee, Leslie, Letcher, Magoffin, Martin, McCreary, Menifee, Owsley, Perry, Pike, Rockcastle, Russell, 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) A person may take an unlimited number of antlerless deer in Zone 1 if the person has purchased the appropriate additional deer permits.

(3) 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) In Zone 3, a person may take up to a total of four (4) deer, except that a firearm or air gun shall not be used to take a total of more than one (1) antlerless deer.

(6) 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.

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.

FRANK JEMLEY III, Acting Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: August 22, 2018

FILED WITH LRC: August 24, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 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 October 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

(a) What this administrative regulation does: This administrative regulation establishes deer hunting seasons and zones, methods of take, bag limits, harvest recording procedures, and checking requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly manage Kentucky's deer population while providing reasonable and ample recreational opportunity for deer hunters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.170 exempts certain people from hunting license and permit requirements. KRS 150.175 authorizes the kinds of licenses and permits that are issued by the department. KRS 150.390 prohibits the taking of deer in any manner contrary to any provisions of Chapter 150 and Title 301 KAR.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the seasons, zones, limits, and other requirements authorized by the statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the process for a special deer hunt for novice hunters that allows modern guns to be used outside of the modern gun deer season, modifies the antlerless deer harvest opportunities statewide, modifies many of the county zone designations, modifies the number of deer that are allowed to be taken in the harvest zones, expands hunting opportunity, and prohibits the construction and deployment of antler traps.

(b) The necessity of the amendment to this administrative regulation: See 1 (b) above.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: For the 2017-18 deer season, there were approximately 257,898 resident and 27,435 non-resident Kentucky deer hunters.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Deer hunters will be required to comply with the change in county zones and the modification of the bag limits in those zones. In addition, antler traps will now be prohibited.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not change any costs to the entities identified in question 3.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will benefit hunters by allowing them to harvest more deer under the current permit system, allow for additional days of deer hunting, and ultimately provide better consistency on harvest strategies across the state. It also benefits novice hunters who may be interested in participating in a department-sponsored special deer hunt.

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

(a) Initially: There will not be an additional cost to the agency to implement this administrative regulation initially.

(b) On a continuing basis: There will not be an additional cost to the agency on a continuing basis.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because all deer hunters are subject to the same seasons, bag limits, zone requirements, and equipment restrictions.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), KRS 150.170, KRS 150.175, and KRS 150.390(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Direct revenue from the sale of deer permits for the first year is estimated to be between \$3.5 and \$4.0 million based on recent years' sales.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue during subsequent years is dependent on the number of permits sold, which has been stable to slightly decreasing in recent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 787 KAR 1:010E

KRS 151B.020(6) requires the secretary of the Education and Workforce Development Cabinet to promulgate administrative regulations that are necessary to implement programs established by federal law, or to qualify for the receipt of federal funds, and that are necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This emergency amendment amends the UI-3, "Employer's Quarterly Unemployment Wage and Tax Report" and the UI-3.2, "Account Status Information." This action must be taken on an emergency basis in accordance with HB 487 passed during the 2018 Regular Session of the General Assembly. KRS 341.243 requires, beginning October 1, 2018, rates established under KRS 341.270 and 341.272 to be adjusted by subtracting seventy-five thousandths percent (0.075%) from each rate if the unemployment insurance trust fund balance exceeds the balance of the trust fund as of December 31, 2017. That seventy-five thousandths percent (0.075%) will be deposited into the service capacity upgrade fund.

Additionally, the amount deposited into the service capacity upgrade fund is not reportable to the IRS on the employers' 940 Federal Unemployment Tax Return; therefore, the UI-3 must be amended to enable employers to comply with federal tax laws. A new ordinary administrative regulation is not sufficient to meet the deadlines established by HB 487 passed during the 2018 Regular Session of the General Assembly. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
DERRICK RAMSEY, Secretary

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Employment and Training
(Emergency Amendment)

787 KAR 1:010E. Application for employer account; reports.

RELATES TO: KRS 341.190

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: September 13, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.190(1) requires each employing unit to keep specified work records and authorizes the secretary to require additional reports. This administrative regulation establishes the application requirements for an employer account and the requirements for other additional reports required by the division.

Section 1. Each employing unit that has met one (1) or more of the requirements for coverage set forth in KRS 341.070 shall complete and file with the Division of Unemployment Insurance an Application for Unemployment Insurance Employer Reserve Account UI-1 no later than the last day of the calendar quarter in which the coverage requirements are first met.

Section 2. Each employing unit shall complete and file with the Division of Unemployment Insurance the following reports as required in accordance with the instructions contained on the forms:

- (1) UI-1S, Supplemental Application for Unemployment Insurance Employer Reserve Account;
- (2) UI-3, Employer's Quarterly Unemployment Wage and Tax Report;
- (3) UI-3.2, Account Status Information;
- (4) UI-21, Report of Change in Ownership or Discontinuance of Business in Whole or Part;
- (5) UI-35, Termination of Coverage;
- (6) UI-74, Application for Partial Payment Agreement;
- (7) UI-412A, Notice to Employer of Claim for Unemployment Insurance Benefits; and
- (8) UI-203, Overpayment and Fraud Detection.

Section 3. If an employing unit elects to submit the information required in any report listed in Section 1 or 2 of this administrative regulation through the Web site provided by the Division of Unemployment Insurance for that purpose, the requirement for the filing of that report shall have been satisfied.

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

- (a) UI-1, "Application for Unemployment Insurance Employer Reserve Account", Rev. 3/05;
- (b) UI-1S, "Supplemental Application for Unemployment Insurance Employer Reserve Account", Rev. 5/11;
- (c) UI-3, "Employer's Quarterly Unemployment Wage and Tax Report", Rev. 7/18[4/13];
- (d) UI-3.2, "Account Status Information", Rev. 7/18[5/44];
- (e) UI-21, "Report of Change in Ownership or Discontinuance

of Business in Whole or Part", Rev. 3/05;

(f) UI-35, "Termination of Coverage", Rev. 5/11;

(g) UI-74, "Application for Partial Payment Agreement", Rev. 5/11;

(h) UI-203, "Overpayment and Fraud Detection", Rev. 9/11; and

(i) UI-412A, "Notice to Employer of Claim for Unemployment Insurance Benefits", Rev. 9/11[?].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of Unemployment Insurance, 275 E. Main Street, 2E, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DERRICK RAMSEY, Secretary

APPROVED BY AGENCY: September 13, 2018

FILED WITH LRC: September 13, 2018 at 4 p.m.

CONTACT PERSON: Beverly Dearborn, WFD Manager, Department of Workforce Investment, 275 East Main St, Frankfort, Kentucky 40601, phone (502) 564-3326, fax (502) 564-5442, email beverlym.dearborn@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beverly Dearborn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application requirements for an employer account and outlines incorporated forms used by employers to communicate with the Division of Unemployment Insurance (Division), Tax Section.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the necessary reports an employer is required to file with the Division.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.190(1) requires each employing unit to keep specified work records and authorizes the secretary to require additional reports. In addition, KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary in the administration of KRS Chapter 341.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets required forms an employer is required to file with the Division.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates the updated UI-3 and UI-3.2 forms. It will allow the Division to enforce KRS 341.243.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for employers to report Service Capacity Upgrade Fund (SCUF) fee authorized by KRS 341.243.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure that Unemployment Insurance tax, including SCUF, is reported correctly by Kentucky employers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky employers who are liable to report their covered employees to the Division are 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: Each Kentucky employer who is liable to report their covered employees to the Division and uses the paper

forms UI-3 and UI-3.2 will have to begin using the new form revised 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): Kentucky employers who are liable to report their employees to the Division will see no cost associated in implementing the revision of this form.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky employers will receive notice of the correct SCUF charges associated with the amendment to KRS 341.243.

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

(a) Initially: Changes will be necessary to the processing system. These programming changes will be negligible costs and absorbed in the course of normal operating expenses.

(b) On a continuing basis: There is no cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Unemployment Insurance is entirely federally funded. Unemployment Insurance administrative funds will be used to make the necessary programming changes.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: The cost of implementing the form in this regulation will be negligible, and absorbed in the course of normal operating expenses.

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

(9) TIERING: Is tiering applied? This amendment updates the quarterly unemployment wage and tax worksheet to notify employers the correct SCUF amount. The amendment will be applied uniformly to all contributory employers and tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Any state or local government entities that are liable to report their employees to the Division and file by paper forms UI-3 and UI-3.2 will be impacted by this amendment to the administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 341.070, KRS 341.250(2), KRS 341.190, KRS 341.243, and KRS 341.262.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 estimated amount SCUF will generate for the first year is \$3 million.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Because it will be capped at \$60 million, SCUF will generate \$57 million total for subsequent years.

(c) How much will it cost to administer this program for the first full year? Implementation of this amendment will create no additional administrative costs for the first full 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 (+/-): None

Expenditures (+/-): None

Other Explanation:

STATEMENT OF EMERGENCY 900 KAR 11:010E

This emergency administrative regulation is being promulgated in accordance with KRS 13A.190(1)(a)2., to prevent a loss of state funds. The emergency administrative amendment is necessary to add a requirement that a complaint include a signed certificate of service certifying that the complaint and any attachments have been served on the Kentucky Cabinet for Health and Family Services. KRS 216C.040(1) provides that the filing of a proposed complaint tolls the applicable statute of limitations. KRS 216C.040(2) establishes when a proposed complaint is considered filed, based on the date the complaint and required filing fees are delivered or mailed by registered or certified mail to the cabinet. A certificate of service will help determine those dates, without requiring the use of state funds to provide extensive research into determining the dates of service for those statutory deadlines. 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 Office of the Secretary (Emergency Amendment)

900 KAR 11:010E. Medical review panels.

RELATES TO: KRS 216C.010, 216C.030, 216C.040, 216C.050, 216C.060, 216C.070, 216C.080, 216C.090, 216C.100, 216C.110, 216C.120, 216C.160, 216C.170, 216C.180, 216C.200, 216C.210, 216C.220, 216C.230

STATUTORY AUTHORITY: KRS 194A.050(1), 216C.040(3)

EFFECTIVE: September 13, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS Chapter 216C establishes the framework and general requirements for medical review panels in Kentucky and KRS 216C.040(3) requires the cabinet to establish the filing fee that shall accompany each proposed complaint filed with a medical review panel. This administrative regulation establishes the requirements for medical review panels in accordance with KRS Chapter 216C.

Section 1. Definitions. (1) "Claimant" means a patient who is pursuing a malpractice or malpractice-related claim against a health care provider.

(2) "Defendant" means the health care provider or providers against whom a complaint is filed.

(3) "Derivative claim" means a claim included in the description of a derivative claim within the KRS 216C.010(7) definition of "patient".

(4) "Health care provider" is defined by KRS 216C.010(4).

(5) "Licensing agency" means a licensure board that licenses health care providers.

(6) "Patient" is defined by KRS 216C.010(7).

(7) "Proposed complaint" or "complaint" means the documentation required by Section 4(1) of this administrative regulation.

Section 2. Application Process for Prospective Panel Chairperson. (1) To apply to serve as chairperson of a medical review panel, an attorney shall complete and submit to the Cabinet

for Health and Family Services, Medical Review Panel Branch, Form MRP-001, Application to Serve as Chairperson of a Medical Review Panel.

(2) The name of each attorney who submits a Form MRP-001 shall remain on the list of attorneys required by KRS 216C.070(8) until the:

(a) Attorney notifies the cabinet that the application is withdrawn; or

(b) Cabinet receives notification that the attorney is no longer licensed to practice law in Kentucky.

Section 3. Identification of Prospective Panelists. (1) The cabinet shall request each licensing agency to provide a current list of all health care providers who:

(a) Are licensed by that agency;

(b) Are natural persons; and

(c) Hold a valid, active license to practice in his or her profession in Kentucky.

(2) The list provided by the licensing agency shall include each licensee's:

(a) Name;

(b) Mailing address;

(c) Business address;

(d) Type of license; and

(e) If applicable, known specialty fields.

Section 4. Proposed Complaints and Filing Fee. (1) A proposed complaint:

(a) May be filed on Form MRP-002;

(b) Shall include:

1.a. The name and current mailing address, phone number, and if known, email address of each named party; and

b. For each named defendant, the name, current mailing address, phone number, and if known, email address of the person authorized to receive summons under the Kentucky Rules of Civil Procedure on behalf of that named defendant;

2. The name and current mailing address, phone number, and email address of the claimant's attorney, if retained;

3. Identification of the claimant, including:

a. If the claimant is the individual who received or should have received health care from a health care provider and the patient's date of birth; or

b. If the claimant is pursuing a derivative claim, a description of that derivative claim, including the name and birth date of the individual who received or should have received health care from a health care provider, and the reason that the claimant is pursuing the claim on that person's behalf;

4. A description of the malpractice and malpractice-related claims against each named health care provider, including:

a. The nature of the patient's injury;

b. The appropriate standard of care with which each defendant was expected to comply;

c. The actions each defendant took or failed to take that caused the defendant's failure to comply with the appropriate standard of care; and

d. How this failure caused or contributed to the claimant's injury;

5. The date of the alleged occurrence of malpractice;

6. The Kentucky Supreme Court district in which the case would be filed;[and]

7. The signature of the claimant or the claimant's counsel, if retained; and

8. A signed certificate of service certifying that the complaint and any attachments have been served by hand, or by registered or certified mail, on the specified date upon the Kentucky Cabinet for Health and Family Services, Medical Review Panels, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky 40601; and

(c) Shall not be filed against an unknown defendant. If a complaint is filed that names an unknown defendant, the cabinet shall return the complaint to the claimant or claimant's attorney to:

1. Completely remove the unknown defendant from the proposed complaint; or

2. Replace the unknown defendant with an identified

defendant.

(2) Except as provided by Section 14 of this administrative regulation, each proposed complaint shall be accompanied by a filing fee as required by this subsection.

(a)1. Except as provided by subparagraph 2. of this paragraph, the amount of the filing fee shall include:

a. A base amount of \$125; and

b. An additional amount of twelve (12) dollars for each defendant to cover the costs of service of process.

2. If service of process is not completed because a valid address was not provided by the claimant in the complaint, as required by subsection (1)(b)1. of this section, the claimant shall pay an additional twelve (12) dollars for each subsequent attempt at service of process.

(b) A fee required by paragraph (a) of this subsection shall be:

1. In the form of a check or money order; and

2. Payable to the Kentucky State Treasurer.

(3) Medical records shall not be submitted with the complaint. Medical records received by the cabinet shall be returned or destroyed.

(4)(a) Except as provided by Section 14 of this administrative regulation, the proposed complaint and required filing fee shall be delivered or mailed by registered or certified mail to the Cabinet for Health and Family Services, Medical Review Panel Branch, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky 40601.

(b) Upon receipt of the proposed complaint and the required filing fee, the cabinet shall:

1. Issue Form MRP-003, Acknowledgement of Complaint Filing, to the claimant; and

2. Assign a case number in the format of "MRP-(four (4) digit calendar year)-(four (4) digit sequential number)".

(c) The cabinet shall:

1. Serve a copy of the proposed complaint on each defendant as required by KRS 216C.050, which requires service on a person authorized to receive summons under the Kentucky Rules of Civil Procedure; and

2. Include Form MRP-004, Cabinet Letter to Party re Filing of Proposed Complaint.

(5) Within ten (10) days after completion of service on each defendant, determined in accordance with KRS 216C.050, the cabinet shall email Form MRP-005, Cabinet Notification to the Parties Regarding Service of the Complaint and Panel Chairperson Selection, to all parties to notify them:

(a) Of the date service on all defendants was completed; and

(b) Regarding the panel chairperson selection process established by KRS 216C.070.

(6)(a) An inquiry about the medical review panel process may be submitted via email to mrp@ky.gov.

(b) A proposed complaint and the required filing fee shall not be submitted via email.

Section 5. Representation by Counsel. (1) If the complaint is filed by counsel on behalf of a claimant, or if notification is received that the claimant has later become represented by counsel, all subsequent notices and information for the claimant shall be sent to the identified counsel unless notification is received that the claimant has obtained different counsel or is no longer represented by counsel.

(2) If an appearance is made by counsel for a defendant, all subsequent notices and information for the defendant shall be sent to the identified counsel unless notification is received that the defendant has obtained different counsel or is no longer represented by counsel.

Section 6. Document Templates. (1)(a) The cabinet shall use the document templates listed in subsection (3) of this section for the documents' established purposes.

(b) The panel chairperson shall communicate the information required by KRS Chapter 216C by using either:

1. The document templates listed in subsection (4) of this section; or

2. A document developed by the panel chairperson that communicates the required information.

(c) Except for the items required by KRS 216C.040(2), 216C.050, 216C.110, and 216C.230 to be mailed, a required or recommended communication shall be mailed or emailed to the appropriate recipient.

(2) If the document template includes variable information that is complaint-specific or references information to be determined by the cabinet or chairperson, that information shall be completed as part of the document's preparation.

(3)(a) Form MRP-006, Cabinet Letter to Parties re Chairperson Striking Panel, shall be sent by the cabinet to notify the parties of the five (5) attorneys whose names were drawn pursuant to KRS 216C.070(2).

(b) Form MRP-007, Cabinet Letter to Party re Strike of Chairperson, shall be used by the cabinet to facilitate the selection of the chairperson pursuant to KRS 216C.070(3).

(c) Form MRP-008, Cabinet Letter to Party re Cabinet Strike of Chairperson, shall be used by the cabinet pursuant to KRS 216C.070(5)(b).

(d) Form MRP-009, Cabinet Letter to Chairperson re Selection to Serve, shall be used by the cabinet to send the notification required by KRS 216C.070(6) of the name of the chairperson to the chairperson and to each party.

(e) Form MRP-010, Cabinet Letter to Chairperson re List of Potential Panelists, shall be used by the cabinet to send the chairperson the list of potential panelists required by KRS 216C.080 and 216C.090(1), which is:

1. Based on the list obtained from the applicable licensing agency as required by Section 3(1) and (2) of this administrative regulation; and

2. To the extent reasonably possible, limited to the professions and specialty fields, if any, of one (1) or more of the defendants.

(f) Form MRP-011, Cabinet Letter to Parties re Acknowledgement by Chairperson, shall be used by the cabinet to notify each party that the chairperson has acknowledged the appointment to serve as chairperson.

(4)(a) Form MRP-012, Chairperson Letter to Parties re Panel Striking Lists, may be used by the panel chairperson to provide the lists required by KRS 216C.090(1) to the parties.

(b) Form MRP-013, Chairperson Letter to Party re Strike, may be used by the panel chairperson to remind a party of the need to strike to comply with KRS 216C.090(3).

(c) Form MRP-014, Chairperson Letter to Panel Members re Selection to Serve, may be used by the panel chairperson to explain to the first two (2) panel members the process established in KRS 216C.090(2) for selecting the third panel member and to provide an overview of their responsibilities as panel members.

(d) Form MRP-015, Chairperson Letter to Third Panel Member re Selection to Serve, may be used by the panel chairperson to notify the third panel member of that person's selection pursuant to KRS 216C.090(3) and to provide an overview of the person's responsibilities as a panel member.

(e) Form MRP-016, Authorization to Release Medical Records and Protected Health Care Information, may be used by the panel chairperson to request that a claimant authorize the release of medical records.

(f) Form MRP-017, Chairperson Letter to Parties re Formation of Panel and Schedule of Submissions, may be used by the panel chairperson as authorized by Section 9(4)(b) of this administrative regulation, to provide the notifications required by KRS 216C.110(1) and (2), and to outline the schedule for submission of evidence in accordance with KRS 216C.160(6) and (7).

(g) Form MRP-018, Chairperson Letter to Panel re Evidence, may be used by the panel chairperson as authorized by Section 9(6)(b) of this administrative regulation, to:

1. Identify and transmit to the panel members the evidence to be considered by the medical review panel in accordance with KRS 216C.160; and

2. Determine potential dates for the panel to convene to:

- a. Discuss the evidence;
- b. Reach a decision; and
- c. Issue a report.

(h) Form MRP-019, Chairperson Letter to Parties re Panel Hearing, may be used by the panel chairperson to notify the parties

that the panel plans to convene a hearing to question counsel or ask the parties to answer specific questions, in accordance with KRS 216C.170(2)(e).

(i) Form MRP-020, Administrative Subpoena, may be used by the panel chairperson to issue an administrative subpoena as authorized by KRS 216C.160(4).

Section 7. Oath for Panel Members. (1) Before considering any evidence or deliberating with other panel members, each member of the medical review panel shall submit written evidence of taking an oath, which shall read as follows: "I swear or affirm under penalties of perjury that I will well and truly consider the evidence submitted by the parties; that I will render my opinion without bias, based upon the evidence submitted by the parties; and that I will not communicate with any party or representative of a party before rendering my opinion, except as authorized by law."

(2) Form MRP-021, Oath for Panel Members, shall be provided to each panelist by the chairperson either prior to submission of the evidence to the panel members or at the same time the panel members receive the evidence.

(3) The written oath shall be signed by each panelist, witnessed, and returned to the panel chairperson for inclusion in the official record of the panel.

Section 8. Duties of Chairperson. In accordance with KRS 216C.060(3), the chairperson shall:

(1) Rule on motions tendered by the parties to:

(a) Expedite the panel's review of a proposed complaint; and

(b) Allow for the parties to make full and adequate presentation of related facts and authorities; and

(2) Use the Kentucky Rules of Civil Procedure as a reference, including for guidance on whether to add a third party for purposes of having all interested and relevant parties before the medical review panel.

Section 9. Submission to the Panel and Other Parties. (1) Evidence submitted pursuant to KRS 216C.160(6) by a claimant shall be submitted to the panel chairperson and all other parties.

(2) Evidence submitted pursuant to KRS 216C.160(7) by a defendant shall be submitted to the panel chairperson and all other parties.

(3) Evidence shall not be submitted by a claimant or defendant directly to a panel member.

(4)(a) The panel chairperson shall send written notification to the parties to provide the:

1. Email addresses to use to submit evidence in electronic form, as authorized by KRS 216C.160(1); and

2. Mailing addresses to use to submit evidence in written form, as authorized by KRS 216C.160(1).

(b) The panel chairperson may use Form MRP-017, Chairperson Letter to Parties re Formation of Panel and Schedule of Submissions, as a template for the written notification required by paragraph (a) of this subsection.

(5) If evidence is submitted in written form, the mailing to the panel chairperson shall include four (4) copies of each item.

(6) The chairperson:

(a) Shall send all submitted evidence to each panel member, as required by KRS 216C.160(5); and

(b) May use Form MRP-018, Chairperson Letter to Panel re Evidence, as a template for the written notification required by paragraph (a) of this subsection.

Section 10. Panel Decision. (1) Each member of the medical review panel shall use Form MRP-022, Panel Member's Opinion, to issue that panel member's opinion as to each defendant, as required and limited by KRS 216C.180. One (1) copy of Form MRP-022 shall be completed by each panel member for each defendant. The completed forms shall be submitted to the panel chairperson.

(2)(a) In accordance with KRS 216C.180(3), if two (2) or more members of the panel agree on the conclusion, that conclusion shall be the opinion of the panel and the chairperson shall complete Form MRP-023, Chairperson's Report of Panel's Final

Opinion.

(b) If there is not agreement by two (2) or more members as required by KRS 216C.180(3), the panel chairperson shall instruct the panel members to continue deliberations.

(3) The chairperson shall provide a copy of the completed Form MRP-023, the supporting Form MRP-022 submitted by each panel member, and the time and expense reports required by Section 11 of this administrative regulation to:

- (a) Each party;
- (b) Each medical review panel member; and
- (c) The Cabinet for Health and Family Services, Medical Review Panel Branch.

Section 11. Payment for Panel Members and Chairperson.

(1)(a) Except as provided in paragraph (b) of this subsection, each panel member shall submit to the chairperson of the medical review panel a completed Form MRP-024, Time and Expense Report for Panel Members, with Form MRP-022, Panel Member's Opinion.

(b) If a proposed complaint is settled or withdrawn prior to receipt of the medical review panel's report pursuant to KRS 216C.180 and 216C.230, each panel member shall submit to the chairperson of the medical review panel, within three (3) business days of notification of the settlement or withdrawal, a completed Form MRP-024, Time and Expense Report for Panel Members.

(c) The Form MRP-024 shall include the log of the panel member's time spent on that medical review panel and the panel member's reasonable travel expenses.

(d) The chairperson shall review each of the forms submitted by the panel members and shall sign the form to verify that the form has been reviewed and appears to be an accurate representation of the panel member's time and expense report.

(2)(a) The chairperson shall complete Form MRP-025, Time and Expense Report for Chairperson, and submit it with the panel's report as required by subsection (3) of this section.

(b) The Form MRP-025 shall include the log of the chairperson's time spent on that medical review panel and the chairperson's reasonable travel expenses.

(3)(a) Pursuant to KRS 216C.220(3), the chairperson shall submit the four (4) completed time and expense reports to the appropriate party or parties with:

1. Form MRP-023, Chairperson's Report of Panel's Final Opinion, as required by KRS 216C.180 and Section 10 of this administrative regulation; or

2. Form MRP-026, Panel's Final Report Following Notification of Settlement or Complaint Withdrawal, if a report will not be issued because the complaint was settled or withdrawn prior to receipt of the medical review panel's report.

(b) The completed time and expense reports shall also be sent by the chairperson to the Cabinet for Health and Family Services, Medical Review Panel Branch.

(4)(a) Except as provided by paragraph (b) of this subsection, payment shall be made as required by KRS 216C.220(4).

(b) If the parties agreed to settle or withdraw the proposed complaint prior to receipt of the medical review panel's report pursuant to KRS 216C.180 and 216C.230:

1. Payment shall be made as agreed to by the parties and stated on Form MRP-027, Notification of Settlement or Withdrawal; or

2. If the Form MRP-027, Notification of Settlement or Withdrawal, does not address payment of the fees and expenses:

a. If there is one (1) claimant and one (1) defendant, the claimant and defendant shall each pay fifty (50) percent of the fees and expenses; and

b. If there are multiple claimants or defendants, the fees and expenses shall be split equally between the parties, with:

(i) The claimants collectively responsible for fifty (50) percent of the fees and expenses; and

(ii) The defendants collectively responsible for fifty (50) percent of the fees and expenses.

(5)(a) A party required to pay the fees and expenses shall submit payment by check or money order:

1. To the medical review panel's chairperson, who shall

distribute the payments to each panel member; and

2. Within thirty (30) days of the date of the panel's report or the date of the settlement.

(b) If full payment is not received by the deadline established in paragraph (a)2. of this subsection, interest shall accrue:

1. From the date of the panel's report or the date of the settlement; and

2. At the current Kentucky post-judgment interest rate.

Section 12. Settlements or Withdrawals. (1) Upon settlement or withdrawal of a matter pending before a medical review panel prior to receipt of the medical review panel's opinion pursuant to KRS 216C.180 and 216C.230, the claimant and defendant shall complete and file Form MRP-027, Notification of Settlement or Withdrawal, as required by subsection (2) or (3) of this section.

(2) If the settlement or withdrawal occurs before the chairperson is selected, the claimant and defendant shall file Form MRP-027 with the Cabinet for Health and Family Services, Medical Review Panel Branch, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky 40601.

(3)(a) If the settlement or withdrawal occurs after the chairperson is selected and before the opinion is issued by the medical review panel, the claimant and defendant shall file Form MRP-027 with the chairperson.

(b) The chairperson shall:

1. Notify the panel members that the complaint has been settled or withdrawn and shall request submission of Form MRP-024, Time and Expense Report for Panel Members, for payment as established in Section 11(4) of this administrative regulation; and

2. Forward a copy of the Form MRP-027, Notification of Settlement or Withdrawal, to the Cabinet for Health and Family Services, Medical Review Panel Branch.

(4) Settlement with, or withdrawal regarding, one (1) or more, but not all, claimants or defendants shall not conclude the medical review panel's obligation to review the remaining claims.

Section 13. Sample Form for Waiver of Medical Review Panel Process. (1) To waive the medical review process, a claimant and all parties shall complete:

(a) Form MRP-028, Parties' Agreement to Waive the Medical Review Panel Process; or

(b) Written documentation, without use of Form MRP-028, that provides evidence of the agreement required by KRS 216C.030.

(2) A waiver of the medical review process may be filed pursuant to KRS 216C.030 without previously filing a proposed complaint and filing fee as required by Section 4(1) and (2) of this administrative regulation.

(3) A copy of the Form MRP-028 or the alternative written documentation shall be filed with the Cabinet for Health and Family Services, Medical Review Panel Branch.

Section 14. Indigent Claimants. (1) If a claimant is unable to pay the filing fee established by Section 4(2) of this administrative regulation and the twenty-five (25) dollar fee for selecting a panel chair established by KRS 216C.070(2), the claimant shall file Form MRP-029, Attestation of Indigency. The proposed complaint and the Form MRP-029, Attestation of Indigency, shall be delivered or mailed by registered or certified mail to the Cabinet for Health and Family Services, Medical Review Panel Branch, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky 40601.

(2) The cabinet secretary or designee shall consider the following factors in evaluating a request that is filed pursuant to subsection (1) of this section:

(a) Income;

(b) Source of income;

(c) Property owned;

(d) Number of motor vehicles owned and in working condition;

(e) Other assets;

(f) Outstanding obligations;

(g) The number and ages of the claimant's dependents; and

(h) The poverty level income guidelines compiled and published by the United States Department of Labor.

(3) The cabinet secretary or designee shall issue Form MRP-

030, Accompanying Order, within two (2) business days either waiving the fees or denying the request.

(4) If the fees are waived:

(a) The filing date for the complaint shall be the date the order is issued;

(b) The required filing fee shall be zero dollars; and

(c) The cabinet shall proceed with the process established in Section 4(4)(b) of this administrative regulation.

(5) If the fees are not waived:

(a) The filing date for the complaint shall be the date the filing fee established by Section 4(2)(a) of this administrative regulation is received by the cabinet; and

(b) The cabinet shall proceed with the process established in Section 4(4)(b) of this administrative regulation once the fee is paid.

(6) Payment for the medical review panel chairperson and members, which is required by KRS 216C.220, shall not be waived.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form MRP-001, "Application to Serve as Chairperson of a Medical Review Panel", July 2018;

(b) Form MRP-002, "Proposed Complaint", August 2018~~September 2017~~;

(c) Form MRP-003, "Acknowledgement of Complaint Filing", July 2018;

(d) Form MRP-004, "Cabinet Letter to Party re Filing of Proposed Complaint", July 2018;

(e) Form MRP-005, "Cabinet Notification to the Parties Regarding Service of the Complaint and Panel Chairperson Selection", July 2018;

(f) Form MRP-006, "Cabinet Letter to Parties re Chairperson Striking Panel", July 2018;

(g) Form MRP-007, "Cabinet Letter to Party re Strike of Chairperson", July 2018;

(h) Form MRP-008, "Cabinet Letter to Party re Cabinet Strike of Chairperson", July 2018;

(i) Form MRP-009, "Cabinet Letter to Chairperson re Selection to Serve", July 2018;

(j) Form MRP-010, "Cabinet Letter to Chairperson re List of Potential Panelists", July 2018;

(k) Form MRP-011, "Cabinet Letter to Parties re Acknowledgement by Chairperson", July 2018;

(l) Form MRP-012, "Chairperson Letter to Parties re Panel Striking Lists", September 2017;

(m) Form MRP-013, "Chairperson Letter to Party re Strike", September 2017;

(n) Form MRP-014, "Chairperson Letter to Panel Members re Selection to Serve", September 2017;

(o) Form MRP-015, "Chairperson Letter to Third Panel Member re Selection to Serve", June 2017;

(p) Form MRP-016, "Authorization to Release Medical Records and Protected Health Care Information", September 2017;

(q) Form MRP-017, "Chairperson Letter to Parties re Formation of Panel and Schedule of Submissions", March 2018;

(r) Form MRP-018, "Chairperson Letter to Panel re Evidence", June 2017;

(s) Form MRP-019, "Chairperson Letter to Parties re Panel Hearing", September 2017;

(t) Form MRP-020, "Administrative Subpoena", July 2018;

(u) Form MRP-021, "Oath for Panel Members", June 2017;

(v) Form MRP-022, "Panel Member's Opinion", July 2018;

(w) Form MRP-023, "Chairperson's Report of Panel's Final Opinion", July 2018;

(x) Form MRP-024, "Time and Expense Report for Panel Members", July 2018;

(y) Form MRP-025, "Time and Expense Report for Chairperson", July 2018;

(z) Form MRP-026, "Panel's Final Report Following Notification of Settlement or Complaint Withdrawal", July 2018;

(aa) Form MRP-027, "Notification of Settlement or Withdrawal", July 2018;

(bb) Form MRP-028, "Parties' Agreement to Waive the Medical Review Panel Process", July 2018;

(cc) Form MRP-029, "Attestation of Indigency", July 2018; and

(dd) Form MRP-030, "Accompanying Order", July 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At the Cabinet for Health and Family Services, Medical Review Panel Branch, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at <http://mrp.ky.gov>.

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: September 6, 2018

FILED WITH LRC: September 13, 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 CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Anne-Tyler Morgan, (502) 564-7042, annetyler.morgan@ky.gov; or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for medical review panels in accordance with KRS Chapter 216C.

(b) The necessity of this administrative regulation: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS Chapter 216C establishes the framework and general requirements for medical review panels in Kentucky and KRS 216C.040(3) requires the cabinet to establish the filing fee that shall accompany each proposed complaint filed with a medical review panel.

(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 provisions and requirements regarding medical review panels and establishing the fee required by KRS 216C.040(3).

(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 authorizing statutes by establishing the required fee and incorporating by reference standard forms for the cabinet and medical review panel chairpersons to use throughout the medical review panel process.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds a requirement for the proposed complaint to include a certificate of service upon the Cabinet for Health and Family Services. Form MRP-002, which may be used to file a complaint, has been updated to include the required certificate of service.

(b) The necessity of the amendment to this administrative regulation: Having a certificate of service will provide a record for the cabinet as to when the proposed complaint was served upon the cabinet by the claimant or claimant's attorney. It also serves as a reminder that a copy of the proposed complaint needs to be filed with the cabinet and provides the correct address for that service.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 216C.040(1) provides that the filing of a proposed complaint tolls the applicable statute of limitations. KRS 216C.040(2) establishes when a proposed complaint is considered filed, based on the date the complaint and required filing fees are delivered or mailed by registered or certified mail to the cabinet. A certificate of service will help determine those dates.

(d) How the amendment will assist in the effective administration of the statutes: KRS 216C.040(1) provides that the filing of a proposed complaint tolls the applicable statute of limitations. KRS 216C.040(2) establishes when a proposed

complaint is considered filed, based on the date the complaint and required filing fees are delivered or mailed by registered or certified mail to the cabinet. A certificate of service will help determine those dates.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendment to this administrative regulation affects anyone who wants to pursue a malpractice or malpractice-related claim against a health care provider in Kentucky and the Medical Review Panels branch of the Cabinet for Health and Family Services. Since June 29, 2017, when KRS Chapter 217C became effective, there have been 508 complaints filed in Kentucky with the cabinet's Medical Review Panels branch.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In filing a proposed complaint, which may be filed using Form MRP-002, a claimant or claimant's attorney will now be required to include a signed certificate of service certifying that the complaint and any attachments were served by hand or by registered or certified mail, on the specified date of service upon the Cabinet for Health and Family Services, Medical Review Panels, at the provided address.

(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 in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): KRS 216C.040(1) provides that the filing of a proposed complaint tolls the applicable statute of limitations. KRS 216C.040(2) establishes when a proposed complaint is considered filed, based on the date the complaint and required filing fees are delivered or mailed by registered or certified mail to the cabinet. A certificate of service will help determine those dates.

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

(a) Initially: There are very nominal costs to implement this administrative regulation as the revised form simply needs to be uploaded to the cabinet's Web site.

(b) On a continuing basis: There are not any ongoing costs as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Until separate budgetary authority is achieved, costs will be borne in part by user fees and in part by the CHFS Secretary's office 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 needed to implement this amendment, which simply adds a Certificate of Service requirement to the Proposed Complaint.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. The existing administrative regulation established fees specifically required by KRS 216C.040(3); however, this amendment does not establish or increase those fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because it simply adds a Certificate of Service requirement to the Proposed Complaint. All proposed complaints will be required to have a Certificate of Service.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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, Medical Review Panels branch.

2. Identify each state or federal regulation that requires or

authorizes the action taken by the administrative regulation. KRS 194A.050(1), 216C.010, 216C.030, 216C.040, 216C.050, 216C.060, 216C.070, 216C.080, 216C.090, 216C.100, 216C.110, 216C.120, 216C.160, 216C.170, 216C.180, 216C.200, 216C.210, 216C.220, 216C.230

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 simply requires a Certificate of Service be included with a Proposed Complaint. It does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment simply requires a Certificate of Service be included with a Proposed Complaint. It does not generate revenue.

(c) How much will it cost to administer this program for the first year? This amendment simply requires a Certificate of Service be included with a Proposed Complaint. There are not additional costs to administer this program based on this amendment.

(d) How much will it cost to administer this program for subsequent years? This amendment simply requires a Certificate of Service be included with a Proposed Complaint. There are not additional costs to administer this program based on this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 907 KAR 1:025E

This emergency administrative regulation is being promulgated to update payment requirements for certain types of nursing facilities, including an increase of the per diem rate for a specific type of traumatic brain injury treatment unit. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. to prevent a loss of federal and state funds and pursuant to KRS 13A.190(1)(a)4. to protect human health. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor

ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations (Emergency Amendment)

907 KAR 1:025E. Payment for nursing facility services provided by an intermediate care facility for individuals with an intellectual disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

RELATES TO: KRS 142.363, 42 C.F.R. 413.9, 413.17, 413.85, 413.90, 413.94, 413.98, 413.106, 413.153, 435.1010, 447.272, 483.10, 42 U.S.C. 1395x, 1396a, 1396d[Parts 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 U.S.C. 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s]

STATUTORY AUTHORITY: KRS 142.363(3), 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: September 13, 2018

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet

for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds [for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for nursing facility services provided by an intermediate care facility for individuals with an intellectual [mental retardation or a developmental] disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

Section 1. Definitions. (1) "Allowable cost" means that portion of a facility's cost ~~that is~~ [which may be] allowed by the department in establishing the reimbursement rate.

(2) "Calculated rate" means the rate effective July 1, 1999 and each July 1 thereafter for:

(a) An intermediate care facility for individuals with an intellectual [mental retardation or a developmental] disability (ICF-IID); or

(b) A nursing facility certified as:

1. A dually-licensed pediatric facility; or
2. An institution for mental diseases.

(3) "Cost-based facility" means a facility ~~that~~ [which]:

(a) The department ~~reimburses~~ [shall reimburse] for all allowable costs; and

(b) Is either:

1. A dually-licensed pediatric facility;
2. An intermediate care facility for individuals with an intellectual [mental retardation or a developmental] disability; or
3. An institution for mental diseases.

(4) "Cost report" means Cost-based Facility Reimbursement Cost Report Instructions and Cost-based Facility Reimbursement Cost Report.

(5) "Department" means the Department for Medicaid Services or its designee.

(6) "IHS Markit Index [Global Insight Index]" means an indication of changes in health care costs from year to year developed by IHS Markit, or its successor organization [Global Insights Index].

(7) "Institution for mental diseases" or "IMD" is defined by 42 C.F.R. 435.1010 [means an institution for mental diseases, excluding psychiatric hospitals].

(8) "Nursing facility" or "NF" means that:

(a) The state survey agency has:

1. Granted an NF license to ~~the~~ [a] facility; and
2. Recommended the NF to the department for certification as a Medicaid provider; and

(b) The department has granted certification for Medicaid participation to the NF.

(9) "Nursing facility with an all-inclusive rate unit" means:

- (a) A nursing facility with a distinct part ventilator unit; or
- (b) A nursing facility with a distinct part brain injury unit.

(10) "Occupancy factor" means a percentage representing:

(a) A facility's actual occupancy level; or

(b) A minimum occupancy level assigned to a facility if its occupancy level is below the minimum level established in Section 3(17) of this administrative regulation.

(11) [(40)] "Prospective rate" means a payment rate for routine services based on allowable costs and other factors ~~that~~ [which], except as specified in Section 3 of this administrative regulation, shall not be retroactively adjusted, either in favor of the facility or the department.

(12) [(14)] "Routine services" means services covered by the Medicaid Program pursuant to 42 C.F.R. 483.10(f)(11)(i) [(e)(8)(i)].

(13) [(42)] "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health [Long-term] Care.

(14) [(43)] "Upper payment limit" means the aggregate payment amount as described in 42 C.F.R. 447.272 for inpatient services furnished by state-owned or operated ICF-IIDs.

Section 2. Certified Bed Requirements. Except for an intermediate care facility for individuals with an intellectual [mental retardation or a developmental] disability or a nursing facility with an all-inclusive rate unit, a facility ~~that~~ [which] desires to participate in the Medicaid Program shall comply with the following requirements:

(1) If the facility has less than ten (10) beds, all of its beds shall participate in the Medicare Program; or

(2) If the facility has ten (10) or more beds, ~~the facility shall~~ [it shall be required to] have the greater of:

(a) Ten (10) of its Medicaid-certified beds participating in the Medicare Program; or

(b) Twenty (20) percent of its Medicaid-certified beds participating in the Medicare Program.

Section 3. Payment System for a Cost-based Facility. The department's reimbursement system shall include the specific policies, components, or principles established in this section.

(1)(a) ~~Except as specified in this section~~, prospective payment rates for routine services shall:

1. Be set by the department on a facility-specific basis; ~~and~~
2. ~~shall~~ Not be subject to retroactive adjustment ~~[except as specified in this section of this administrative regulation]~~.

(b) Prospective rates shall be determined on a cost basis annually, and may be revised on an interim basis by the department.

(c) An adjustment to a prospective rate (subject to the maximum payment for that type of facility) shall be considered if:

1. The facility's increased costs are attributable to:
 - a. A governmentally imposed minimum wage increase, staffing ratio increase, or [a] level of service increase; and
 - b. The increase was not included in the IHS Markit [Global Insight] Index;
2. A new licensure requirement or new interpretation of an existing requirement by the appropriate governmental agency as issued in an administrative regulation results in changes that affect all facilities within the class; or
3. The facility experiences a governmentally-imposed displacement of residents.

(d) 1. The amount of any prospective rate adjustment resulting from a governmentally-imposed minimum wage increase or licensure requirement change or interpretation as cited in paragraph (c) 2 [(2)] of this subsection [of this paragraph] shall not exceed the amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into the following two (2) general areas:

- a. Salaries; and
 - b. Other.
2. The effective date of an interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2)(a) The state shall set a uniform rate year for a cost-based facility (July 1 - June 30) by taking the latest available cost data available as of May 16 of each year and trending the facility costs to July 1 of the rate year. If the latest available cost report data has not been audited or desk-reviewed prior to rate setting for the universal year beginning July 1, a prospective rate based on a cost report ~~that~~ [which] has not been audited or desk-reviewed shall be subject to adjustment when the audit or desk review is completed.

(b) Partial year [;] or budget cost data shall be used if a full year's ~~data~~ [date] is unavailable. Unaudited reports shall be subject to an adjustment to the audited amount.

(c) Other factors relating to costs.

1. If the department has made a separate rate adjustment as compensation to a facility for a minimum wage update, the department shall:

- a. Not pay the facility twice for the same costs; and
- b. Adjust downward the trending and indexing factors to the extent necessary to remove from the factors costs relating to the

minimum wage updates already provided for by the separate rate adjustment.

2. If the trending and indexing factors include costs related to a minimum wage increase:

a. The department shall not make a separate rate adjustment; and

b. The minimum wage costs shall not be deleted from the trending and indexing factors.

3. The maximum payment amounts for the prospective universal rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

4. For purposes of administrative ease in computations, normal rounding shall be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents.

(3)(a) Except as provided in paragraph (b) of this subsection, interest expense used in setting a prospective rate shall be an allowable cost if permitted pursuant to 42 C.F.R. 413.153 and if the interest expense:

1. Represents interest on:

a. Long term debt existing at the time the provider enters the program; or

b. New long-term debt, if the proceeds are used to purchase fixed assets relating to the provision of the appropriate level of care.

(i) If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable; and

(ii) The form of indebtedness may include mortgages, bonds, notes, and debentures if the principal is to be repaid over a period in excess of one (1) year; or

2. Is for working capital and operating needs that directly relate to providing patient care. The form of indebtedness may include notes, advances, and various types of receivable financing.

(b) Interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(4) The allowable cost for a service or good purchased by a facility from a related organization shall be the cost to the related organization, unless it ~~is~~^{can be} demonstrated that the related organization is equivalent to a second party supplier.

(a) Except as provided in paragraph (b) of this subsection, an organization shall be considered a related organization if an individual possesses five (5) percent or more of ownership or equity in the facility and the supplying business.

(b) An organization shall not be considered a related organization if fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(5)(a) Except as provided in paragraph (b) of this subsection, the amount allowable for leasing costs shall not exceed the amount ~~that~~^{which} would be allowable based on the computation of historical costs.

(b) The department shall determine the allowable costs of an arrangement based on the costs of the original lease agreement if:

1. A cost-based facility entered into a lease arrangement as an intermediate care facility prior to April 22, 1976;

2. An intermediate care facility for individuals with an intellectual~~mental retardation or a developmental~~ disability entered into a lease arrangement prior to February 23, 1977; or

3. A nursing facility entered into a lease arrangement as a skilled nursing facility prior to December 1, 1979.

(6) A cost shall be allowable and eligible for reimbursement if the cost is:

(a) Reflective of the provider's actual expenses of providing a service; and

(b) Related to Medicaid patient care pursuant to 42 C.F.R. 413.9.

(7) The following costs shall be allowable:

(a) Costs to related organizations pursuant to 42 C.F.R. 413.17;

(b) Costs of educational activities pursuant to 42 C.F.R. 413.85;

(c) Research costs pursuant to 42 C.F.R. 413.90;

(d) Value of services of nonpaid workers pursuant to 42 C.F.R. 413.94;

(e) Purchase discounts and allowances, and refunds of expenses pursuant to 42 C.F.R. 413.98;

(f) Depreciation on buildings and equipment if a cost is:

1. Identifiable and recorded in the provider's accounting records;

2. Based on historical cost of the asset or, if donated, the fair market value; or

3. Prorated over the estimated useful life of the asset using the straight-line method;

(g) Interest on current and capital indebtedness; or

(h) Professional costs of services of full-time or regular part-time employees not to exceed what a prudent buyer would pay for comparable services.

(8) The following shall not be allowable costs:

(a) The value of services provided by nonpaid members of an organization if there is an agreement with the provider to furnish the services at no cost;

(b) Political contributions;

(c) Legal fees for unsuccessful lawsuits against the Cabinet for Health and Family Services;

(d) Travel and associated costs outside the Commonwealth of Kentucky to conventions, meetings, assemblies, conferences, or any related activities that are not related to NF training or educational purposes; or

(e) Costs related to lobbying.

(9) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the~~following~~ methods established in this subsection shall be used for changes of ownership occurring before July 18, 1984~~;~~:

(a)1.~~Determine~~ The actual gain on the sale of the facility shall be determined; and

2. There shall be added~~Add~~ to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis~~;~~;

(b) Gain shall be the amount in excess of a seller's depreciated basis as computed under program policies at the time of a sale, excluding the value of goodwill included in the purchase price~~;~~;

(c) A sale shall be any bona fide transfer of legal ownership from an owner to a new owner for reasonable compensation, which shall usually be fair market value. A lease purchase agreement or other similar arrangement ~~that~~^{which} does not result in a transfer of legal ownership from the original owner to the new owner shall not be considered a sale until legal ownership of the property is transferred~~;~~ and

(d) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined pursuant to paragraphs (a) through (c) of this subsection.

(10) Valuation of capital assets.

(a) An increase in valuation in relation to depreciation and interest costs shall not be allowed for a change~~changes~~ of ownership occurring after July 18, 1984 and before October 1, 1985.

(b) For a bona fide change~~changes~~ of ownership entered into on or after October 1, 1985, the depreciation and interest costs shall be increased in valuation in accordance with 42 U.S.C. 1395x(v)(1)(O)(i).

(11)(a) A facility shall maintain and make available any records and data necessary to justify and document:

1. Costs to the facility; and

2. Services performed by the facility~~;~~ and

(b) The department shall have unlimited on-site access to all of a facility's fiscal and service records for the purpose of:

1. Accounting;

2. Auditing;

3. Medical review;

4. Utilization control; and
5. Program planning.

(12) The requirements established in this subsection~~following~~ shall apply to an annual cost report~~;~~

(a) A year-end cost report shall contain information relating to prior year cost, and shall be used in establishing prospective rates and setting ancillary reimbursement amounts~~;~~

(b) A new item or expansion representing a departure from current service levels for which the facility requests prior approval by the department shall be so indicated with a description and rationale as a supplement to the cost report~~;~~

(c) Department approval or rejection of a projection or expansion shall be made on a prospective basis in the context that, if an expansion and related costs are approved, they shall be considered when actually incurred as an allowable cost. Rejection of an item or costs shall represent notice that the costs shall not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection~~;~~ and

(d) If a request for prior approval of a projection or expansion is made, absence of a response by the department shall not be construed as approval of the item or expansion.

(13)(a) The department shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of an audit in relation to routine and ancillary service cost~~;~~

(b) If a field audit is not determined to be necessary, the cost report shall be settled without an audit~~;~~

(c) A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates ~~that~~^{which} have been set based on unaudited data~~;~~ and

(d) Audits may be conducted annually or at less frequent intervals.

(14) A year-end adjustment of the prospective rate and a retroactive cost settlement shall be made if:

(a) An incorrect payment has been made due to a computational error (other than an omission of cost data) discovered in the cost basis or establishment of the prospective rate;

(b) An incorrect payment has been made due to a misrepresentation on the part of a facility (whether intentional or unintentional);

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser; or

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(15) A facility shall provide the services mandated in 42 C.F.R. 483.10(f)(11)(i)~~(e)(8)(i)~~.

(16) A facility shall submit to the department the data required for determining the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility with the department's concurrence.

(17) Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with a non-state, privately-owned facility's occupancy factor.

(a) An occupancy factor shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates).

(b) A minimum occupancy factor shall be ninety (90) percent of certified bed days for a nonstate, privately-owned ~~facility~~^{facilities} with less than ninety (90) percent certified bed occupancy.

(c) The department may impose a lower occupancy factor for a newly constructed or newly participating nonstate, privately-owned facility, or for an existing nonstate, privately-owned facility suffering a patient census decline as a result of a newly constructed or opened competing facility serving the same area.

(d) The department may impose a lower occupancy factor during the first two (2) full fiscal years an existing cost-based nonstate, privately-owned facility participates in the program under this payment system.

(18) A provider tax on a cost-based facility shall be considered an allowable cost.

(19) All other costs shall be:

(a) Other care-related costs;

(b) Other operating costs;

(c) Capital costs; or

(d) Indirect ancillary costs.

(20) Basic per diem costs for each major cost category (nursing services costs and all other costs) shall be the calculated rate arrived at after otherwise allowable costs are trended and adjusted in accordance with the:

(a) ~~IHS Markit~~^{Global-Insight} Index inflation factor; and

(b) Occupancy factor for a nonstate, privately owned facility.

(21) Maximum allowable costs shall be the maximum amount ~~that~~^{which} may be allowed to a facility as reasonable cost for the provision of a supply or service while complying with limitations expressed in related federal or state administrative regulations.

(22) Nursing services costs shall be the direct costs associated with nursing services.

(23) State-owned or operated ICF-IID reimbursement for noncapital routine services shall be subject to an upper payment limit. The upper payment limit shall:

(a) Be an aggregate limit on ICF-IID reimbursement paid by the department;

(b) Equal 112 percent of the average of aggregate cost for a state fiscal year;

(c) Be revised annually by the ~~IHS Markit~~^{Global-Insight} Index using the most recent full year of Medicaid paid days;

(d) Not be rebased more frequently than every three (3) years; and

(e) Use as its base year the State Fiscal Year 2005.

(24) The department shall retroactively cost settle state-owned or operated ICF-IID reimbursement for non-capital routine services beginning with the cost report period November 1, 2005 through June 30, 2006, as mandated by the Centers for Medicare and Medicaid Services in accordance with 42 U.S.C. 1396a(a)(30). Retroactive settlement shall entail:

(a) Comparing interim payments with the properly apportioned cost of Medicaid services rendered. Cost report data shall be used to determine properly apportioned costs;

(b) A tentative cost report settlement based upon:

1. Eighty (80) percent of any amount due the facility after a preliminary review is performed; or

2. 100 percent settlement of any liability due the department; and

(c) A final cost report settlement after the allowed billing period has elapsed for the dates of service identified within the cost report.

(25) The department, regarding state-owned or operated ICF-IID reimbursement for noncapital routine services, shall:

(a) Use projected data in order to approximate as closely as possible an interim rate expected to correspond to post-settlement cost; and

(b) Adjust interim rates up or down if necessary to approximate a rate corresponding as close as possible to anticipated post-settlement cost.

Section 4. Prospective Rate Computation for a Cost-based Facility. The prospective rate for a cost-based facility shall reflect~~the following~~:

(1) The adjusted allowable cost for the facility; and

(2) Except for a state-owned or operated facility, the facility's occupancy factor. A state-owned or operated facility's occupancy factor shall not be factored into the facility's prospective rate.

Section 5. Ancillary Services. (1) Except for an intermediate care facility for individuals with an intellectual~~mental retardation or a developmental~~ disability, an ancillary service shall be a direct service for which a charge is customarily billed separately from a

per diem rate including:

- (a) Ancillary services pursuant to 907 KAR 1:023; or
- (b) Laboratory procedures or x-rays if ordered by a:
 1. Physician;
 2. An advanced practice registered nurse (APRN)[~~practitioner (ARNP)~~] if the laboratory test or x-ray is within the scope of the APRN's[~~ARNP's~~] practice; or
 3. Physician assistant if:
 - a. Authorized by the supervising physician; and
 - b. The laboratory test or x-ray is within the scope of the physician assistant's practice.

(2) For an intermediate care facility for individuals with an intellectual[~~mental retardation or a developmental~~] disability, an ancillary service shall be a direct service for which a charge is customarily billed separately from a per diem rate including:

- (a) Ancillary services pursuant to[~~identified in~~] 907 KAR 1:023;
- (b) Laboratory procedures or x-rays if ordered by a:
 1. Physician;
 2. An APRN[~~ARNP~~] if the laboratory test or x-ray is within the scope of the APRN's[~~ARNP's~~] practice; or
 3. Physician assistant if:
 - a. Authorized by the supervising physician; and
 - b. The laboratory test or x-ray is within the scope of the physician assistant's practice; or
 - (c) Psychological or psychiatric therapy.

(3) Ancillary service.

(a) Reimbursement shall be subject to a year-end audit, retroactive adjustment, and final settlement.

(b) Costs shall be subject to allowable cost limits pursuant to 42 C.F.R. 413.106.

(4) For ancillary services, the department shall utilize an NF's prior year cost-to-charge ratio, based on the prior year's cost report as of May 31, as the percentage to be used for interim reimbursement purposes for the following year. (For example, if an NF's cost-to-charge ratio for SFY 2001 is seventy-five (75) percent, the department shall reimburse the NF, on an interim basis, seventy-five (75) percent of billed charges for SFY 2002.)

(5) An NF without a prior year cost report may submit to the department a percentage to be used for interim reimbursement purposes for ancillary services.

(6) If an NF has been reimbursed for ancillary services at an interim percentage above its allowable cost-to-charge ratio for a given year, the department shall decrease the interim percentage for the following year by no more than twenty-five (25) percentage points unless:

- (a) A retroactive adjustment of an NF's reimbursement for the prior year reveals an overpayment by the department exceeding twenty-five (25) percent of billed charges; or
- (b) An evaluation of an NF's current billed charges indicates that the NF's charges exceed, by greater than twenty-five (25) percent, average billed charges for other comparable facilities serving the same area.

Section 6. Reimbursement for a Nursing Facility With a Distinct Part Ventilator Unit. (1)(a) Except as provided by paragraph (b) of this subsection, a nursing facility with a distinct part ventilator unit[~~recognized as providing distinct part ventilator dependent care~~] shall be paid at an all-inclusive[~~(excluding drugs which shall be reimbursed through the pharmacy program)~~] fixed rate for services provided in the distinct part ventilator unit.

(b) The all-inclusive fixed rate required by paragraph (a) of this subsection shall not include payment for drugs, which shall be reimbursed through the pharmacy program established in 907 KAR Chapter 23.

(2) A distinct part ventilator unit shall:

- (a) Have a minimum of twenty (20) beds;
- (b) Maintain a census of fifteen (15) patients; and
- (c) Base the patient census upon:

1. The quarter preceding the beginning of the rate year; or
2. The quarter preceding the quarter for which certification is requested if the facility did not qualify for participation as a distinct part ventilator[~~care~~] unit at the beginning of the rate year.

(3)(a) The fixed rate for a hospital-based facility shall be

\$583.82 per day effective for SFY 2006, and shall be increased or decreased pursuant to subsection (4) of this section.

(b) The department shall reimburse a freestanding facility:

1. A fixed rate of \$317.29 per day effective for SFY 2006, and shall be increased or decreased pursuant to subsection (4) of this section; and

2. An add-on to the fixed rate in accordance with KRS 142.363.

(4) The fixed rates established in subsection (3) of this section shall be increased or decreased based on the IHS Markt Index[~~Data Resource Incorporated~~] rate of inflation indicator for the nursing facility services for each rate year.

(5) Costs of a distinct part ventilator unit in a nursing facility[~~units~~] shall be excluded from allowable costs for purposes of rate setting and settlement of cost-based nursing facility cost reports.

Section 7. Reimbursement for a Nursing Facility with a Distinct Part Brain Injury Unit. (1) In order to participate in the Medicaid Program as a brain injury provider, a nursing facility with a distinct part brain injury unit shall:

(a) Be Medicare and Medicaid certified;

(b) Designate as a brain injury unit at least ten (10) certified beds that are physically contiguous and identifiable;

(c) Be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) after the first year of participation; and

(d) Establish written policies regarding administration and operations, the facility's governing authority, quality assurance, and program evaluation.

(2)(a) Except as provided in subsection (3) of this section and paragraph (b) of this subsection, a nursing facility with a distinct part[~~Medicaid-certified~~] brain injury unit providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive[~~(excluding drugs which shall be reimbursed through the pharmacy program)~~] fixed rate, which shall be set at \$530[~~\$475~~] per diem for services provided in the brain injury unit.

(b) The all-inclusive fixed rate required by paragraph (a) of this subsection shall not include payment for drugs, which shall be reimbursed through the pharmacy program established in 907 KAR Chapter 23.

(3)(a) Except as provided by paragraph (b) of this subsection, a facility providing preauthorized specialized rehabilitation services for persons with brain injuries with rehabilitation complicated by neurobehavioral sequelae shall be paid an all-inclusive[~~(excluding drugs which shall be reimbursed through the pharmacy program)~~] negotiated rate, which shall not exceed the facility's usual and customary charges.

(b) The all-inclusive fixed rate required by paragraph (a) of this subsection shall not include payment for drugs, which shall be reimbursed through the pharmacy program established in 907 KAR Chapter 23.

(c) The negotiated rate established pursuant to paragraph (a) of this subsection shall be:

1. A minimum of the approved rate for a Medicaid certified brain injury unit;

2. A maximum of the lesser of the average rate paid by all payers for this service; or

3. The facility's usual and customary charges.

Section 8. Appeal Rights. A participating facility may appeal department decisions as to the application of this administrative regulation as it impacts the facility's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 9. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR) for a Nursing Facility With a Distinct Part Ventilator Unit, a Nursing Facility With a Distinct Part Brain Injury Unit, an IMD, or a Dually-licensed Pediatric Facility.

(1) Prior to an admission of an individual, a facility shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse a facility for a covered service delivered to an individual if the facility complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of a facility's participation in the Medicaid Program.

Section 10. Reimbursement Provisions. (1) Each of the following types of facilities participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation:

(a) A nursing facility with a distinct part~~[certified]~~ brain injury unit;

(b) A nursing facility with a distinct part ventilator unit;

(c) A nursing facility designated as an institution for mental diseases;

(d) A dually-licensed pediatric facility; or

(e) An intermediate care facility for individuals with an intellectual~~[mental retardation or a developmental]~~ disability.

(2) A payment made to a facility governed by this administrative regulation shall:

(a) Be made in accordance with the requirements established in 907 KAR 1:022; and

(b) Be subject to the limits established in 42 C.F.R. 447.272.

Section 11. Supplemental Payments to Dually-licensed Pediatric Facilities. (1) Beginning July 1, 2002 and annually thereafter, the department shall establish a pool of \$550,000 to be distributed to facilities qualifying for supplemental payments in accordance with subsection (2) of this section.

(2) Based upon its pro rata share of Medicaid patient days compared to total patient days of all qualifying facilities, a dually-licensed pediatric facility shall qualify for a supplemental payment if:

(a) Funding is available; and

(b) The facility:

1. Is located within the Commonwealth of Kentucky;

2. Has a Medicaid occupancy rate at or above eighty-five (85) percent;

3. Only provides services to children under age twenty-one (21); and

4. Has forty (40) or more licensed beds.

(3) A supplemental payment to a facility meeting the criteria established in subsection (2) of this section shall:

(a) Apply to services provided on or after July 1, 2002;

(b) Be made on a quarterly basis; and

(c) Not be subject to the cost settlement provisions established in Section 3 of this administrative regulation.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Cost-based Facility Reimbursement Cost Report Instructions", April 2000 Edition; and

(b) "Cost-based Facility Reimbursement Cost Report", April 2000 Edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JILL R. HUNTER, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: August 30, 2018

FILED WITH LRC: September 13, 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 CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for nursing facility services provided by an intermediate care facility for individuals with an intellectual disability, a dual licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the Department for Medicaid Services' reimbursement provisions and requirements for institutional facilities that are reimbursed on a cost basis.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing the Department for Medicaid Services' reimbursement provisions and requirements for institutional facilities that are reimbursed on a cost basis.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the Department for Medicaid Services' reimbursement provisions and requirements for institutional facilities that are reimbursed on a cost basis.

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

(a) How the amendment will change this existing administrative regulation: The amendment addresses distinct part brain injury units. The rate for these units has been increased from \$475 to \$530. Additional changes were made throughout the administrative regulation to comply with the drafting and formatting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to update reimbursement rates and procedures for distinct part brain injury units.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing Medicaid reimbursement rates regarding traumatic brain injury treatment provided in distinct part brain injury units.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by establishing Medicaid reimbursement rates regarding traumatic brain injury treatment provided in distinct part brain injury units.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Any facility providing brain injury treatment in distinct part brain injury units. Currently there is one (1) facility.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities will need to provide covered services as a distinct part brain injury unit and submit for reimbursement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Distinct part brain injury units will be able to more effectively provide treatment.

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

(a) Initially: The department anticipates an annual cost of about \$300,000 to implement this administrative regulation.

(b) On a continuing basis: The department anticipates an annual cost of about \$300,000 to implement this administrative regulation.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment.

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

(9) Tiering: Is tiering applied? Yes, tiering was applied as there are different rates based on the facility type.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30)(A), 42 U.S.C. 1396a(a)(13)(A), and 42 C.F.R. 447.204.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S. C. 1396a(a)(30)(A) requires a state's Medicaid program to "provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area." 42 U.S.C. 1396a(a)(13)(A) requires "a public process for determination of rates of payment" for nursing facility services and services for intermediate care facilities for individuals with an intellectual disability. 42 C.F.R. 447.204 requires Medicaid programs' reimbursement to be "sufficient to enlist enough providers so that services under the plan are available to beneficiaries at least to the extent that those services are available to the general population."

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 set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS projects no revenue will initially be generated by the amendment 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? DMS projects no revenue will be generated in subsequent years by the amendment to this administrative regulation.

(c) How much will it cost to administer this program for the first year? The department anticipates an annual cost of about \$300,000 to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The department anticipates an annual cost of about \$300,000 to implement this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY

922 KAR 1:100E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)3. to coincide with the effective date of 2018 Ky. Acts ch. 159 or House Bill 1 of the 2018 Regular Session. In addition, the emergency administrative regulation is necessary to establish policy and procedure that better supports permanency outcomes for children in the custody of the Cabinet for Health and Family Services, thereby better assuring foster children's health, safety, and welfare and the state's compliance with outcomes of federal child welfare fund sources in accordance with KRS 13A.190(1)(a)1. and KRS 13A.190(1)(a)2. An ordinary administrative regulation would not allow the agency sufficient time to align with recently enacted state law and federal performance measures, thereby preserving federal child welfare funding and the overall health, safety, and welfare of foster children through permanent adoptive homes. 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 1:100E. Public agency adoptions.

RELATES TO: KRS 194A.060(1), 199.011(4), (10) [(9)], 199.430(3), 199.520, 199.525, [499.565,] 199.570, 199.572, 199.575, 202B.010(12), 600.020 (30), (52), (63) [(26), (47), (56)], 605.090, 615.030, 620.050, 620.360, 625.045, 625.108, Chapter 625, 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629-629i, 670-679b, 1996, 1996b

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472

EFFECTIVE: September 13, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to establish policies and operate programs to protect, develop, and maintain the welfare of the citizens of the Commonwealth. KRS 199.472 requires the cabinet to establish criteria for the public agency adoption of children in the custody of the cabinet. This administrative regulation establishes the procedures for public agency adoptions.

Section 1. Definitions. (1) "Approved adoptive parent" means a family approved in accordance with:

(a) 922 KAR 1:310;

(b) 922 KAR 1:350; or

(c) Section 6 of this administrative regulation.

(2) "Child-focused recruitment model" or "CFRM" means a program for the recruitment of an adoptive family in accordance with Section 2 of this administrative regulation by cabinet staff for a

child in the custody of the cabinet whose adoptive placement has not been identified.

(3) "Foster family home" is defined by KRS 199.011(10)(9) and 600.020(30)(26).

(4)(3) "Home study" means an evaluation conducted in accordance with the requirements of the state where the home is located, to determine the preparation and suitability of a prospective[proposed] adoptive parent, including the home environment, to receive a child for the purpose of adoption.

(5)(4) "Open adoption" means an agreement between an adoptive parent and an adopted child's biological or legal parent regarding communication or contact with the child.

(6)(5) "Pre-adoptive placement" means a home, approved by the cabinet, where a child legally free for adoption is placed prior to adoption finalization.

(7)(6) "Pre-placement conference" means a meeting conducted by cabinet staff with a prospective adoptive parent that fulfills requirements specified in Section 4 of this administrative regulation.

(8)(7) "Prospective adoptive parent" means an individual who has applied with a Kentucky or an out-of-state public or licensed private child welfare agency to be approved as an adoptive parent.

(9)(8) "Qualified mental health professional" or "QMHP" is defined by KRS 600.020(52)(48).

(10) "Qualified professional in the area of intellectual disabilities" [(9) "Qualified mental retardation professional" or "QMRP"] is defined by KRS 202B.010(12).

(11)(10) "Social service worker":

(a) Is defined by KRS 600.020(63)(56); or

(b) Means a social or human service worker with an out-of-state public or licensed private child welfare agency who meets the requirements of that state to conduct a home study. [(11) "Special Needs Adoption Program" or "SNAP" means a program for the recruitment of an adoptive family by cabinet staff for a child in the custody of the cabinet whose adoptive placement has not been identified within thirty (30) days following the termination of parental rights, in accordance with KRS Chapter 625-]

Section 2. Eligibility and Referral to the Child-Focused Recruitment Model. A child may be referred to CFRM if the child:

(1) Is determined eligible, as special needs, in accordance with 42 U.S.C. sec. 673;

(2) Has a goal of planned permanent living arrangement or long-term foster care;

(3) Is on extended commitment and has had parental rights terminated; or

(4) Has adoption as the child's case plan goal and does not have an adoptive resource identified.

Section 3[2]. Preparation of the Child for Adoptive Placement.

(1) A child prepared for adoptive placement by cabinet staff shall receive information regarding the following, with consideration given to the child's maturity and developmental stage:

(a) Relationship to the biological or legal parent;

(b) Entitlement to a parent;

(c) If applicable, relationship with the foster family home;

(d) Reason the foster placement may not become the adoptive placement;

(e) Role of the social service worker, other pertinent cabinet staff, and the child in the placement planning process;

(f) Meaning of adoption;

(g) Process of recruitment of a parent and how the child may be involved;

(h) Impending placement;

(i) Visitation process;

(j) Placement decision; and

(k) Cabinet staff responsible for the placement decision.

(2) Cabinet staff shall:

(a) Request the biological or legal parent to either consent or refuse to consent to the inspection of the adoption records by the adult adopted person when the child reaches twenty-one (21) years of age; and

(b) File with the circuit or family court in the county where the

adoption was finalized the consent or refusal to consent to the inspection of the adoption records by the adult adopted person.

(3) If a child's permanency goal includes adoption and reunification with a sibling separated during foster care, the cabinet shall plan for the transition[reunion] and coordinate increased visitation between siblings.

(4) If cabinet staff agree by consensus during a planning conference, a sibling may be separated from another sibling in adoption upon consideration of:

(a) If age appropriate, each sibling's understanding of the facts of the relationship, feelings, wishes, and ideas regarding options for placement;

(b) The perception of the relationship of each child with the sibling; and

(c) The recommendation of a:

1. QMHP; or

2. If applicable, a qualified professional in the area of intellectual disabilities[QMRP].

(5) A planning committee shall convene annually for siblings who remain separated in out-of-home care to:

(a) Determine if reunification is possible; and

(b) Develop a plan for maintaining sibling connections.

(6) A QMHP, qualified professional in the area of intellectual disabilities[QMRP], relative, social service worker, other pertinent cabinet staff, nonadoptive foster parent, or another individual approved by cabinet staff may assist with preparing the child for adoption.

(7)(6) If the child's goal is changed to adoption, a child in the custody of the cabinet may be placed with an approved adoptive parent prior to the termination of parental rights to the child.

(8)(7) If a prospective adoptive parent has not been identified for a child after the child's permanency goal has been changed to adoption in accordance with 922 KAR 1:140, the cabinet:

(a) Shall convene an adoption review committee[comply with the Swift adoption procedures in accordance with KRS 199.565] to meet and discuss child-specific recruitment and the potential strengths and barriers of placement with an identified[of a] prospective adoptive parent;

(b) May invite an individual specified in subsection (6)(5) of this section to a meeting in which the child's permanency plan is discussed;[and]

(c) Shall refer the child to the CFRM in accordance with Section 2 of this administrative regulation; and

(d)(e) Shall refer[register] the child to the Adoption Services Branch[with SNAP] in accordance with Section 7(1)[6(4)] of this administrative regulation.

Section 4[3]. Selection of an Adoptive Family. (1) Priority consideration for an adoptive placement shall be given to:

(a) A relative; or

(b) The current foster family home.

(2) The process of recruiting a prospective adoptive parent shall begin if:

(a) Parental rights of the child are terminated;

(b) A relative has not made a commitment to adopt the child;

(c) The child's foster family home has not made a commitment to adopt through a statement of intent;

(d) Both biological or legal parents of the child are deceased, and the[designated] cabinet has[staff have] been granted custody through the court; or

(e) The child's pre-adoptive placement is disrupted.

(3) Prior to placement, cabinet staff shall consider the prospective adoptive parent's acceptance of the child's behavior and characteristics.

(4) (a) The cabinet shall take the following into consideration regarding the number of children to be placed in an adoptive home:

1. The prospective adoptive parent's parental capacity and resources to meet the needs of all children in the home; and

2. The impact of all children involved, including the potential adoptive child.

(b) A prospective adoptive parent may request review of a denial based upon the number of children in the home in accordance with 922 KAR 1:350, Section 8(2).[Unless an

~~exception has been approved as described in 922 KAR 1:350, Section 2(2), or by the completion of the DPP-112C, Adoption Placement Exception Request, the following requirements shall apply to a prospective adoptive parent:~~

~~(a) No more than five (5) children, including prospective adoptive parent's own children, shall live in the prospective adoptive parent's home; and~~

~~(b) No more than two (2) children under age two (2), including the prospective adoptive parent's own children, shall live in the prospective adoptive parent's home.]~~

~~(5) The cabinet shall:~~

~~(a) Review and obtain the prospective adoptive parent's signature on the DPP-171, Notice of Confidentiality Requirements Acknowledgement Cover Sheet; and~~

~~(b) Inform the prospective adoptive parent of:~~

~~1. Visitation and supervision requirements in accordance with KRS 605.090(1)(b); and~~

~~2. Detailed information about the child's history and services provided to the child, excluding any identifying information of the biological parent, including:~~

~~a. Health, background, and placement history;~~

~~b. Behavior, including behaviors in accordance with KRS 605.090(1); and~~

~~c. Personal characteristics.~~

Section 5[4]. Preparation of the Prospective Adoptive Parent.

(1) Cabinet staff shall conduct a preplacement conference for a child available for adoption with the child's:

(a) Foster parent;

(b) Prospective adoptive parent;

(c) If applicable, a QMHP or qualified professional in the area of intellectual disabilities[QMRP]; and

~~(d) A representative~~[If applicable, social service worker] from the cabinet or child-placing agency where the child is placed.

(2) During the pre-placement conference, cabinet staff shall:

(a) Discuss the information provided in accordance with Section 4(5)(b)[3(5)(b)] of this administrative regulation with the prospective[approved] adoptive parent;

(b) Assist the prospective[approved] adoptive parent in reaching a decision regarding acceptance of placement;

(c) Determine the method of presenting the prospective[approved] adoptive parent to the child; and

(d) Discuss with the prospective adoptive parent acceptance of the child's plan for visitation and placement.

(3) If there is a planned foster parent adoption, the preplacement conference may occur at the same time the adoptive placement agreement is signed in accordance with KRS 199.555.

Section 6[5]. Adoptive Placement. (1) Planned visitation between a child older than one (1) month and a prospective adoptive parent shall occur at least two (2) times prior to placement.

(2) After parental rights to the child are terminated, final placement with a prospective adoptive parent shall occur as quickly as possible upon concurrence of:

(a) Cabinet staff;

(b) The prospective adoptive parent;~~and~~

(c) The recommendation of a qualified professional in the area of intellectual disabilities, if applicable; and

(d) The child, to the extent the child's age and maturity permit the child's participation.

(3) Adoption assistance shall be provided in accordance with 922 KAR 1:050 or 922 KAR 1:060.

Section 7[6]. Out-of-State Adoptive Placement. (1) If a prospective adoptive parent has not been identified after the child has been referred to the CFRM[by the time the child becomes available for adoption], cabinet staff shall:

(a) Consider an out-of-state placement; and

(b) Refer the child to the Adoption Services Branch for referral on the adoption website[SNAP] if:

1. Termination of parental rights has been granted; and

2. No adoptive placement has been identified through the

CFRM program[within thirty (30) days following the termination of parental rights].

(2) Placement of a Kentucky child with an out-of-state prospective adoptive parent may occur if:

(a) The prospective adoptive parent is seeking a child through:

1. An out-of-state public child welfare agency; or

2. A licensed private child welfare agency; and

(b) A home study has been completed or updated within one (1) year by the out-of-state public child welfare agency or licensed private child welfare agency, in accordance with the requirements of the out-of-state agency.

(3) If a prospective adoptive parent who resides out-of-state cannot pay the expense to attend a pre-placement conference or visit the child, the cabinet may pay travel expenses for the prospective adoptive parent, to the extent funds are available.

(4) If the Kentucky and out-of-state deputy compact administrators agree to the child's visit in accordance with KRS 615.030, a child may visit and be placed with a prospective adoptive parent who resides in another state, in accordance with KRS 615.030.

(5) Upon approval of the commissioner or designee, cabinet staff or another adult whom the child knows shall accompany a Kentucky child available for adoption on an out-of-state visit or placement with a prospective out-of-state adoptive parent.

Section 8[7]. Open Adoption. The cabinet shall not prohibit an open adoption.

Section 9[8]. Postplacement Service. (1) The goal of a postplacement service shall be to:

(a) Ensure the success of the placement; and

(b) Prevent disruption of the placement.

(2) The cabinet shall coordinate support services for a child and a prospective adoptive parent prior to the legal adoption and through finalization of the adoption.

(3) Until the adoption judgment has been granted by a court of competent jurisdiction, the cabinet shall conduct an annual permanency review of a child placed with a prospective adoptive parent.

(4) Post-Adoption Placement Stabilization Services (PAPSS) shall be offered in accordance with 922 KAR 1:530.

Section 10[9]. Closure of An Approved Adoptive Home. Unless an extension is approved by the commissioner, closure of an approved adoptive home shall occur in accordance with:

(1) 922 KAR 1:310; or

(2) 922 KAR 1:350.

Section 11[40]. Service Appeals. A service appeal may be requested in accordance with 922 KAR 1:320.

Section 12[44]. Confidentiality of Records. (1) A child's records shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, as described by KRS 194A.060(1), 199.430(3), 199.520, 199.525, 199.570, 199.572, 199.575, 620.050, 625.045, 625.108, and 922 KAR 1:510.

(2) If the child is not adopted, the prospective adoptive parent shall return all documentation pertaining to the child to the cabinet within ten (10) working days of the decision not to adopt.

Section 13[42]. Request for Information from Adoption Records. (1) Identifying information from the cabinet's record may be released only upon written order by the court upon application to the circuit court that granted the adoption by an adoptee, twenty-one (21) years of age or older.

(2) If the birth parent has not previously filed consent for release of identifying information with the circuit court, the judge may:

(a) Issue a court order requiring the cabinet to conduct a search for each birth parent as identified on the original birth certificate; and

(b) Determine the parent's desire concerning the release of

identifying information from the record.

(3) Upon receipt of written request by the adult adoptee or the adoptive family, nonidentifying health and background information may be released by the cabinet from a closed adoption record.

(4) If a request is received from an adoptee, eighteen (18) years of age or older, for contact with an adult preadoptive birth sibling separated during finalization of a closed adoption, cabinet staff shall:

(a) Review the adoption record; and

(b) Release identifying information if a mutual request for contact is contained within the record.

(5) If a request is received from a birth relative seeking an adoptee, either adult or minor, information may be given that adoption did occur and reassurance of the well-being of the adoptee at last contact may be confirmed, but cabinet staff shall not contact an adoptee or adoptive family at the request of the birth family.

(6) If an adult adoptee seeks contact with the birth family, cabinet staff shall inform the adult adoptee of a birth relative's interest.

Section 14[13]. Incorporation by Reference. (1)[The following material is incorporated by reference:

(a)] "DPP-171, Notice of Confidentiality Requirements Acknowledgement Cover Sheet", 9/18, is incorporated by reference[edition 9/08; and

(b)] "DPP-112C, Adoption Placement Exception Request", edition 9/08].

(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: September 6, 2018

FILED WITH LRC: September 13, 2018 at 1 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@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 policy and procedures for public agency adoptions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish policy and procedures related to public agency adoptions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the policy and procedures for public agency adoptions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes through its establishment of policy and procedures for public agency adoptions.

(2) If 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 the definition related to the Special Needs Adoption Program due to its negative implication that the children waiting to be adopted fall into a "special needs" criteria. Additionally, the amendment adds language regarding the child-specific recruitment employed by Kentucky in order to ensure permanency for children. Additional changes were made to better ensure sibling connections are maintained and remove arbitrary restrictions on the number of children who can be placed in a

home. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to realize changes in practice that have occurred as a result of the state's child welfare transformation efforts and House Bill 1 of the 2018 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by updating public agency adoptions' policy and procedures in accordance with House Bill 1 of the 2018 Regular Session and child welfare transformation efforts.

(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 improving policy and procedures applicable to public agency adoptions in accordance with House Bill 1 of the 2018 Regular Session and child welfare transformation efforts.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There were 1,065 adoption finalizations in Kentucky in 2017.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Foster children awaiting adoption will have improved connection with siblings and permanency services provided by the cabinet in accordance with House Bill 1 of the 2018 Regular Session and the state's child welfare transformation efforts.

(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 create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children in foster care will benefit from improved sibling connections, child-focused recruitment efforts, and enhanced considerations of prospective adoptive parents resources versus an arbitrary cap on the number of children in a prospective adoptive home.

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

(a) Initially: The amendment to this administrative regulation will be implemented within available federal and state appropriations for the department.

(b) On a continuing basis: The amendment to this administrative regulation will be implemented within available federal and state appropriations for the department.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding to be used for implementation and enforcement of this administrative regulation are the federal Title IV-E and Title IV-B funds made available under the Social Security Act and general funds.

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

(9) TIERING: Is tiering applied? Tiering is not applied. Public agency adoptions are implemented in a like manner statewide for children in foster care.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal

mandate.

45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629-629i, 670-679b, 1996, 1996b

2. State compliance standards. KRS 194A.050(1), 199.472

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629-629i, 670-679b, 1996, 1996b

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.472, 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629-629i, 670-679b, 1996, 1996b

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

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

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

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

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

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission
(As Amended at ARRS, September 11, 2018)

9 KAR 1:015. Preadministrative proceedings.

RELATES TO: KRS 11A.080, 11A.100

STATUTORY AUTHORITY: KRS 11A.110(3)

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

Section 1. Definitions. (1) "Commission" means/is the Executive Branch Ethics Commission created by KRS 11A.060.

(2) "Complaint" means/is the "complaint signed under penalty of perjury by any person" as stated in KRS 11A.080(1)(a) and 11A.080(1). A complaint does not include a referral of information to the commission that is provided without being under penalty of perjury.

Section 2. Complaint. (1) A complaint shall state the:

(a) Full name and address of the:

1. Complainant; and

2. Complainant's attorney, if an attorney has been retained;

(b) Name of each person alleged to have violated KRS Chapter 11A;

(c) Employment of each alleged violator, if known;

(d) Alleged facts that are the basis of the complaint; and

(e) Statute alleged to have been violated, if known.

(2) The statement that the complaint is signed under penalty of perjury shall appear above the signature of the complainant.

(3) Appearing after the complainant's signature shall appear a line for a Notary Public to sign, the date of Notary Public signature, and the date of expiration of Notary Public commission.

(4) Appearing after the Notary Public's signature, the complainant's attorney, if any retained, shall sign the complaint.

(5) A complaint that does not contain the following shall not be accepted as properly filed with the commission:

(a) The signature of the complainant;

(b) The signature of a valid Notary Public;

(c) The name of a person alleged to have violated KRS Chapter 11A over which the commission maintains jurisdiction; and

(d) Facts that, if true, would indicate a violation of KRS Chapter 11A.

(6) The complaint shall be part of the records of a preliminary investigation pursuant to KRS 11A.080 and shall remain confidential pursuant to KRS 11A.080(2) until/such time as/ final action is taken by the commission pursuant to KRS 11A.100(3).

Section 3[2]. Answer to Complaint. (1) The documents specified in KRS 11A.080(1)(c) shall be sent, by certified mail, return receipt requested, at the last known address, or by personal service to the person alleged to have violated KRS Chapter 11A.

(2) Within twenty (20) days of receiving a copy of the complaint, a person against whom a complaint is filed may/shall:

(a) File with the commission a written, signed response to the complaint; and

(b) Mail a copy of the response to the complainant.

(3) The answer, if any, shall be part of the records of the preliminary investigation pursuant to KRS 11A.080 and shall remain confidential pursuant to KRS 11A.080(2) until/such time

as/ final action is taken by the commission pursuant to KRS 11A.100(3).

Section 4[3]. Meeting During Preliminary Investigation. (1) At any time during the course of a preliminary investigation pursuant to KRS 11A.080(1)(a), a[The] person being investigated may/ at any time during the course of the preliminary investigation:

(a) Request a meeting with the commission's attorney and the complainant, if any; and

(b) Have an attorney represent him at this meeting.

(2) The commission's attorney shall use reasonable efforts to schedule a meeting if one has been requested.

(3) [Nothing in] This section shall not be construed to prohibit the commission's attorney[attorney] or an investigator acting on behalf of the commission[commission] from initiating contact with the person being investigated, or the person's attorney[attorney] if he or she has retained counsel.

Section 5[4]. Dismissal of Complaint. (1) The commission may dismiss a complaint if it determines that the facts stated in the complaint, or facts known to the commission upon a preliminary investigation, fail to establish a violation of KRS Chapter 11A.

(2) The commission may dismiss a complaint if the complainant or his or her attorney at any time before the commission takes final action pursuant to KRS 11A.100(3), publicly reveals that the complaint has been filed with the commission or that the commission opened a preliminary investigation based upon the complaint, which may interfere with the preliminary investigation remaining confidential pursuant to the requirements of KRS 11A.080(2).

WILLIAM G. FRANCIS, Chair

APPROVED BY AGENCY: JULY 10, 2018

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

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

FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission
(As Amended at ARRS, September 11, 2018)

9 KAR 1:030. Administrative proceedings.

RELATES TO: KRS 11A.080, 11A.100, 13B.030 - 13B.050, 13B.070, 13B.090

STATUTORY AUTHORITY: KRS 11A.080, 11A.100, 11A.110(3)

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

~~regulation provides the procedures for the designation of hearing officers for the commission. KRS 100(1) provides that the commission is exempted from the provisions of KRS 13B.050(1), (2), and (3) when a party fails to file an answer or otherwise participate. The administrative regulation establishes procedures to govern when a party fails to participate in an administrative proceeding. KRS 11A.110(3) provides that the Executive Branch Ethics Commission promulgate administrative regulations to implement KRS Chapter 11A.]~~

Section 1. Definitions. (1) "Commission" means[is] the Executive Branch Ethics Commission established by KRS 11A.060.

(2) "Commission secretary" means the employee of the commission designated pursuant to KRS 11A.070 to designate hearing officers.

(3) "Executive director" means the executive director appointed by the commission pursuant to KRS 11A.070.

(4) "Initiating order" means the document issued by the commission to initiate an administrative proceeding to determine whether there has been a violation as provided by KRS 11A.080(4)(b).

Section 2. Initiating Order. (1) To initiate an administrative proceeding, the commission shall issue an initiating order to the alleged violator, who shall be referred to as the respondent during the course of the administrative proceeding.

(2) The initiating order shall:

(a) Be served on the respondent by certified mail, return receipt requested, or registered mail sent to the last known address of the respondent, or by personal service. Service by certified or registered mail shall be complete upon the date on which the commission receives the return receipt or the returned notice;

(b)[(4)] Include the information required by KRS 13B.050(3), except for the information required in KRS 13B.050(3)(a) and (b);

(c)[(2)] State that all material submitted to the commission by the respondent or his attorney shall be addressed to the commission[Executive Branch Ethics Commission];[and]

(d) State the deadline for submitting an answer and the ramifications of failing to file an answer as provided in Section 4 of this administrative regulation; and

(e) State that the procedural schedule for the proceedings will be set by a subsequent order after the designation of a hearing officer[(3) Establish the procedural schedule for the proceeding or state that it will be set by subsequent order].

Section 3[2]. Answer. (1) The respondent shall file a written answer to the initiating order[shall be filed] with the commission within twenty (20) days of service of the initiating order.

(2) The answer shall be filed[.] by the:

- (a) Respondent, if he has not retained counsel; or
- (b) Respondent's attorney, if he has retained counsel.

(3)[(2)] The answer shall be signed[verified] by the respondent or by counsel for respondent.

(4) The respondent may request additional time in which to file an answer. The executive director may grant the respondent an additional twenty (20) days in which to file an answer.

(5) If the respondent requests additional time to file an answer beyond the additional twenty (20) days, the request shall be reviewed by the commission at its next regularly scheduled meeting. The commission may grant additional time to file an answer with good cause shown.

Section 4. Default. (1) If the respondent fails to file a timely answer, then the commission may:

(a) Accept the failure to answer as an admission of the allegations in the initiating order;

(b) Find by clear and convincing evidence pursuant to KRS 11A.100(3) that the respondent has engaged in the alleged conduct in violation of KRS Chapter 11A;

(c) Enter a final order of default against the respondent; and

(d) Levy the appropriate possible penalty allowed under KRS 11A.100(3).

Section 5[3]. Counsel. (1) If a respondent has retained counsel, the attorney shall file an entry of appearance with the commission.

(2) If a respondent has retained counsel, notices, correspondence, and orders relating to the administrative proceeding shall thereafter be transmitted to the attorney instead of the respondent.

Section 6. Assignment of a Hearing Officer. (1) If the respondent files a timely answer, then the commission shall designate a hearing officer.

(2) The commission shall designate a roster of hearing officers as provided by[pursuant to] KRS 13B.030(2)(a) and as dictated by[the requirements of] KRS Chapter 45A.

(3) A person qualified to serve as a hearing officer for the commission shall:

- (a) Maintain the qualifications required by KRS 13B.040;
- (b) Be an attorney in good standing with the Kentucky Bar Association or otherwise have approval by the Kentucky Bar Association to practice law in the Commonwealth of Kentucky;

(c) Demonstrate knowledge of KRS Chapter 11A by having served as an ethics officer, having previously served as a member or staff of the commission, or attending or participating in trainings offered by the commission on the requirements of KRS Chapter 11A;

- (d) Not be a current member or staff of the commission; and
- (e) Not be under the jurisdiction of the commission.

(4) Once the roster of hearing officers is established, the commission secretary shall randomly assign administrative proceedings initiated by the commission pursuant to KRS 11A.080(4)(b) to a hearing officer from the roster of hearing officers, unless otherwise directed by the commission.

Section 7. Hearing Officer. (1) After the hearing officer is designated by the commission, the hearing officer shall within ten (10) days of the designation send notice to the parties of the date and time of the first telephonic prehearing conference.

(2) The hearing officer shall follow the requirements of KRS Chapter 13B for the conduct of administrative hearings, except as provided in KRS 11A.100 for the burden of proof where the higher standard of proof is required as dictated by KRS 13B.090(7)[13B.050(7)].

Section 8[4]. Settlement. (1) At any time during the proceedings, the commission's counsel may enter into mediation or informal proceedings pursuant to KRS 13B.070 with the respondent[after charges have been initiated].

(2) An agreed order or settlement reached through this process shall be reviewed by the commission and, upon approval by the commission, shall be signed by the commission and the respondent.

(3) The commission shall not approve a settlement that provides for the confidentiality of:

- (a) The existence of the settlement; or
- (b) Any of the terms of the settlement.

Section 9[5]. Ex Parte Communications. Once an administrative proceeding has commenced, the commission, its executive director, commission counsel, the respondent, respondent counsel or other person acting on behalf of the respondent shall not initiate, participate in, or consider ex parte communications concerning the subject matter of a hearing or a related[an] issue of fact or law[related thereto], except upon notice and opportunity for all parties to participate.

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

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

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

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

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

1. Court stenographer; or
2. Commission, if the stenographer is unable to furnish a copy.]

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

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

WILLIAM G. FRANCIS, Chair

APPROVED BY AGENCY: JULY 10, 2018

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

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

AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, September 11, 2018)

12 KAR 2:016. Brand and product names.

RELATES TO: KRS 250.491-250.631

STATUTORY AUTHORITY: KRS 250.571(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation establishes uniformity in the use of brand and product names to inform and not mislead the purchaser.

Section 1. The brand or product name shall be appropriate for the intended use of the feed and shall not be misleading. If the name indicates the feed is made for a specific use, the character of the feed shall conform to that use.

Section 2. Commercial, registered brand, or trade names:

- (1) Shall not be used in guarantees or ingredient listings; and
- (2) May be used in the product name of a feed produced by, for, or with the permission of the firm holding the rights to the name.

Section 3. (1) The name of a commercial feed shall not:

- (a) Be derived from one (1) or more ingredients of a mixture to the exclusion of other ingredients; and
 - (b) Represent a component of a mixture unless all components are included in the name.
- (2) The name of an ingredient or combination of ingredients that is intended to impart a distinctive characteristic to the product that~~which~~ would be of significance to a purchaser may be used as a part of the brand name or product name if:
- (a) The ingredient or combination of ingredients is quantitatively guaranteed in the guaranteed analysis; and
 - (b) The brand name or product name is not otherwise false or misleading.

Section 4. The word "protein" shall not be used in the product name of a feed that contains added non-protein nitrogen.

Section 5. (1) If the name carries a percentage value, the percentage value shall signify the protein or equivalent protein content, and the name may explicitly modify the percentage with the word "protein".

(2) If another percentage value is used, the value shall be followed by the proper description without false or misleading labeling.

(3) If a figure is used in the brand name (except in mineral,

vitamin, or other products where the protein guarantee is nil or unimportant), it shall be preceded by the word "number" or some other suitable designation.

(4) A digital number shall not be used in a manner that is misleading or confusing to the purchaser.

Section 6. A single ingredient feed shall have a product name that conforms to the definitions of feed ingredients in 12 KAR 2:006.

Section 7. The word "vitamin," a contraction thereof, or word suggesting vitamin may be used in the name of a feed that~~which~~ is:

- (1) Represented to be a vitamin supplement; and
- (2) Labeled with the minimum content of each vitamin declared, as specified in 12 KAR 2:021, Section 3.

Section 8. (1) The term "mineralized" shall not be used in the name of a feed, except for "trace mineralized salt."

(2) A product including "trace mineralized salt" in its name shall contain significant amounts of trace minerals that~~which~~ are recognized as essential for animal nutrition by an authority on animal nutrition such as the National Research Council.

Section 9. The term "meat" or "meat by-products" shall designate the animal from which the meat or meat by-products is derived unless the meat or meat by-products are from cattle, swine, sheep, or~~and~~ goats.

Section 10. If the commercial feed consists of raw milk, the words, "Raw (blank) Milk" shall appear conspicuously on the principal display panel. (The blank shall be completed by using the species of animal from which the raw milk is collected.)

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 5, 2018 at 10 a.m.

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

AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, September 11, 2018)

12 KAR 2:018. Guaranteed analysis.

RELATES TO: KRS 250.491-250.631

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

NECESSITY, FUNCTION, and CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. KRS 250.521(1)(b) requires that a commercial feed label contain a guaranteed analysis stated in terms the director by administrative regulation determines are required to advise the user of the composition of the feed or to support claims made in the labeling. This administrative regulation establishes a uniform format for the nutritional guarantees required as a part of the commercial feed label.

Section 1. The nutritional guarantees shall be listed in the following order: crude protein, equivalent crude protein from nonprotein nitrogen, amino acids, crude fat, crude fiber, acid detergent fiber, neutral detergent fiber, calcium, phosphorus, salt, and sodium. Other guarantees shall follow in a general format with the units of measure used to express guarantees (percentage, parts per million, international units, etc.) listed in a sequence that provides a consistent grouping of the units of measure.

Section 2. Required Guarantees for Swine Formula Feeds. (1) The animal classes for swine shall be:

- (a) Prestarter - two (2) to eleven (11) pounds;
- (b) Starter - eleven (11) to forty-four (44) pounds;
- (c) Grower - forty-four (44) to 110 pounds;
- (d) Finisher - 110 pounds to ~~242 pounds or~~ market weight;
- (e) Gilts, sows, and adult boars; and
- (f) Lactating gilts and sows.

(2) The guaranteed analysis for swine complete feeds and supplements (all animal classes) shall include the:

- (a) Minimum percentage of crude protein;
- (b) Minimum percentage of lysine;
- (c) Minimum percentage of crude fat;
- (d) Maximum percentage of crude fiber or acid detergent fiber

(ADF);

- (e) Minimum and maximum percentage of calcium;
- (f) Minimum percentage of phosphorus;
- (g) Minimum and maximum percentage of salt (if added);
- (h) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee; and

- (i) Minimum selenium in parts per million (ppm); ~~and~~
- (j) ~~Minimum zinc in parts per million (ppm)].~~

Section 3. Required Guarantees for Formula Poultry Feeds (Chicken and Turkey). (1) The animal classes for layer chickens that are grown to produce eggs for food shall be:

- (a) Starting/~~and~~ growing - from day of hatch to approximately ten (10) weeks of age;
- (b) Finisher - from approximately ten (10) weeks of age to time first egg is produced (approximately twenty (20) weeks of age);
- (c) Laying - chickens from time first egg is laid throughout the time of egg production; and
- (d) Breeders - chickens that produce fertile eggs to hatch replacement layers that produce eggs for food.

(2) The animal classes for broiler chickens that are grown for human food shall be:

- (a) Starting/~~and~~ growing - from day of hatch to approximately five (5) weeks of age;
- (b) Finisher - from approximately five (5) weeks of age to market, (forty-two (42) to fifty-two (52) days); and
- (c) Breeders - hybrid strains of chickens whose offspring are grown for human food (broilers), any age and either sex.

(3) The animal classes for breeder chickens whose offspring (broilers) are grown for human food shall be:

- (a) Starting/~~and~~ growing - from day of hatch until approximately ten (10) weeks of age;
- (b) Finishing - from approximately ten (10) weeks of age to time first egg is produced, approximately twenty (20) weeks of age; and

- (c) Laying - fertile egg producing chickens (broilers/roasters) from day of first egg throughout the time fertile eggs are produced.

(4) The animal classes for turkeys shall be:

- (a) Starting/~~and~~ growing - turkeys that are grown for human food from day of hatch to approximately thirteen (13) weeks of age (females) and sixteen (16) weeks of age (males);
- (b) Finisher - turkeys that are grown for human food, females from approximately thirteen (13) weeks of age to approximately seventeen (17) weeks of age, males from sixteen (16) weeks of age to twenty (20) weeks of age, or desired market weight;

- (c) Laying - female turkeys that are producing eggs, from time first egg is produced, throughout the time they are producing eggs; and

- (d) Breeder - turkeys that are grown to produce fertile eggs, from day of hatch to time first egg is produced (approximately thirty (30) weeks of age), both sexes.

(5) The guaranteed analysis for poultry complete feeds and supplements (all animal classes) shall include the:

- (a) Minimum percentage of crude protein;
- (b) Minimum percentage of lysine;
- (c) Minimum percentage of methionine;
- (d) Minimum percentage of crude fat;
- (e) Maximum percentage of crude fiber or acid detergent fiber

(ADF);

- (f) Minimum and maximum percentage of calcium;

- (g) Minimum percentage of phosphorus;
- (h) Minimum and maximum percentage of salt (if added); and
- (i) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee.

Section 4. Required Guarantees for Beef Cattle Formula Feeds. (1) The animal classes for beef cattle shall be:

- (a) Calves (birth to weaning);
- (b) Cattle on pasture (may be specific as to production stage; e.g., stocker, feeder, replacement heifers, brood cows, bulls, etc.); and
- (c) Feedlot cattle.

(2) The guaranteed analysis for beef complete feeds and supplements (all animal classes) shall include the:

- (a) Minimum percentage of crude protein;
- (b) Maximum percentage of equivalent crude protein from non-protein~~nonprotein~~ nitrogen (if added);
- (c) Minimum percentage of crude fat;
- (d) Maximum percentage of crude fiber or acid detergent fiber

(ADF);

- (e) Minimum and maximum percentage of calcium;
- (f) Minimum percentage of phosphorus;
- (g) Minimum and maximum percentage of salt (if added);
- (h) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee;

- (i) Minimum percentage of potassium; and
- (j) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(3) The guaranteed analysis for beef mineral feeds (if added) shall include the:

- (a) Minimum and maximum percentage of calcium;
- (b) Minimum percentage of phosphorus;
- (c) Minimum and maximum percentage of salt;
- (d) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee;
- (e) Minimum percentage of magnesium;
- (f) Minimum percentage of potassium;
- (g) Minimum copper in parts per million (ppm);
- (h) Minimum selenium in parts per million (ppm);
- (i) Minimum zinc in parts per million (ppm); and
- (j) Minimum vitamin A, other than precursors of vitamin A, in international units per pound.

Section 5. Required Guarantees for Dairy Formula Feeds. (1) The animal classes for dairy cattle shall be:

- (a) Veal milk replacer - milk replacer fed to calves for veal production;
- (b) Herd milk replacer - milk replacer fed to calves for herd replacement and other uses;
- (c) Starter - calf from approximately three (3) days to three (3) months of age;
- (d) Non-lactating dairy cattle: replacement dairy heifers, dairy bulls, and dairy calves~~Growing heifers, bulls and dairy beef:~~
- 1. ~~Grower 1 -- three (3) months to twelve (12) months of age;~~

- and
- 2. ~~Grower 2 -- more than twelve (12) months of age];~~

- (e) Lactating dairy cows~~cattle~~; and
- (f) Dry dairy cows~~Nonlactating dairy cattle~~.

(2) The guaranteed analysis for veal and herd milk replacer shall include the:

- (a) Minimum percentage of crude protein;
- (b) Minimum percentage of crude fat;
- (c) Maximum percentage of crude fiber;
- (d) Minimum and maximum percentage of calcium;
- (e) Minimum percentage of phosphorus; and
- (f) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(3) The guaranteed analysis for dairy cattle complete feeds and supplements shall include the:

- (a) Minimum percentage of crude protein;

- (b) Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) (if added);
- (c) Minimum percentage of crude fat;
- (d) Maximum percentage of crude fiber;
- (e) Maximum percentage of acid detergent fiber (ADF);
- (f) Minimum and maximum percentage of calcium;
- (g) Minimum percentage of phosphorus;
- (h) Minimum selenium in parts per million (ppm); and
- (i) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(4) The guaranteed analysis for dairy mixing and pasture mineral (if added) shall include the:

- (a) Minimum and maximum percentage of calcium;
- (b) Minimum percentage of phosphorus;
- (c) Minimum and maximum percentage of salt;
- (d) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee;
- (e) Minimum percentage of magnesium;
- (f) Minimum percentage of potassium;
- (g) Minimum selenium in parts per million (ppm); and
- (h) Minimum vitamin A, other than the precursors of vitamin A, in international units per pound.

Section 6. Required Guarantees for Equine Complete Feeds and Supplements (All Classes). (1) The equine animal classes shall be:

- (a) Growing[Foal];
 - (b) Broodmare[Mare];
 - (c) Maintenance[Breeding]; and
 - (d) Performance (including stallions)[Maintenance].
- (2) The guaranteed analysis for equine complete feeds and supplements (all animal classes) shall include the:
- (a) Minimum percentage of crude protein;
 - (b) Minimum percentage of crude fat;
 - (c) Maximum percentage of crude fiber;
 - (d) Maximum percentage of Acid Detergent Fiber (ADF);
 - (e) Maximum percentage of Neutral Detergent Fiber (NDF);
 - (f) Minimum and maximum percentage of calcium;
 - (g)[(e)] Minimum percentage of phosphorus;
 - (h)[(f)] Minimum copper in parts per million (ppm) (if added);
 - (i)[(g)] Minimum selenium in parts per million (ppm);
 - (j)[(h)] Minimum zinc in parts per million (ppm); and
 - (k)[(i)] Minimum vitamin A, other than the precursors of vitamin A, in international units per pound (if added).

(3) The guaranteed analysis for equine mineral feed shall include the:

- (a) Minimum and maximum percentage of calcium;
- (b) Minimum percentage of phosphorus;
- (c) Minimum and maximum percentage of salt (if added);
- (d) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee;
- (e) Minimum copper in parts per million (ppm) (if added);
- (f) Minimum selenium in parts per million (ppm);
- (g) Minimum zinc in parts per million (ppm); and
- (h) Minimum vitamin A, other than the precursors of vitamin A, in international units per pound (if added).

Section 7. Required Guarantees for Goat[Goats and Sheep] Formula Feeds. (1) The animal classes for goats[and-sheep] shall be:

- (a) Starter;
 - (b) Grower;
 - (c) Finisher;
 - (d) Breeder; and
 - (e) Lactating.
- (2) The guaranteed analysis for goat[and-sheep] complete feeds and supplements (all animal classes) shall include the:
- (a) Minimum percentage of crude protein;
 - (b) Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) (if added);
 - (c) Minimum percentage of crude fat;

- (d) Maximum percentage of crude fiber;
- (e) Maximum percentage of acid detergent fiber;
- (f) Minimum and maximum percentage of calcium;
- (g)[(f)] Minimum percentage of phosphorus;
- (h)[(g)] Minimum and maximum percentage of salt (if added);
- (i)[(h)] Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee;
- (j)[(i)] Minimum and maximum copper in parts per million (ppm) (if added); ~~or if total copper exceeds twenty (20) ppm~~);
- (k)[(j)] Minimum selenium in parts per million (ppm); and
- (l)[(k)] Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

Section 8. Required Guarantees for Sheep Formula Feeds. (1) The animal classes for sheep shall be:

- (a) Starter;
 - (b) Grower;
 - (c) Finisher;
 - (d) Breeder; and
 - (e) Lactating.
- (2) The guaranteed analysis for sheep complete feeds and supplements (all animal classes) shall include the:
- (a) Minimum percentage of crude protein;
 - (b) Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) (if added);
 - (c) Minimum percentage of crude fat;
 - (d) Maximum percentage of crude fiber or acid detergent fiber (ADF);
 - (e) Minimum and maximum percentage of calcium;
 - (f) Minimum percentage of phosphorus;
 - (g) Minimum and maximum percentage of salt (if added);
 - (h) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee;
 - (i) Minimum and maximum copper in parts per million (ppm) (if added, or total copper exceeds 20 ppm);
 - (j) Minimum selenium in parts per million (ppm); and
 - (k) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

Section 9. Required Guarantees for Ducks and Geese Formula Feeds. (1) The duck animal classes shall be:

- (a) Starter - zero to three (3) weeks of age;
 - (b) Grower - three (3) to six (6) weeks of age;
 - (c) Finisher - six (6) weeks to market;
 - (d) Breeder developer - eight (8) to nineteen (19) weeks of age; and
 - (e) Breeder - twenty-two (22) weeks to end of lay.
- (2) The geese animal classes shall be:
- (a) Starter - zero to four (4) weeks of age;
 - (b) Grower - four (4) to eight (8) weeks of age;
 - (c) Finisher - eight (8) weeks to market;
 - (d) Breeder developer - ten (10) to twenty-two (22) weeks of age; and
 - (e) Breeder - twenty-two (22) weeks to end of lay.

(3) The guaranteed analysis for duck and geese complete feeds and supplements (for all animal classes) shall include the:

- (a) Minimum percentage of crude protein;
- (b) Minimum percentage of crude fat;
- (c) Maximum percentage of crude fiber or acid detergent fiber (ADF);
- (d) Minimum and maximum percentage of calcium;
- (e) Minimum percentage of phosphorus;
- (f) Minimum and maximum percentage of salt (if added); and
- (g) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee.

Section 10[9]. Required Guarantees for Fish Complete Feeds and Supplements. (1) The following animal species shall be declared in lieu of an animal class:

- (a) Trout;

- (b) Catfish; and
- (c) Species other than trout or catfish.
- (2) The guaranteed analysis for all fish complete feeds and supplements shall include the:
 - (a) Minimum percentage of crude protein;
 - (b) Minimum percentage of crude fat;
 - (c) Maximum percentage of crude fiber or acid detergent fiber (ADF); and
 - (d) Minimum percentage of phosphorus.

Section 11[40]. Required Guarantees for Rabbit Complete Feeds and Supplements. (1) The rabbit animal classes shall be:

- (a) Grower - four (4) to twelve (12) weeks of age; and
- (b) Breeder - twelve (12) weeks of age and over.
- (2) The guaranteed analysis for rabbit complete feeds and supplements (all animal classes) shall include the:
 - (a) Minimum percentage of crude protein;
 - (b) Minimum percentage of crude fat;
 - (c) Minimum and maximum percentage of crude fiber or acid detergent fiber (ADF) (the maximum[~~crude fiber~~] shall not exceed the minimum by more than five (5.0) units);
 - (d) Minimum and maximum percentage of calcium;
 - (e) Minimum percentage of phosphorus;
 - (f) Minimum and maximum percentage of salt (if added);
 - (g) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee; and
 - (h) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

Section 12[44]. The required guarantees of grain mixtures and formula feeds and ingredients that are not specifically described in Sections 2 through 11[40] of this administrative regulation, or exempted under Section 13[42] of this administrative regulation, shall include the following items in the order listed:

- (1) Minimum percentage of crude protein;
- (2) Minimum or maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) as required in 12 KAR 2:021 (if added);
- (3) Minimum percentage of crude fat;
- (4) Maximum percentage of crude fiber or acid detergent fiber (ADF);
- (5) Minerals in formula feeds in the following order:
 - (a) Minimum and maximum percentage of calcium;
 - (b) Minimum percentage of phosphorus;
 - (c) Minimum and maximum percentage of salt (if added);
 - (d) Minimum and maximum percentage of total sodium, if the total sodium exceeds that furnished by the maximum salt guarantee; and
 - (e) Other minerals;
- (6) Minerals in feed ingredients as specified by the official definition of the Association of American Feed Control Officials;
- (7) Vitamins in the terms required by 12 KAR 2:021;
- (8) Total sugars as invert on dried molasses products or products being sold primarily for their sugar content;
- (9) Viable lactic acid producing microorganisms if/when used in silage products and direct fed microbial products guaranteed in terms specified in 12 KAR 2:021; and
- (10)~~Enzymatic activity for enzyme products and formula feeds represented as a source of enzymes guaranteed in terms specified in 12 KAR 2:021; and~~
- (11) If the item is a commercial feed (e.g., vitamin and mineral premix, base mix, etc.) intended to provide a specialized nutritional source for use in the manufacture of other feeds, its intended purpose and guarantee of those nutrients relevant to the stated purpose.

Section 13[42]. Exemptions. (1) A mineral guarantee for feed, excluding those feeds manufactured as complete feeds and for feed supplements intended to be mixed with grain to produce a complete feed for swine, poultry, fish, or/and veal and herd milk replacers, shall not be required if:

- (a) The feed or feed ingredient is not intended or represented

or does not serve as a principle source of that mineral to the animal; or

(b) The feed or feed ingredient is intended for nonfood producing animals and contains less than six and five-tenths (6.5) percent total mineral.

(2) Guarantees for vitamins shall not be required if the commercial feed is neither formulated for nor represented as a vitamin supplement.

(3) Guarantees for crude protein, crude fat and crude fiber shall not be required if the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as a Type A drug article, mineral or vitamin supplements, or/and molasses.

(4) Guarantees for microorganisms and enzymes shall not be required if the commercial feed is intended for a purpose other than to furnish these substances or they are of minor significance relating to the primary purpose of the product and no specific label claims are made.

(5) The indication for animal class and species is not required on single ingredient products if the ingredient is not intended, represented, or defined for a specific animal class or species.

Section 14[43]. Incorporation by Reference. (1) "Official Publication", 2018[4996] Edition, Association of American Feed Control Officials, is incorporated by reference.

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

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 5, 2018 at 10 a.m.

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

AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, September 11, 2018)

12 KAR 2:021. Expression of guarantees.

RELATES TO: KRS 250.491-250.631

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. KRS 250.521(1)(b) requires that a commercial feed label contain a guaranteed analysis stated in terms the director by administrative regulation determines are required to advise the user of the composition of the feed or to support claims made in the labeling. This administrative regulation establishes a uniform format for the expression of nutritional guarantees required as a part of the commercial feed label.

Section 1. The guarantees for crude protein, equivalent crude protein from non-protein[~~nonprotein~~] nitrogen; lysine, methionine, and other amino acids; crude fat; crude fiber; and acid detergent fiber shall be in terms of percentage.

Section 2. Mineral Guarantees. (1) If the calcium, salt, and sodium guarantees are given in the guaranteed analysis, the guarantee shall be stated and conform to the following:

(a) If the minimum is below two and one-half (2.5) percent, the maximum shall not exceed the minimum by more than one-half (0.5) percentage point.

(b) If the minimum is two and one-half (2.5) percent but five (5)

percent, the maximum shall not exceed the minimum by more than one (1) percentage point.

(c) If the minimum is above five (5) percent, the maximum shall not exceed the minimum by more than twenty (20) percent of the minimum and in no case shall the maximum exceed the minimum by more than five (5) percentage points.

(2) If stated, guarantees for minimum and maximum total sodium and salt; minimum potassium, magnesium, sulfur, and phosphorus; and maximum fluoride shall be stated in terms of percentage. Other minimum mineral guarantees shall be stated in parts per million (ppm) if the concentration is less than 10,000 ppm and in percentage if the concentration is 10,000 ppm (one (1) percent) or greater.

(3) Products labeled with a quantity statement (e.g. tablets, capsules, granules, or liquids) shall state mineral guarantees in milligrams (mg) per unit (e.g. tablets, capsules, granules, or liquids) consistent with the quantity statement and directions for use.

Section 3. Guarantees for minimum vitamin content of commercial feeds shall be listed in the following general order specified and stated in mg/lb. or in units consistent with those employed for the quantity statement unless otherwise specified in this section in the unit of measure per weight specified or expressed in terms of a quantity (tablets, capsules, granules or liquid volume) consistent with the quantity statement and directions for use shall be stated:

(1) Vitamin A, other than precursors of vitamin A, shall be stated in International Units per pound.

(2) Vitamin D3, in products offered for poultry feeding, shall be stated in International Chick Units per pound.

(3) Vitamin D for other uses shall be stated in International Units per pound.

(4) Vitamin E shall be stated in International Units per pound.

(5) Concentrated oils and feed additive premixes containing vitamins A, D, or E may, at the option of the distributor, be stated in units per gram instead of units per pound.

(6) Vitamin B-12 shall be stated in milligrams or micrograms per pound.

~~(7) All other vitamin guarantees shall express the vitamin activity in milligrams per pound for the following: menadione, riboflavin, d-pantothenic acid, thiamine, niacin, vitamin B-6, folic acid, choline, biotin, inositol, p-amino benzoic acid, ascorbic acid, and carotene, except that concentrate feed additive sources used for further manufacturing purposes may, at the option of the distributor, express the vitamin guarantee in grams per pound or other unit of weight when this expression is more meaningful and consistent with its use.~~

~~(7) Concentrated oils and feed additive premixes containing vitamin A, vitamin D or vitamin E may, at the option of the distributor, state guarantees in international units per gram.~~

Section 4. Guarantees for drugs shall be stated in terms of percent by weight, except:

(1) Antibiotics present at less than 2,000 grams per ton (total) of commercial feed shall be stated in grams per ton of commercial feed.

(2) Antibiotics present at 2,000 or more grams per ton (total) of commercial feed shall be stated in grams per pound of commercial feed.

(3) The term "milligrams per pound" may be used for drugs or antibiotics if a dosage is given in "milligrams" in the feeding directions.

Section 5. Commercial feeds containing added non-protein nitrogen shall be labeled as follows:

(1) For ruminants:

(a) Complete feeds, supplements, and concentrates containing added non-protein nitrogen and containing more than five (5) percent protein from natural sources shall be guaranteed as follows: Crude Protein, minimum ____ percent (this includes not more than ____ percent equivalent protein from non-protein nitrogen).

(b) Mixed feed concentrates and supplements containing five

(5) percent or less protein from natural sources shall be guaranteed as follows: Equivalent Crude Protein from Non-protein Nitrogen, minimum ____ percent.

(c) Ingredient sources of non-protein nitrogen including Urea, ~~Diammonium~~[Di-Ammonium] Phosphate, Ammonium Polyphosphate Solution, Ammoniated Rice Hulls, or other basic non-protein nitrogen ingredients defined by the Association of American Feed Control Officials shall be guaranteed as follows: Nitrogen, minimum ____ percent. Equivalent Crude Protein from Non-protein Nitrogen, minimum ____ percent.

(2) For non-ruminants:

(a) Complete feeds, supplements, and concentrates containing crude protein from all forms of non-protein nitrogen, added as such[~~from ammonium polyphosphate solution, diammonium phosphate, or monoammonium phosphate~~], shall be labeled as follows:

Crude protein, minimum ____ percent.

(This includes not more than ____ percent equivalent crude protein which is not nutritionally available to (species of animal for which feed is intended).)

(b) Premixes, concentrates, or supplements intended for non-ruminants containing more than 1.25 percent equivalent crude protein added from all forms of non-protein nitrogen, added as such, shall contain adequate directions for use and this prominent statement:

WARNING: This feed must be used only in accordance with directions furnished on the label.

Section 6. Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (if present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.

Section 7. Guarantees for microorganisms shall be stated in colony forming units per gram (CFU/g) if directions are for using the product in grams, or in colony forming units per pound (CFU/lb) if directions are for using the product in pounds. A parenthetical statement following the guarantee shall list each species in order of predominance.

Section 8[7]. Guarantees for enzymes shall be stated in units of enzymatic activity per unit weight or volume, consistent with label directions. The source organism for each type of enzymatic activity shall be specified in the format followed in this example: Protease (Bacillus subtilis) five and five-tenths (5.5) mg amino acids liberated/min./milligram. If two (2) or more sources have the same type of activity, they shall be listed in order of predominance based on the amount of enzymatic activity provided.

Section 9. Guarantees for Dietary Starch, Sugars, and Fructans for Commercial Feeds, Other than Customer-formula Feed, Pet Food, and Specialty Pet Food Products. (1) A commercial feed that bears on its labeling claim in any manner for levels of "dietary starch," "sugars," or words of similar designation, shall include on the label:

(a) Guarantees for maximum percentage of dietary starch and maximum percentage sugars, in the Guaranteed Analysis section immediately following the last fiber guarantee; and

(b) A maximum percentage guarantee for fructans immediately following sugars, if the feed contains forage products.

(2) When such guarantees for dietary starch, sugars, or fructans for commercial feeds appear on the label, feeding directions shall indicate the proper use of the feed product and a recommendation to consult with veterinarian or nutritionist for a recommended diet.

Section 10. The guaranteed analyses that appear upon the label of a commercial feed shall adequately inform the consumer of the actual nutrient content of a product. The Division of Regulatory Services shall use the 2018 Table of Kentucky Analytical Variations to determine those analytes that fall outside of acceptable ranges.

Section 11. Incorporation by Reference. (1) "2018 Table of Kentucky Analytical Variations", January 2018, Division of Regulatory Services, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m. [8. Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.]

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 5, 2018 at 10 a.m.

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

**AGRICULTURAL EXPERIMENT STATION
(As Amended at ARRS, September 11, 2018)**

12 KAR 2:026. Ingredients.

RELATES TO: KRS 250.491-250.631

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. KRS 250.521(1)(c) requires that a commercial feed label list the common or usual name of each ingredient used in the manufacture of the commercial feed, unless the director promulgates an administrative regulation permitting the use of a collective term for a group of ingredients. This administrative regulation establishes the requirements for listing the ingredients on the commercial feed label.

Section 1. Commercial feeds, other than customer-formula~~[customer formula]~~ feeds, shall have an ingredient statement listing the feed ingredients, collective terms for the grouping of feed ingredient, or other appropriate statement pursuant to~~as provided by~~ [under provisions of] KRS 250.521(1)(c). (1) The name of each ingredient or collective term for the grouping of ingredients, if required to be listed, shall be the name as defined in the "Official Common and Usual Names and Definitions of Feed Ingredients" as published in the Official Publication of the Association of American Feed Control Officials, the common or usual name, or one approved by the director.

(2) The ingredient statement may list the collective terms for the grouping of feed ingredients as defined in the official definitions of feed ingredients published in the Official Publication of the Association of American Feed Control Officials rather than the individual ingredients.

(a) If a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label.

(b) The manufacturer shall provide the Director of Regulatory Services, upon written or oral request, with a listing of individual ingredients within a defined group that are or have been used in manufacturing facilities distributing in Kentucky. The manufacturer shall be specific in its response when the request is made of a particular facility or production.

Section 2. The name of each ingredient shall be shown in letters or type of the same size.

Section 3. A reference to quality or grade of an ingredient shall not appear in the ingredient statement of a feed.

Section 4. The term "dehydrated" may precede the name of a product that has been artificially dried.

Section 5. A single ingredient product defined by the Association of American Feed Control Officials shall not be required to have an ingredient statement.

Section 6. Tentative definitions for ingredients shall not be used until adopted as official by the Association of American Feed Control Officials unless an official definition does not exist or the ingredient has a common accepted name that requires no definition, (i.e. sugar).

Section 7. ~~Commercial, registered brand or trade names shall not be permitted in the ingredient listing.~~

Section 8. ~~The percentage of rice hulls shall be listed in the ingredient statement of a formula feed intended to supply energy to the animal if the amount added exceeds three (3) percent by weight. This shall not apply to feed products where rice hulls are used as a carrier including in dried molasses products, Type A medicated articles, vitamins, trace mineral and other premix additives. The percentage of rice hulls contributed from carrier sources shall be excluded from the determination of percentage of rice hulls in formula feeds.~~

Section 9. ~~A product that is labeled, represented or intended to provide a substantial amount of magnesium to cattle shall be formulated utilizing magnesium ingredients with a biological value of seventy (70) percent or greater when compared to standard reference of feed grade magnesium oxide with a biological value of 100 percent; however, dolomitic limestone shall not be an acceptable source of magnesium unless data substantiates the source of dolomitic limestone has a biological value of seventy (70) percent or greater.~~

Section 10. ~~If the word "iodized" is used in connection with a feed ingredient, the feed ingredient shall contain not less than 0.007 percent iodine, uniformly distributed.~~

Section 8[14]. Incorporation by Reference. (1) "Official Publication", 2018~~[1996]~~ Edition, Association of American Feed Control Officials, is incorporated by reference.

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

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 5, 2018 at 10 a.m.

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

**AGRICULTURAL EXPERIMENT STATION
(As Amended at ARRS, September 11, 2018)**

12 KAR 2:031. Directions for use and precautionary statements~~[for feed containing additives]~~.

RELATES TO: KRS 250.501, 250.531, 250.551(1), (2), 21 C.F.R. 225.80, 225.180

STATUTORY AUTHORITY: KRS 250.521(2)(e), (f), 250.571(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.490 to 250.631. This administrative regulation requires that directions for feeding and

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

precautionary statements be provided with feed containing additives to ensure safe and effective use of the product.

Section 1. Directions for use and precautionary statements on the labeling of a commercial feed and customer-formula feed containing additives~~[an additive]~~, such as a drug, a special purpose additive, or nonnutritive additive shall:

(1) Be adequate to enable~~[stated in a manner that informs of the]~~ safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of the articles~~[of the product for its intended purpose]~~; and

(2) Include at a minimum, all information prescribed by:

(a) Applicable federal regulations under the Federal Food, Drug, and Cosmetic Act, which is codified as 21 U.S.C. 301 to 397; and

(b) 12 KAR 2:036, for feed containing non-protein~~[nonprotein]~~ nitrogen.

Section 2. Adequate directions and precautionary statements necessary for safe and effective use shall be placed on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with a vitamin, mineral, or other dietary nutrient or compound.

Section 3. Raw milk distributed as commercial feed shall bear the following statement: "WARNING: NOT FOR HUMAN CONSUMPTION - THIS PRODUCT HAS NOT BEEN PASTEURIZED AND MAY CONTAIN HARMFUL BACTERIA." This statement shall be displayed in a conspicuous manner and shall not be smaller than the height of the minimum font required by the Federal Fair Packaging and Labeling Act for the quantity statement as shown in the following table:

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

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 5, 2018 at 10 a.m.

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

AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, September 11, 2018)

12 KAR 2:036. Non-protein~~[Nonprotein]~~ nitrogen.

RELATES TO: KRS 250.491-250.631

STATUTORY AUTHORITY: KRS 250.571

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation establishes requirements for the safe use of non-protein~~[nonprotein]~~ nitrogen in commercial feeds~~[ruminant ration]~~.

Section 1. Urea and other non-protein~~[nonprotein]~~ nitrogen products defined in the Official Publication of the Association of American Feed Control Officials shall be acceptable ingredients in commercial feeds for ruminant animals as a source of equivalent crude protein. If the commercial feed contains more than 8.75 percent of equivalent crude protein from all forms of non-protein

nitrogen, added as such, or the equivalent crude protein from all forms of non-protein nitrogen, added as such, exceeds one-third of the total crude protein, the label shall bear adequate directions for the safe use of feeds and precautionary statement: "CAUTION USE AS DIRECTED." The directions for use and the caution statement shall be in type of such size that when placed~~[so placed]~~ on the label it~~[that they]~~ will be read and understood by ordinary persons under customary conditions of purchase and use.

Section 2. A label shall bear adequate directions for the safe use of a feed and the precautionary statement "Caution: Use as Directed"; if:

(1) The commercial feed contains more than 8.75 percent of equivalent crude protein from all forms of nonprotein nitrogen; or

(2) The equivalent crude protein from all forms of nonprotein nitrogen exceeds one-third (1/3) of the total crude protein.

Section 3. Non-protein~~[Nonprotein]~~ nitrogen defined in the Official Publication of the Association of American Feed Control Officials, if so indicated, shall be acceptable ingredients in commercial feeds distributed to non-ruminant~~[nonruminant]~~ animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from non-protein~~[nonprotein]~~ nitrogen sources when used in non-ruminant~~[nonruminant]~~ rations shall not exceed 1.25 percent of the total daily ration.

Section 3~~4~~. The directions for use and the caution statement shall be typed and placed on the label in a manner that can be read and understood by ordinary persons under customary conditions of purchase and use.

Section 5. On labels such as those for medicated feeds that bear adequate feeding directions or warning statements, the presence of added non-protein~~[nonprotein]~~ nitrogen shall not require a duplication of the feeding directions or the precautionary statements if those~~[the]~~ statements include sufficient information to ensure the safe and effective use of this product due to the presence of non-protein~~[nonprotein]~~ nitrogen.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 5, 2018 at 10 a.m.

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

AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, September 11, 2018)

12 KAR 2:056. List of manufacturers.

RELATES TO: KRS 250.491-250.631

STATUTORY AUTHORITY: KRS 250.571(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation establishes~~[To provide]~~ a current listing of facilities manufacturing commercial feed in the state to~~[This will]~~ aid in the exchange of correspondence and collections of official feed samples.

Section 1. For the purpose of maintaining current files of feed manufacturers pursuant to~~[under]~~ KRS 250.511(1) of the Kentucky Feed Law, the list of manufacturers on file shall~~[will]~~ be evaluated quarterly and~~[purged on January 1 of each year of all]~~ facilities not having current tonnage reports shall be removed.

Section 2. Firms removed~~[purged will]~~ be notified at the

address of record and ~~shall~~will be given the opportunity of being reinstated if the division is notified that reinstatement is desired.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 5, 2018 at 10 a.m.

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

**AGRICULTURAL EXPERIMENT STATION
(As Amended at ARRS, September 11, 2018)**

12 KAR 2:066. Suitability.

RELATES TO: KRS 250.541(2)(e)

STATUTORY AUTHORITY: KRS 250.541(2)(e), 250.571(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation establishes criteria that commercial feed shall meet in order to be suitable for its intended purpose and establishes the procedure for an affidavit attesting to the nutritional adequacy of a commercial feed.

Section 1. The nutritional content of commercial feed shall be as stated by its labeling. The feed, its labeling and stated use shall be suitable for the intended purpose of the product.

Section 2. (1) Commercial feed for swine, poultry, or fish or milk replacer for veal or herd replacement calves, if fed according to directions, shall meet the applicable nutrient requirements established by the National Research Council, and incorporated by reference in this administrative regulation.

(2) A signed affidavit of suitability attesting to the nutritional adequacy of the feed based upon valid scientific evidence shall be submitted to the director upon request as established in Section 6 of this administrative regulation.

Section 3. An affidavit of suitability certifying that the feed sponsor has valid scientific knowledge assuring suitability of the nutritional content of the feed shall be submitted to the director if the suitability of the feed is challenged.

Section 4. Submission of a completed Affidavit of Suitability shall serve as proof of suitability. The feed sponsor shall not be required to provide scientific information nor a reference thereto unless the director has reason to believe that the feed is not suitable for its intended use. The director shall have the authority to conduct a hearing requiring the feed sponsor to produce sufficient scientific evidence of the feed's suitability.

Section 5. Upon receipt by the director of a complete Affidavit of Suitability, the feed sponsor may continue to market the product. If an affidavit is not properly submitted, the director may, pursuant to KRS 250.091(1) or 250.601(2), place or continue a stop-sale order on the feed and order its removal from the marketplace as well as all other feeds manufactured or distributed under the same product name.

Section 6. The Affidavit of Suitability shall contain the following information:

(1) The feed manufacturer's name;[-]

(2) The feed's product name;[-]

(3) The name and title of the affiant submitting the document;[-]

(4) The statement that the affiant has knowledge of the nutritional content of the feed and is familiar with the nutritional requirements of the animal species and animal class for which the product is intended, as established by the National Research

Council of the National Academy of Sciences;[-]

(5) The statement that the affiant has knowledge of valid scientific evidence that supports the suitability for the intended animal species and animal ~~class~~class(es) for which the feed is intended. If the manufacturer states on the label a nutrient guarantee below the minimum National Research Council nutrient recommendation, the manufacturer shall specify in the Affidavit of Suitability scientific evidence demonstrating that a feed with that nutrient content is suitable for its intended purpose;[-]

(6) The date of submission; and[-]

(7) The signature of the affiant notarized by a notary public.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Nutrient Requirements of Swine, ~~Eleventh~~Tenth Revised Edition, ~~2012~~1998, National Research Council;

(b) Nutrient Requirements of Dairy Cattle, ~~Seventh~~Sixth Revised Edition, ~~2001~~1998, National Research Council;

(c) Nutrient Requirements of Fish, 1993, National Research Council; and

(d) Nutrient Requirements of Poultry, Ninth Revised Edition, 1994, National Research Council.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Building, Lexington, Kentucky ~~40546~~40545-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: July 5, 2018

FILED WITH LRC: July 5, 2018 at 10 a.m.

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

**Council on Postsecondary Education
(As Amended at ARRS, September 11, 2018)**

13 KAR 2:020. Guidelines for admission to the state-supported postsecondary education institutions~~[in Kentucky]~~.

RELATES TO: KRS 156.160, 158.6451, 158.6453, 164.001, 164.020(5), (8), 164.030

STATUTORY AUTHORITY: KRS 164.020(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.020(8) requires the Council on Postsecondary Education~~[council]~~ to set the minimum qualifications for admission to the state-supported postsecondary education institutions. KRS 164.020(29) requires the council to promulgate administrative regulations governing its powers, duties, and responsibilities as described in KRS 164.020.~~[It is the intent of the council that all prospective students have available to them an opportunity for postsecondary education appropriate to their interests and abilities.]~~ This administrative regulation establishes the minimum qualifications related to admission at state-supported postsecondary education institutions.

Section 1. Definitions. (1) "Academic Readiness" means the student has demonstrated the requisite ability to succeed in credit-bearing coursework by meeting or exceeding the college readiness benchmarks adopted by the Council. An institution shall not determine academic readiness using scores received from exams taken more than four (4) years prior.

(2) "Accelerated pathway" means a high school program of study that is designed for students to be able to graduate in (3) three years or less from high school, before age eighteen (18) and prepare for transition to college.

(3) "Certified, non-public school" means a Kentucky non-public school that has been granted certification by the Kentucky Board of Education.

(4) "Corequisite course" means a course that includes enhanced academic supports, such as additional hours of instruction, tutoring, mentoring, or advising that awards credit toward a credential or degree.

(5) "Council" is defined by KRS 164.001(8).

(6) "Credit for prior learning" means college credit for the college-level knowledge and skills gained from non-college instructional programs or life experiences:

(a) Such as credit awarded pursuant to 13 KAR 2:025 and KRS 164.2951(2)(e), employment, military experience, civic activities, and volunteer service; and

(b) That is evaluated through nationally standardized exams in specific disciplines, challenge exams for specific courses at individual institutions, evaluations of non-college training programs, and individualized assessments.

(7) "Curriculum pathway" means a specified series of courses or competencies needed to complete a credential or degree.

(8) "Developmental course" means a course that prepares a student for college-level study and does not award credit toward a credential or degree.

(9) "Dual credit course" is defined by KRS 164.002(5) and does not include developmental education courses.

(10) "Institution" means a state-supported postsecondary education institution as defined in KRS 164.001(12).

(11) "KCTCS" is defined by KRS 164.001(13) **means the Kentucky Community and Technical College System as defined in KRS 164.001(13)**.

(12) "Learning contract" means a student success document signed by the student and a designated institution representative after a personal consultation that **establishes/sets forth** the:

(a) Advising, mentoring, tutoring and support services expectations for both the student and the institution;

(b) Student learning goals and expectations;

(c) Student participation requirements in a financial literacy program;

(d) Process by which student progress will be monitored; and

(e) Specified length of the learning contract.

(13) "Pre-college curriculum" means completion of:

(a)1. The Kentucky minimum high school graduation requirements; or

2. Other approved course of study established in 704 KAR 3:305; and

(b)1. Two (2) units of a single world language; or

2. Demonstration of a world language proficiency.

Section 2. Admission Requirements for All Institutions. (1) Each institution shall develop and publish in its catalog or other appropriate publications specific policy and procedures for admission of students into programs or courses with enrollment limitations or specialized curricula.

(2) An institution shall not determine academic readiness using scores received from exams taken more than four (4) years prior to the application.

Section 3. Minimum Requirements for Undergraduate Admission to a Degree Program at Kentucky Public Universities. (1) Graduates of a public or certified non-public Kentucky high school applying for admission shall:

(a) Meet the Kentucky Minimum High School Graduation Requirements related to 704 KAR 3:305;

(b) 1. Meet the precollege curriculum requirements; and

2. If an applicant has not met the pre-college curriculum requirements, as defined in Section 1(13)(b) **of this administrative regulation**, complete the world language requirements established by the institution as part of their college curriculum;

(c) Take the established college admission or academic readiness assessments established by the Kentucky Department of Education; and

(d) Have a minimum unweighted high school GPA of:

1. 2.5 on a 4.00 scale; or

2. a. 2.0 to 2.49 on a 4.0 scale; and

b. Enter into a learning contract with the university prior to

enrollment.

(2) Graduates of public or certified non-public non-Kentucky high schools applying for admission shall meet criteria for admission established by the institution that is commensurate with the minimum criteria established in Section 3(1) **of this administrative regulation**.

(3) Applicants with Nonimmigrant Visas not graduating from a public or certified non-public high school shall meet admission criteria established by the institution that include requirements that meet national best practice for the admission of these student and assure academic readiness commensurate to the pre-college curriculum requirements.

(4) Applicants who have earned a state issued high school equivalency diploma or are graduates of a Kentucky based non-certified non-public high school, including a home school, shall meet the admission criteria established by the university, which shall include taking the appropriate admissions exams to assess college readiness.

(5) Notwithstanding sections (1) through (4) **of this administrative regulation**, an applicant transferring to a university with twenty-four (24) or more semester credit hours applicable to a baccalaureate degree with a grade point average (GPA) of at least 2.00 on a 4.00 scale shall meet the minimum requirements for admission to a degree program.

(6) Each institution shall develop and publish in the catalog or other appropriate publications policies and procedures for the readmission of students that have sat out three (3) or more semesters from the admitting institution.

Section 4. Admission of Non-Degree Seeking Students. An institution may admit a person who does not meet the minimum entrance requirements established by the institution for the purpose of enrolling in a college course or courses as a non-degree seeking student.

Section 5. Admission to a KCTCS Institution. KCTCS institutions shall develop admission criteria for all programs and courses offered consistent with the type of course or program and its mission **established/set forth** in KRS 164.580, such as providing accessible education and training to support the lifelong learning needs of Kentucky citizens.

Section 6. Minimum Requirements for Dual Credit and Early College Admission. (1) Students admitted to any Kentucky public postsecondary institution in an accelerated pathway or in dual credit courses in general education shall have an unweighted high school GPA of at least 2.5 on a 4.00 scale and meet any college course prerequisites established by the institution.

(2) Students shall be granted admission into a career and technical education dual credit course if they meet the course prerequisite requirements established by the institution.

(3) Dual credit courses shall not include developmental education courses.

Section 7. College Course Placement. (1) A student demonstrating academic readiness shall be placed in credit-bearing courses in their respective curriculum pathway. The student shall not be required to enroll in a developmental course.

(2) A student who does not demonstrate academic readiness shall be administered an academic readiness placement exam only in the area in which the student does not meet the benchmark.

(3) A degree-seeking student admitted to a college within the KCTCS system may be required to enroll in no more than one (1) developmental course in the curriculum pathway in areas for which the student has not met the academic readiness standards. A student shall have access to a corequisite or credit-bearing content course in the curriculum pathway of study within the first academic year of enrollment.

(4) An undergraduate degree-seeking student enrolled in a public university shall be placed in a corequisite course in the curriculum pathway in any areas for which the student has not met the academic readiness standards. A student admitted to a public university shall not be required to enroll in or complete a

developmental course in any academic readiness area.

(5) Each institution shall develop and publish any course prerequisite requirements for all courses taught at any degree level. Institutions shall develop policies and procedures that maximize the award of credit for prior learning consistent with any applicable state, federal, or accreditation standards which shall assist in appropriate placement of students.

Section 8. Publication. All policies and procedures established pursuant to this administrative regulation shall be published in the institution's catalog and any other appropriate admission and placement materials. [Section 1. Definitions. (1) "Adult learner" means a student who is twenty-one (21) years of age or older.

(2) "Certified, non-public school" means a Kentucky non-public school that has been granted certification by the Kentucky Board of Education.

(3) "Council" is defined by KRS 164.001(8).

(4) "Developmental course" means a college or university class or section that prepares a student for college-level study and does not award credit toward a degree.

(5) "Institution" means a state-supported postsecondary education institution as defined in KRS 164.001(12).

(6) "KCTCS" means the Kentucky Community and Technical College System as defined in KRS 164.001(13).

(7) "Pre-college curriculum" means completion of:

(a)1. The Kentucky minimum high school graduation requirements; or

2. Other approved course of study established in 704 KAR 3:305; and

(b)1. Two (2) units of a single world language; or

2. Demonstration of a world language proficiency.

(8) "Student eligible to pursue a GED®" means a student who has met the federal ability to benefit guidelines established in 34 C.F.R. 668.141 to 668.156 pursuant to 20 U.S.C. 1091(d).

(9) "Supplemental course or program" means a college or university class, additional class hours, tutoring, or mentoring beyond that required for a student who meets the system-wide standards for readiness.

(10) "System-wide standard" means an ACT Assessment sub-score of eighteen (18) in English, nineteen (19) in mathematics, or twenty (20) in reading.

Section 2. Minimum Qualifications for Institutional Admission as a First-time Student to a State-supported University. (1)(a) Except as provided by paragraph (b) of this subsection, an applicant who is a resident of Kentucky and who seeks admission to a Kentucky state-supported university shall have fulfilled the minimum requirements for admission to a baccalaureate degree program if the applicant has met the admission criteria established by the institution and:

1. Graduated from a public high school or a certified non-public high school;

2. Completed the pre-college curriculum; and

3. Taken the ACT Assessment.

(b) An applicant who has earned a high school general equivalency diploma (GED®) or who is a graduate of a Kentucky based non-certified non-public high school, including a home school, shall have fulfilled the requirements for admission to a baccalaureate program by meeting the admission criteria established by a university, in writing, and by taking the ACT Assessment and by scoring at levels established by the university.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection, a university may substitute the SAT for the ACT Assessment. A university may substitute the ACT RESIDUAL, ASSET Testing Program, COMPASS Testing Program, KYOTE Testing Program, or ACCUPLACER Testing Program for the ACT Assessment requirement for an adult learner.

(2) A non-resident shall have fulfilled the minimum requirements for admission to a baccalaureate degree program at a university if the applicant has met the admission criteria established by the institution and:

(a) Completed a college preparatory curriculum comparable to Kentucky's pre-college curriculum; and

(b) Taken the ACT Assessment or the SAT Assessment.

(3)(a) A university may admit a student who has not met the testing requirements of subsection (1)(a)(3), (1)(b), or (2)(b) of this section if the university has a written policy defining the circumstances that authorize the testing to be delayed.

(b) A university admitting a student under paragraph (a) of this subsection shall satisfy the provisions of subsection (1)(a)(3), (1)(b), or (2)(b) of this section during the first semester of enrollment.

(4) Except as provided in subsection (5) or (6) of this section, the requirement to complete the pre-college curriculum shall apply to:

(a) A first-time university student pursuing a baccalaureate degree with or without a declared major;

(b) A university student who is already enrolled and who is converting from non-degree status to baccalaureate degree status;

(c) A student changing from certificate or associate degree status to baccalaureate degree status; or

(d) A student transferring from another institution who has been admitted to baccalaureate degree status by a state-supported university.

(5) A university shall accept a waiver of a pre-college curriculum course if:

(a) A student is unable to complete the course because of a physical handicap;

(b) The school district superintendent or designee verifies that a student's handicapping condition prevents the student from completing the course in question; and

(c) The student completes a course substituted by the local school in accordance with 704 KAR 3:305, Section 3(2).

(6) The requirement to complete the pre-college curriculum as established in subsection (1)(a)2. of this section shall not apply to:

(a) An adult learner;

(b) A student entering baccalaureate degree status with twenty-four (24) or more semester credit hours applicable to a baccalaureate degree with a grade point average (GPA) of at least 2.00 on a 4.00 scale;

(c) Active duty military personnel, their spouses, and their dependents;

(d) A student enrolled in a community or technical college or a community college type program at a university;

(e) A non-resident student subject to the provisions of subsection (2) of this section; or

(f) An international student.

(7) A university may establish, in writing, additional admission criteria to supplement these minimum requirements.

(8) An applicant granted early admission to a university shall be exempt from the requirement of meeting the pre-college curriculum as set forth in subsection (1)(a)2. of this section.

(9) A university may admit a person who does not meet the entrance requirements established in this section for the purpose of enrolling in a college course or courses as a non-degree student.

(10) A state-supported university that admits a student in an associate or baccalaureate degree program who does not meet the system-wide standards of readiness for English, mathematics, or reading shall use a placement exam to place the student in the proper course. If the student scores below the system-wide standard of readiness in English, mathematics, or reading as outlined in the College Readiness Indicators document incorporated by reference, a university shall place the student in an:

(a) Appropriate developmental course in the relevant discipline within two (2) semesters following a student's initial enrollment; or

(b) Appropriate entry-level college course within two (2) semesters following a student's initial enrollment, if the course is a supplemental course or program.

(11)(a) A student shall not be required to enroll in a developmental or supplemental course in English if the student has:

1. A sub-score on the ACT Assessment of eighteen (18) or higher;

2. Met an English benchmark placement score outlined in the

College Readiness Indicators document;

3. Successfully completed a high school English transitional course or intervention program and met the system-wide English benchmark for readiness outlined in the College Readiness Indicators document; or

4. Successfully completed a developmental or supplemental English course at a public postsecondary education institution if the course meets the system-wide learning outcomes identified in the College Readiness Indicators document.

(b) A student shall not be required to enroll in a developmental or supplemental mathematics course if the student is enrolling in a liberal arts mathematics course, and has:

1. A sub-score on the ACT Assessment of nineteen (19) or higher;

2. Met a liberal arts mathematics benchmark placement score outlined in the College Readiness Indicators document;

3. Successfully completed a high school mathematics transitional course or intervention program and met the system-wide mathematics benchmark for readiness for a mathematics liberal arts course outlined in the College Readiness Indicators document; or

4. Successfully completed a developmental or supplemental mathematics course at a state-supported postsecondary education institution that meets the system-wide learning outcomes identified in the College Readiness Indicators document.

(c) A student shall not be required to enroll in a developmental or supplemental course in college algebra if the student has:

1. A sub-score on the ACT Assessment of twenty-two (22) or higher in mathematics;

2. Met a college algebra mathematics benchmark placement score outlined in the College Readiness Indicators document; or

3. Successfully completed a developmental or supplemental mathematics course at a state-supported postsecondary education institution that meets the system-wide learning outcomes for college algebra identified in the College Readiness Indicators document.

(d) A student shall not be required to enroll in a developmental or supplemental course in reading if the student has:

1. A sub-score on the ACT Assessment of twenty (20) or higher;

2. Met a reading benchmark placement score outlined in the College Readiness Indicators document;

3. Completed twelve (12) hours of reading intensive work at a postsecondary education institution;

4. Successfully completed a high school reading transitional course or intervention program and met the system-wide English benchmark for readiness outlined in the College Readiness Indicators document; or

5. Successfully completed a developmental or supplemental reading course at a state-supported postsecondary education institution that meets the system-wide learning outcomes identified in the College Readiness Indicators document.

(e) A student who scores twenty-seven (27) or higher on the ACT Assessment in mathematics shall be permitted to enroll in a credit-bearing calculus course.

(f) A student who demonstrates a level of competence by achieving the standards established in the College Readiness Indicators document, and by achieving the scores contained in paragraphs (a) through (e) of this subsection shall be guaranteed placement in credit-bearing course work.

(12) An adult learner who has been admitted without taking the ACT Assessment or the SAT shall be placed into an appropriate course based on the following tests:

(a) The ACT Residual Test

(b) The ASSET Testing Program;

(c) The COMPASS Testing Program;

(d) The KYOTE Testing Program;

(e) The ACCUPLACER Testing Program; or

(f) An institutional placement test.

(13) An institution shall be responsible for determining the remediation required including the number of developmental courses required.

(14) An institution shall enroll a student who scores below the

state-wide readiness standards in an appropriate developmental or entry-level course until readiness for credit-bearing courses has been demonstrated. An institution shall ensure that a student who completes a developmental or supplemental course shall enroll in a credit-bearing course in that subject or discipline, or in the case of reading, in an appropriate course requiring college-level reading skills.

(15) A university shall report to the Council data that monitors the performance of first-time students in developmental and entry-level courses. The core elements of the first-time student performance monitoring system shall include:

(a) ACT or SAT scores;

(b) Institutional placement exam results;

(c) Information that identifies whether a course is developmental, entry-level, or entry-level with supplementary academic support provided; and

(d) Grades in developmental entry-level courses.

Section 3. Minimum Qualifications for Institutional Admission as a First-time Student to the Kentucky Community and Technical College System (KCTCS). (1) Except as provided by paragraph (b) of this subsection, an applicant who is a resident of Kentucky and who seeks admission to a community and technical college degree program established by the Kentucky Community and Technical College System may be admitted if the applicant has:

(a) Graduated from a public high school or certified non-public high school; or

(b) Earned a general equivalency diploma (GED®).

(2) A non-resident applicant who has earned a high school general equivalency diploma (GED®) or an applicant who is a graduate of a Kentucky-based non-certified non-public high school, including a home school, shall have fulfilled the requirements for admission to a community or technical college by meeting the admission criteria established by KCTCS.

(3) KCTCS may waive the requirement to take the GED® as set forth in subsection (1)(b) of this section pursuant to a written policy published by KCTCS.

(4) KCTCS may admit a person who does not meet the entrance requirements established in this section for the purpose of enrolling in a college course or courses as a non-degree student.

(5) KCTCS, in admitting a student to a degree program who does not meet the system-wide standards of readiness for English, mathematics, or reading, shall use a placement exam to place the student in the proper course. If the student scores below the system-wide standard of readiness in English, mathematics, or reading as outlined in the College Readiness Indicators document incorporated by reference, the institution shall place the student in an:

(a) Appropriate developmental course or adult education course of study in the relevant discipline within two (2) semesters following a student's initial enrollment; or

(b) Appropriate entry-level college course within two (2) semesters following a student's initial enrollment, if the course is a supplemental course or program.

(6)(a) A student shall not be required to enroll in a developmental or supplemental course in English if the student has:

1. A sub-score on the ACT Assessment of eighteen (18) or higher;

2. Met an English benchmark placement score outlined in the College Readiness Indicators document;

3. Successfully completed a high school English transitional course or intervention program and met the system-wide English benchmark for readiness outlined in the College Readiness Indicators document; or

4. Successfully completed a developmental or supplemental English course at a state-supported postsecondary education institution if the course meets the system-wide learning outcomes identified in the College Readiness Indicators document.

(b) A student shall not be required to enroll in a developmental or supplemental mathematics course if the student is enrolling in a liberal arts mathematics course, and has:

1. A sub-score on the ACT Assessment of nineteen (19) or

higher;

2. Met a liberal arts mathematics benchmark placement score outlined in the College Readiness Indicators document;

3. Successfully completed a high school mathematics transitional course or intervention program and met the system-wide mathematics benchmark for readiness for a mathematics liberal arts course outlined in the College Readiness Indicators document; or

4. Successfully completed a developmental or supplemental mathematics course at a state-supported postsecondary education institution that meets the system-wide learning outcomes identified in the College Readiness Indicators document.

(c) A student shall not be required to enroll in a developmental or supplemental course in college algebra if the student has:

1. A sub-score on the ACT Assessment of twenty-two (22) or higher in mathematics;

2. Met a college algebra mathematics benchmark placement score outlined in the College Readiness Indicators document; or

3. Successfully completed a developmental or supplemental mathematics course at a state-supported postsecondary education institution that meets the system-wide learning outcomes for college algebra identified in the College Readiness Indicators document.

(d) A student shall not be required to enroll in a developmental or supplemental course in reading if the student has:

1. A sub-score on the ACT Assessment of twenty (20) or higher;

2. Met a reading benchmark placement score outlined in the College Readiness Indicators document;

3. Completed twelve (12) hours of reading intensive work at a postsecondary education institution;

4. or intervention program and met the system-wide English benchmark for readiness outlined in the College Readiness Indicators document; or

5. Successfully completed a developmental or supplemental reading course at a state-supported postsecondary education institution that meets the system-wide learning outcomes identified in the College Readiness Indicators document.

(e) A student who scores twenty-seven (27) or higher on the ACT Assessment in mathematics shall be permitted to enroll in a credit-bearing calculus course.

(f) A student who demonstrates a level of competence by achieving the standards established in the College Readiness Indicators document, and by achieving the scores contained in paragraph (a) through (d) of this subsection shall be guaranteed placement in credit-bearing course work.

(7) An adult learner who has been admitted without taking the ACT Assessment or the SAT may be placed into an appropriate course based on the following tests:

(a) The ACT Residual Test;

(b) The ASSET Testing Program;

(c) The COMPASS Testing Program;

(d) The KYOTE Testing Program;

(e) The ACCUPLACER Testing Program; or

(f) An institutional placement test.

(8) An institution shall be responsible for determining the remediation required including the number of developmental courses required.

(9) An institution shall enroll a student who scores below the state-wide readiness standards in an appropriate developmental or entry-level course until readiness for credit-bearing courses has been demonstrated. An institution shall ensure that a student who completes a developmental or supplemental course shall enroll in a credit-bearing course in that subject or discipline, or in the case of reading, in an appropriate course requiring college-level reading skills.

(10) KCTCS may exempt students enrolled in selected occupational based certificate or diploma programs from an assessment and placement in English, mathematics, or reading. The list of certificate and diploma programs that exempt students from the required assessment and placement shall be published by KCTCS in the student catalog.

(11) KCTCS shall report to the Council data that monitors the performance of first-time students in developmental and entry-level

courses. The core elements of the first-time student performance monitoring system shall include:

(a) ACT or SAT scores;

(b) Institutional placement exam results;

(c) Information that identifies whether a course is developmental, entry-level, or entry-level with supplementary academic support provided; and

(d) Grades in developmental entry-level courses.

~~Section 4. Transfer Students. (1) The council's General Education Transfer Policy and Implementation Guidelines, incorporated by reference, shall direct an institution's policy on the acceptance of transfer credits.~~

~~(2) An institution shall assure that a transferring student receives academic counseling concerning the transfer of credit among institutions.~~

~~(3) A university or the KCTCS, consistent with the provisions of subsection (1) of this section, shall accept a student's college credit earned when a course is taken both for high school credit and college credit. Credit earned through a dual enrollment arrangement shall be treated the same as credit earned in any other college course.~~

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

~~(a) "General Education Transfer Policy and Implementation Guidelines", 2011, Council on Postsecondary Education; and~~

~~(b) College Readiness Indicators, 2010.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

SHERRILL B. ZIMMERMAN, Chair

TRAVIS POWELL, General Counsel

APPROVED BY AGENCY: July 13, 2018

FILED WITH LRC: July 13, 2018 at 11 a.m.

CONTACT PERSON: Travis Powell, General Counsel and Associate Vice President, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone 502.573.1555 ext. 142, fax 502.573.1535, email travis.powell@ky.gov.

**GENERAL GOVERNMENT CABINET
Kentucky Office of the Attorney General
Office of Consumer Protection
(As Amended at ARRS, September 11, 2018)**

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

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

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

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

health, safety and welfare].

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

- (1) The legal name of the registrant;
- (2) Other names under which the registrant conducts business;
- (3) The registrant's contact person including name, title, business address, phone number, and fax number. The contact person's email address may also be provided;
- (4) The registrant's principal physical business location, which shall not be a post office box;
- (5) The registrant's mailing address;
- (6) The location where the registrant keeps or maintains records of its Kentucky customers;
- (7) The toll-free phone numbers for questions from customers, optometrists, osteopaths and physicians;
- (8) The registrant's fax number;
- (9) The registrant's website;
- (10) Whether the registrant has been the subject of civil or criminal action by an agency in any state that regulates the sale or dispensing of visual aid glasses, and, if yes, an explanation;
- (11) A list of each state in which the registrant is registered or licensed to sell or dispense visual aid glasses;
- (12) An annual registration fee of \$500 enclosed with each registration in the form of a check made payable to "Kentucky State Treasurer"; and
- (13) The signature of the registrant or a person authorized to sign on behalf of the registrant, the printed name and title of the person signing the registration form, and the date of the signature. The signature shall constitute a certification that the statements contained in the registration form are true and correct to the best of the knowledge and belief of the person signing the registration form.

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

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

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

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

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

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

ANDY BESHEAR, Attorney General

APPROVED BY AGENCY: June 29, 2018

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

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

**GENERAL GOVERNMENT
Kentucky Board of Cosmetology
(As Amended at ARRS, September 11, 2018)**

201 KAR 12:251. Repeal of 201 KAR 12:085, 201 KAR 12:088, 201 KAR 12:120, 201 KAR 12:180 and 201 KAR 12:250.

RELATES TO: KRS 317A.060

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 requires the board to promulgate administrative regulations governing the operation of any schools and salons of cosmetology, nail technology, and *esthetic[esthetics]* practices, including[*but not limited to*] administrative regulations to protect the health and safety of the public. **This administrative regulation repeals 201 KAR 12:085, 12:088, 12:120, 12:180, and 12:250, because of recent statutory changes and the consolidation of KRS Chapter 317B into KRS Chapter 317A.** All matters repealed[*herein*] are *either obsolete or* addressed in 201 KAR 12:082, 201 KAR 12:140, **201 KAR 12:190,** and **201 KAR 12:280.**

Section 1. The following administrative regulations are hereby repealed:

- (1) 201 KAR 12:085. School Advertising;
- (2) 201 KAR 12:088. Esthetic course of instruction;
- (3) 201 KAR 12:120. School faculty;
- (4) 201 KAR 12:180. Hearing procedures; and
- (5) 201 KAR 12:250. School equipment for esthetics course.

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: June 8, 2018

FILED WITH LRC: June 12, 2018 at noon

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

**GENERAL GOVERNMENT CABINET
Board of Cosmetology
(As Amended at ARRS, September 11, 2018)**

201 KAR 12:280. Esthetic practices restrictions.

RELATES TO: KRS 317A.130

STATUTORY AUTHORITY: KRS 317A.060, **317A.130**

NECESSITY, FUNCTION AND CONFORMITY: KRS 317A.060 requires the board to establish appropriate standards of practice for individuals licensed by the board. This administrative regulation establishes the required restrictions and limitations placed on esthetic practices.

Section 1. Definitions. (1) "Cosmetic resurfacing exfoliating procedures" means the application of cosmetic resurfacing exfoliating substances by a licensed *health care* practitioner for the purpose of improving the aesthetic appearance of the skin. **This includes services such as acid or chemical peels, microdermabrasion, and other forms of exfoliation or resurfacing of a cosmetic nature.**

(2) **"Direct supervision" means to be within immediate distance, such as on the same floor, and available to respond when needed.**

(3) **"Health care practitioner" means any individual certified by the Kentucky Board of Nursing, or the Kentucky Board of Medical Licensure to perform esthetic specialties.**

(4) **"Immediate supervision" means a licensed physician is physically present in the same room and overseeing the activities**

of the esthetician at all times.

(5)(3) "Microdermabrasion" means a gentle, progressive, superficial, mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system.

(6)(4) "Microneedling" means the use of multiple tiny solid needles designed to pierce the skin for the purpose of stimulating collagen production or cellular renewal. Devices used may be in the form of rollers, stamps, or electronic "pens". Microneedling is also known as:

- (a) Dermal needling;
- (b) Collagen Induction Therapy (CIT);
- (c) Dermal rolling;
- (d) Cosmetic dry needling;
- (e) Multitrepennic collagen actuation; or
- (f) Percutaneous collagen induction.

(7) "Physician" means a medical doctor licensed by the Kentucky Board of Medical Licensure to perform services within his or her scope of practice.

Section 2. Supervision of Restricted Practices. An esthetician licensed by the board shall not perform any of the activities listed in KRS 317A.130(2) unless under the immediate supervision of a licensed physician. **Medical procedures shall not be performed by an esthetics or cosmetology licensee. Services under the direct supervision of a licensed health care practitioner shall fall within the category of cosmetic resurfacing exfoliating procedures.**

Section 3. Microdermabrasion. (1) To be approved for use, a microdermabrasion device **shall/must**:

- (a) Be specifically labeled for cosmetic or esthetic purposes;
- (b) Be a closed-loop vacuum system that uses a tissue retention device; and
- (c) Not result in the removal of the epidermis beyond the stratum corneum from the normal and customary use of the device.

(2) Loose particle microdermabrasion systems **shall not be used[are prohibited for use]**.

Section 4. Acids and Chemical Exfoliations. (1) The use of any acid or acid solution, which would exfoliate the skin below the stratum corneum, including those listed **in subsection (2) of this section shall not be used[below are prohibited]** unless **used** under the **direct** supervision of a licensed health care practitioner.

(2) The following acids **or acid solutions shall not be used[are prohibited]** unless **used** under the **direct** supervision of a licensed health care practitioner:

- (a) Phenol;
- (b) Bichloroacetic acid;
- (c) Resorcinol;
- (d) Any acid in any concentration level that requires a prescription;

(e) Modified jessner solution on the face and the tissue immediately adjacent to the jaw line;

(f) Alpha hydroxy acids with a pH of not less than one (1.0) and at a concentration of fifty (50) percent **shall/must** include partially neutralized acids, and any acid above the concentration of fifty (50) percent is prohibited;

(g) Beta hydroxy acids with a concentration of not more than thirty (30) percent;

(h) Trichloroacetic acid (TCA), in a concentration of not more than fifteen (15) percent, but no manual, mechanical, or acid exfoliation **may/can** be used prior to treatment unless under the **direct/general** supervision of a licensed health care practitioner; and

(i) Vitamin-based acids.

(3) Limited chemical exfoliation for a basic esthetician **shall/does** not include the mixing, combining, or layering of skin exfoliation products or services, but **shall/does** include:

- (a) Alpha hydroxy acids of thirty (30) percent or less, with a pH of not less than three (3.0); and
- (b) Salicylic acid of fifteen (15) percent or less.

(4) A licensee may not apply any exfoliating acid to a client's skin that has undergone microdermabrasion or microneedling

within the previous seven (7) days, unless under the **direct/general** supervision of a licensed physician.

(5) A licensee shall prepare and maintain current documentation of the licensee's cumulative experience in chemical exfoliation, including:

- (a) Courses of instruction;
- (b) Specialized training;
- (c) On-the-job experience; and
- (d) The approximate percentage that chemical exfoliation represents in the licensee's overall business.

(6) A licensee shall provide the documentation required by subsection **(5) of this section/(4)** to the board upon request.

(7) A licensee shall not use an acid or perform a chemical exfoliation that the licensee is not competent to use or perform through training and experience, and as documented in accordance with subsection **(5) of this section**.

(8) Only commercially available products utilized in accordance with manufacturers' instructions shall be used for chemical exfoliation purposes.

(9) A patch test shall be administered to each client prior to beginning any chemical exfoliation series.

Section 5. Devices. No mechanical or electrical apparatus that is considered a prescription medical device by the FDA may be used by a licensee, unless such use is under the immediate supervision by a licensed physician and within that licensed physician's appropriate scope of practice.

Section 6. Disclosure. Before applying a chemical exfoliant or using a microdermabrasion machine, a licensee shall inform a client that:

(1)/(a) The procedure shall only be performed for cosmetic and not medical purposes; and

(2)/(b) The benefits and risks of the all procedures shall be **disclosed prior to application/divulged**.

Section 7. Prohibited Practices. (1) A licensee shall never use any preparation, product, device, or procedure that pierces or penetrates the skin beyond the stratum germinativum layer, also known as the basal layer of the epidermis.

(2) Dermaplane procedures, dermabrasion procedures, microneedling procedures, blades, knives, and lancets are prohibited, except for:

- (a) Advanced extraction of impurities from the skin; and
- (b) Dermaplane procedures for advanced exfoliation under direct supervision of a licensed physician.

(3) A licensee shall not use any procedure in which human tissue is cut or altered by laser energy or ionizing radiation.

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: June 8, 2018

FILED WITH LRC: June 12, 2018 at noon

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

GENERAL GOVERNMENT CABINET

Board of Nursing

(As Amended at ARRS, September 11, 2018)

201 KAR 20:490. Licensed practical nurse infusion [intravenous] therapy scope of practice.

RELATES TO: KRS 314.011(10)(a), (c)

STATUTORY AUTHORITY: KRS 314.011(10)(c), 314.131(1) **[, 314.011(10)(c)]**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.011(10)(c) authorizes the board to promulgate an administrative regulation to establish the scope of practice for

administering medicine or treatment by a licensed practical nurse. KRS 314.011(10)(a) requires that licensed practical nurses practice under the direction of a registered nurse, advanced practice registered nurse, physician assistant, licensed physician, or dentist. This administrative regulation establishes the scope of that practice as it relates to infusion[intravenous] therapy.

Section 1. Definitions. (1) "Administration" means to initiate and maintain infusion[intravenous] therapy.

(2) "Antineoplastic agent" means a medication that prevents the development, growth, or proliferation of malignant cells.

(3) ~~"Bolus" means a concentrated medication or solution given rapidly over a short period of time.~~

(4) ~~"Central venous access device" means a catheter inserted into a peripheral or centrally located vein with the tip residing in the superior or inferior vena cava[device that permits access to the central vascular system and is inserted with the tip residing in the lower one-third of the superior vena cava or above the level of the diaphragm in the inferior vena cava]. This includes peripherally inserted central catheters.~~

(4) ~~(5) "Direction" means a communication of a plan of care that is based upon assessment of a patient by an advanced practice registered nurse, a registered nurse, physician assistant, licensed physician, or dentist that establishes the parameters for the provision of care or for the performance of a procedure.~~

(5) ~~(6) "Discontinuance" means to stop the infusion of the medication or fluid and does not include removal of the intravenous access device.~~

(7) ~~"Fibrinolytic agent" means a pharmaceutical agent capable of dissolving blood clots.~~

(8) ~~"Intravenous access device" means either a peripheral access device or a central venous access device.~~

(9) ~~"Mix" or "mixing" means to combine two (2) or more medications or solutions, and includes reconstituting a powder into a liquid, and diluting a medication or solution.~~

(10) ~~"Moderate sedation" means the administration of intravenous medications to produce a state that intentionally results in a depressed level of consciousness in a patient.~~

(11) ~~"Peripheral venous access device" means a peripherally inserted intravenous catheter or needle that is less than or equal to three (3) inches in length.~~

(12) ~~"Pharmacology" means information on the classification of intravenous drugs, indications for use, pharmacological properties, monitoring parameters, contraindications, dosing, clinical mathematics, anticipated side effects, potential complications, antidotal therapy, compatibilities, stabilities, specific considerations for select intravenous drugs, and administration of intravenous medications to pediatric, adult, and geriatric populations.~~

(13) ~~"Procedural sedation" means the administration of intravenous medications to produce a decreased[state that allows a patient to tolerate unpleasant procedures and results in a depressed] level of consciousness.[(14) "Push" means administration of medication under pressure via a syringe.]~~

(14) ~~"Supervision" means the provision of guidance by a registered nurse, advanced practice registered nurse, physician assistant, licensed physician, or dentist for the accomplishment of a nursing task with periodic observation and evaluation of the performance of the task including validation that the nursing task has been performed in a safe manner.~~

(15) ~~"Supervisor" means the registered nurse, advanced practice registered nurse, physician assistant, licensed physician, or dentist who provides supervision of the licensed practical nurse's practice as defined in[subsection (15) of] this section.~~

(16) ~~"Therapeutic phlebotomy" means removal of a specific volume of blood from a patient as ordered for the treatment of a specific condition or disease[a clinical procedure whereby blood volume is reduced to achieve a therapeutic outcome].~~

(17) ~~"Unstable" means inconsistent, unpredictable, or consistently fluctuating[(18) "Titration" means adjustment of a medication dosage or rate of solution infusion as prescribed within a therapeutic range that is based on the assessment of a patient.~~

(19) ~~"Vesicant" means an agent capable of causing injury if it escapes from the intended vascular pathway into surrounding~~

tissue].

Section 2. Education and Training Standards. (1) Prior to performing infusion[intravenous (IV)] therapy, the licensed practical nurse (LPN) shall have completed education and training related to the scope of infusion[IV] therapy for an LPN. This education and training shall be obtained through:

(a) A precursure program of nursing for individuals admitted to the program after September 15, 2019[2004]; or

(b) An institution, practice setting, or continuing education provider that has in place a written instructional program and a competency validation mechanism that includes a process for evaluation and documentation of an LPN's demonstration of the knowledge, skills, and abilities related to the safe administration of infusion[IV] therapy. The LPN shall receive and maintain written documentation of completion of the instructional program and competency validation.

(2) The education and training programs recognized in subsection (1) of this section shall be based on the ["Policies and Procedures for Infusion Therapy[Nursing"] and the["Infusion Therapy[Nursing]: Standards of Practice["]] and shall include the following components:

(a) Legal considerations and risk management issues[Technology and clinical applications];

(b) Related anatomy and physiology including fluid and electrolyte balance;

(c) Principles of pharmacology as related to infusion therapy[Pharmacology and vesicants];

(d) Infusion equipment and preparation[Infection control];

(e) Principles and procedures for administration of solutions and medications via intravenous route including transfusion therapy and parenteral nutrition[Transfusion therapy];

(f) Principles and procedures for site maintenance for a peripheral venous access device and a central venous access device[site maintenance]; [Parenteral nutrition; and]

(g) Assessment of and appropriate interventions for complications related to infusion therapy; and [Legal aspects based on KRS Chapter 314 and this administrative regulation.]

(h) Demonstration and validation of competency for infusion therapy procedures.

Section 3. Supervision Requirements. (1) An LPN performing infusion[IV] therapy procedures shall be under the direction and supervision of a registered nurse (RN), advanced practice registered nurse (APRN), physician assistant, licensed physician, or dentist.

(2) For a patient whose condition is determined by the LPN's supervisor to be stable and predictable, and rapid change is not anticipated, the supervisor may provide supervision of the LPN's provision of infusion[IV] therapy without being physically present in the immediate vicinity of the LPN, but shall be readily available.

(3) In the following cases, for the LPN to provide infusion[IV] therapy, the LPN's supervisor shall be physically present in the immediate vicinity of the LPN and immediately available to intervene in the care of the patient:

(a) If a patient's condition is or becomes[critical, fluctuating,] unstable[, or unpredictable];

(b) ~~If IV medications or fluids are administered by push or bolus administration, except for saline or heparinized saline to maintain patency of an IV access device;~~

(c) ~~If a patient has developed signs and symptoms of an IV catheter-related infection, venous thrombosis, or central line catheter occlusion;~~

(d) ~~If a patient is receiving blood, blood components, or plasma volume expanders; or~~

(e) ~~If a patient is receiving peritoneal dialysis or hemodialysis.~~

Section 4. Standards of Practice. (1) An LPN shall perform only those infusion[IV] therapy acts for which the LPN possesses the knowledge, skill, and ability to perform in a safe manner, except as limited by Section 5[6] of this administrative regulation and under supervision as required by Section 3 of this administrative regulation.

(2) An LPN shall consult with an RN or physician, physician

assistant, dentist, or advanced practice registered nurse and seek guidance as needed if:

(a) The patient's care needs exceed the licensed practical nursing scope of practice;

(b) The patient's care needs surpass the LPN's knowledge, skill, or ability; or

(c) The patient's condition becomes unstable[or imminent assistance is needed].

(3) An LPN shall obtain instruction and supervision as necessary if implementing new or unfamiliar nursing practices or procedures.

(4) An LPN shall follow the written, established policies and procedures of the facility that are consistent with KRS Chapter 314.

Section 5.[Functions That May Be Performed. An LPN who has met the education and training requirements of Section 2 of this administrative regulation may perform the following IV therapy functions, except as limited by Section 6 of this administrative regulation and under supervision as required by Section 3 of this administrative regulation:

(1) Calculation and adjustment of the flow rate on all IV infusions;

(2) Observation and reporting of subjective and objective signs of adverse reactions to any IV administration and initiate appropriate interventions;

(3) For all IV access devices:

(a) Administration of IV fluids and medications via central venous and peripheral access devices as permitted by this section and not prohibited by Section 6 of this administrative regulation;

(b) Performance of site care and maintenance that includes:

1. Monitor access site and infusion equipment;

2. Change administration set, including add-on device and tubing;

3. Flushing; and

4. Change site dressing;

(c) Discontinuance of a medication or fluid infusion; and

(d) Conversion of a continuous infusion to an intermittent infusion;

(4) Insertion or removal of a peripheral access device;

(5) Administration, monitoring, and discontinuance of blood, blood components, and plasma volume expanders;

(6) Administration of IV medications and fluids that are mixed and labeled by an RN, APRN, physician, dentist, or pharmacist or are commercially prepared;

(7) Mixing and administration via push or bolus route of any of the following classifications of medications:

(a) Analgesics;

(b) Antiemetics;

(c) The antagonistic agents for analgesics;

(d) Diuretics;

(e) Corticosteroids; and

(f) Saline, heparinized saline, or Heplock solution to maintain patency of an IV access device;

(8) Administration of glucose to patients fourteen (14) years of age or older via direct push or bolus route;

(9) Administration, monitoring, and discontinuance of IV medications and fluids given via a patient-controlled administration system;

(10) Administration, monitoring, and discontinuance of parenteral nutrition and fat emulsion solutions;

(11) Performance of dialysis treatment, including:

(a) Administering Heparin 1:1000 units or less concentration either to prime the pump, initiate treatment, or for administration throughout the treatment, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse. The licensed practical nurse shall not administer Heparin in concentrations greater than 1:1000; and

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

(12) Collection of blood specimens from a peripheral IV access

device only at the time of initial insertion;

(13) Removal of a noncoring needle from an implanted venous port;

(14) Titration of intravenous analgesic medications for hospice patients;

(15) Administration of peripheral intravenous medications via a volumetric control device;

(16) Administration of intravenous medications or solutions via a ready-to-mix intravenous solution infusion system;

(17) Aspiration of a central venous catheter to confirm patency via positive blood return; and

(18) Administration of medications or fluids via:

(a) Peripherally inserted central catheters; or

(b) Implanted or tunneled central venous catheters.

Section 6.] Functions That Shall Not Be Performed. An LPN shall not perform the following infusion[IV] therapy functions:

(1) Administration of tissue plasminogen activators, except when used to de clot any central venous access device [immunoglobulins, antineoplastic agents, or investigational drugs];

(2) Accessing of a central venous access device used for hemodynamic monitoring;

(3) Administration of medications or fluids via arterial lines or implanted arterial ports;

(4)[Administration of medications via push or bolus route except as permitted by Section 5(7) or (8) of this administrative regulation;

(5) Administration of a fibrinolytic agent to de clot any IV access device;

(6) Administration of medications requiring titration, except as permitted by Section 5(14) of this administrative regulation;

(7) Insertion or removal of any IV access device, except as permitted by Section 5(4) or (13) of this administrative regulation;

(8) Accessing or programming an implanted[IV] infusion pump;

(5) [(9)] Administration of infusion therapy[IV] medications for the purpose of procedural sedation[, moderate sedation,] or anesthesia;

(6) [(10)] Administration of fluids or medications via an epidural, intrathecal, intraosseous, or umbilical route, or via a ventricular reservoir;

(7) [(11)] Administration of medications or fluids via an arteriovenous fistula or graft, except for dialysis;

(8) [(12)] [Performance of the] Repair of a central venous access device; [(13) Mixing of any medications other than those listed in Section 5(7) of this administrative regulation;

(14) Insertion of noncoring needles into an implanted port;]

(9) [(15)] Performance of therapeutic phlebotomy; [(16) Administration of medications or fluids via a nontunneled, nonimplanted central venous catheter;]

(10) [(17)] Aspiration of an arterial line; [(18) Withdrawal of blood specimens via a central venous catheter; or]

(11) [(19)] Initiation and removal of a peripherally inserted central, midclavicular, or midline catheter; or

(12) Administration of immunoglobulins, antineoplastic agents, or investigational drugs.

Section 6[7]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Policies and Procedures for Infusion Therapy[Nursing]", Fifth Edition, 2016[Fourth Edition, 2014]; and

(b) "Infusion Therapy[Nursing]: Standards of Practice", 2016[2014].

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

LEWIS PERKINS, President

APPROVED BY AGENCY: June 7, 2018.

FILED WITH LRC: June 22, 2018 at 1 p.m.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email nathan.goldman@ky.gov.

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

GENERAL GOVERNMENT
Board of Physical Therapy
(As Amended at ARRS, September 11, 2018)

201 KAR 22:170. Physical Therapy Compact Commission.

RELATES TO: KRS 327.300(12)

STATUTORY AUTHORITY: KRS 327.300(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.300(12) requires the Board of Physical Therapy to review any rule adopted by the Physical Therapy Compact Commission within sixty (60) days of adoption for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS ~~[Chapter]~~ 13A.190 and for filing the rule as an accompanying ordinary administrative regulation, following the requirements of KRS Chapter 13A. This administrative regulation incorporates by reference ~~[sets forth]~~ ~~[incorporated by reference]~~ the rules and bylaws ~~[and bylaws]~~ adopted by the Physical Therapy Compact Commission ~~[on November 5, 2017]~~.

Section 1. The Kentucky Board of Physical Therapy shall comply with all bylaws, rules, and administrative regulations of the Physical Therapy Compact Commission, which includes the Physical Therapy Compact Commission Rules and Bylaws ~~[as of November 2017]~~.

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

(a) "Physical Therapy Compact Commission Rules", June 2018 ~~[November 2017]~~; and

(b) "Physical Therapy Compact Commission Bylaws", November 2017.

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

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

(3) This material may also be obtained at:

(a) The Physical Therapy Compact Commission, 124 West Street South, Third Floor, Alexandria, Virginia, 22314; or

(b) <http://www.ptcompact.org>.

LOUIS D. KELLY, General Counsel

APPROVED BY AGENCY: July 11, 2018.

FILED WITH LRC: July 11, 2018 at 9 a.m.

CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142, email ScottD.Majors@ky.gov; and Louis D. Kelly, Esq., General Counsel, Board of Physical Therapy, Adams, Stepner, Woltermann & Dusing, 40 W. Pike Street, P.O. Box 861, Covington, Kentucky 41012, phone (859) 394-6200, fax (859) 392-7239, email kelly@aswdlaw.com.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, September 11, 2018)

301 KAR 1:201. Taking of fish by traditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to promulgate administrative regulations for creel and size limits for fish. This administrative regulation establishes fish

size limits, daily creel limits, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure, bare hook, or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.

(2) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(3) "Culling" means releasing a previously caught fish that an angler has kept as a part of a daily creel limit and replacing it with another fish of the same species.

(4) "Daily creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.

(5) "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

(6) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(7) "Processed fish" means a fish that has been gutted, with the head removed.

(8) "Release" means to return a fish to the water from which it was taken immediately after removing the hook.

(9) "Shad" means a live gizzard shad or threadfin shad.

(10) "Single hook" means a hook with no more than one (1) point.

(11) "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(12) "Slot limit" means a size range of a fish species that shall be released by an angler.

(13) "Traditional fishing methods" means the act of taking or attempting to take for noncommercial purposes any freshwater fish species using:

(a) Hook and line in hand; or

(b) Rod in hand.

(14) "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide Limits and Requirements. (1) A person taking fish from public or private waters using traditional fishing methods shall observe the daily creel limits and size limits established in paragraphs (a) through (k) ~~[of]~~ of this subsection, except as established in Sections 3 through 8 ~~[7]~~ of this administrative regulation or pursuant to 301 KAR 1:180:

(a) Black bass daily creel limit, six (6).

1. Largemouth bass and smallmouth bass size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass, no size limit;

(b) Rock bass daily creel limit, fifteen (15);

(c) Sauger, walleye, and any hybrid thereof daily creel limit, singly or in combination, six (6); ~~[walleye and walleye hybrids]~~ size limit, ~~fourteen (14)~~ ~~[fifteen (15)]~~ inches; ~~[no size limit for sauger;]~~

(d) Muskellunge daily creel limit, one (1); size limit, thirty (30) inches;

(e) Chain pickerel daily creel limit, five (5); no size limit;

(f) White bass and hybrid striped bass daily creel limit, singly or in combination, fifteen (15); size limit, no more than five (5) fish in a daily creel limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer;

(g) Striped bass daily creel limit, five (5); size limit, fifteen (15) inches;

(h) Crappie daily creel limit, twenty (20); no size limit;

(i) Trout.

1. No culling statewide.

2. Rainbow trout daily creel limit, eight (8); no size limit.

3. Brown trout daily creel limit, one (1); size limit, sixteen (16) inches.

4. Brook trout, catch and release only; ~~[and]~~

(j) Redear sunfish daily creel limit, twenty (20); no size limit; and

(k) Paddlefish daily creel limit, two (2); no size limit.

(2) The possession limit shall be two (2) times the daily creel limit, except as established in Section 3 of this administrative

regulation.

(3) A person shall release grass carp caught from a lake owned or managed by the department.

(4) A person shall release any:

- (a) Lake sturgeon; or
- (b) Alligator gar.

(5) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or

(c) Of a particular species if a person already possesses the daily creel limit for that species.

(6) A person shall not possess more than one (1) daily creel limit of processed or unprocessed fish while:

- (a) Fishing;
- (b) On the shoreline; or
- (c) On the water.

(7) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of tournament caught fish:

- (a) At the weigh-in site;
- (b) At the release site; or
- (c) While transporting live fish from a remote weigh-in site back to the water body of origin for release.

(8) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of unprocessed tournament caught fish that expired at the sites established in subsection (7) of this section for subsequent disposal by one (1) of the methods established in paragraphs (a) through (c) of this subsection:

- (a) Bagged, sealed, and placed in a garbage dump;
- (b) Donated to a charity for the purpose of human consumption; or

(c) Transferred to a conservation officer or another agent of the department.

(9) A person shall not remove the head or tail of any fish for which a size limit or daily creel limit exists while:

- (a) Fishing;
- (b) On the shoreline; or
- (c) On the water.

(10) A person may possess sport fish below the size limit or beyond the possession limit if the person:

- (a) Obtains the fish from a licensed fish propagator or other legal source; and
- (b) Retains a receipt or other written proof that the fish were legally acquired.

(11) A person shall release all caught trout unless the person:

- (a) Has a valid trout permit;
- (b) Is exempted from trout permit requirements pursuant to KRS 150.170(2); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

(12) A person fishing in an artificial bait-only area shall not attach any of the items established in paragraphs (a) through (h) of this subsection to the artificial bait:

- (a) An insect;
- (b) Minnow;
- (c) Fish egg;
- (d) A worm;
- (e) Corn;
- (f) Cheese;
- (g) Cut bait; or
- (h) A similar organic bait substance including dough bait and putty or paste-type bait designed to attract fish by taste or smell.

(13) The fishing season shall be open year-round.

Section 3. Exceptions. All other provisions of this administrative regulation shall apply to the bodies of water listed in this section, with the exceptions established in subsections (1) through (70)[(77)] of this section. (1) Bad Branch, Letcher County. A person shall only fish with artificial bait with a single hook;

(2) Barkley Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, ten (10) inches[;

(c) Sauger size limit, fourteen (14) inches];

(3) Barren River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Largemouth and smallmouth bass size limit, fifteen (15) inches, except that a person may keep one (1) bass under fifteen (15) inches within a daily creel limit.

(c) Blue and channel catfish aggregate daily creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

(d) Barren River Lake shall extend up:

- 1. Barren River to the Highway 100 bridge;
- 2. Long Creek to the Highway 100 bridge;
- 3. Beaver Creek to the Highway 1297 bridge;
- 4. Skaggs Creek to the Mathews Mill Road bridge; and
- 5. Peter Creek to the Peter Creek Road bridge;

(4) Beaver Lake, Anderson County. ~~(a) Channel catfish size limit, twelve (12) inches.~~

~~(b)] A person shall not possess shad or use shad as bait;~~

(5) Beech Fork Reservoir, Powell County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Bluegill daily creel limit, fifteen (15);

(6) Bert Combs Lake, Clay County. A person shall not possess shad or use shad as bait;

~~(7)[Beshears Lake, Caldwell County. Channel catfish size limit, twelve (12) inches;~~

~~(8)] Boltz Lake, Grant County. [(a)] A person shall not possess shad or use shad as bait[-~~

~~(b) Channel catfish size limit, twelve (12) inches];~~

~~(8)[(9)] Briggs Lake, Logan County. A person shall not possess shad or use shad as bait;~~

~~(9) [(10)] Buckhorn Lake.~~

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Muskellunge size limit, forty (40)~~[thirty-six (36)]~~ inches.

(c) Crappie size limit, nine (9) inches;

~~(10)[(11)] Bullock Pen Lake, Grant County. Channel catfish size limit, twelve (12) inches;~~

~~(12)] Carnico Lake, Nicholas County.~~

~~(a) Largemouth bass size limit, fifteen (15) inches.~~

~~(b) Sunfish daily creel limit, fifteen (15);~~

~~(11)[(13)] Carpenter Lake, Daviess County. A person shall not possess shad or use shad as bait;~~

~~(14)] Carr Creek Lake.~~

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, nine (9) inches;

~~(12)[(15)] Carter Caves State Park Lake, Carter County.~~

(a) Fishing shall be during daylight hours only.

(b) Largemouth bass.

1. There shall be a slot limit between twelve (12) and fifteen (15) inches.

2. The daily creel limit shall not include more than one (1) fish greater than fifteen (15) inches.

(c) A person shall not possess shad or use shad as bait;

~~(13)[(16)] Cave Run Lake.~~

(a) Largemouth bass. There shall be a slot limit between thirteen (13) and sixteen (16) inches.

(b) Smallmouth bass size limit, eighteen (18) inches.

(c) Muskellunge size limit, thirty-six (36) inches;

~~(14)[(17)] Cedar Creek Lake, Lincoln County.~~

~~[(a)] Largemouth bass size limit, twenty (20) inches; daily creel limit, one (1)[-~~

~~(b) Channel catfish size limit, twelve (12) inches];~~

~~(15)[(18)] Chimney Top Creek, Wolfe County. Brown trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only;~~

~~(16)[(19)] Corinth Lake, Grant County. [(a)] A person shall not possess shad or use shad as bait[-~~

~~(b) Channel catfish size limit, twelve (12) inches];~~

~~(17)[(20)] Cumberland Lake.~~

(a) 1. Largemouth bass size limit, fifteen (15) inches.
 2. Smallmouth bass size limit, eighteen (18) inches.
 3. Striped bass size limit, twenty-two (22) inches; daily creel limit, two (2).
 4. Crappie size limit, ten (10) inches.
 (b) Cumberland Lake shall extend up:
 1. The Cumberland River to Cumberland Falls;
 2. The Big South Fork to Devil's Jump;
 3. The Rockcastle River to The Narrows; and
 4. The Laurel River to Laurel River Dam;
~~(18)[(21)] Cumberland River downstream from Barkley Lake Dam. Sauger size limit, fourteen (14) inches;~~
~~(22)] Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries, except Hatchery Creek in Russell County as established in subsections (33)[(38)] and (34)[(39)] of this section.~~
 (a) Brown trout size limit, twenty (20) inches; daily creel limit, one (1).
 (b) Brook trout size limit, fifteen (15) inches; daily creel limit, one (1).
 (c) Rainbow trout. There shall be a slot limit between fifteen (15) and twenty (20) inches; daily creel limit, five (5), which shall not include more than one (1) fish greater than twenty (20) inches.
 (d) A trout permit shall be required in order to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.
 (e) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line, including the Hatchery Creek and all other tributaries upstream to the first riffle;
~~(19)[(23)] Dale Hollow Lake.~~
 (a) Smallmouth bass. There shall be a slot limit between sixteen (16) and twenty-one (21) inches. The daily creel limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.
 (b) Walleye and walleye hybrids, daily creel limit, five (5); size limit, sixteen (16) inches.
 (c) Sauger daily creel limit, ten (10); size limit, fourteen (14) inches.
 (d) Rainbow trout and brown trout, no size limit; daily creel limit, seven (7), singly or in combination.
 (e) Largemouth bass size limit, fifteen (15) inches.
 (f) Black bass aggregate daily creel limit, five (5), no more than two (2) of which shall be smallmouth bass.
 (g) Crappie size limit, ten (10) inches; daily creel limit, fifteen (15);
~~(20)[(24)] Dewey Lake.~~
 (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
 (b) Blue and channel catfish aggregate creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.
 (c) Muskellunge size limit, thirty-six (36) inches;
~~(21)[(25)] Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall only fish with artificial bait;~~
~~(22)[(26)] Doe Run Lake, Kenton County.~~
 (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
 (b) Channel catfish daily creel limit, four (4).
 (c) A person shall not possess shad or use shad as bait;
~~(23)[(27)] Dog Fork, Wolfe County. A person shall only fish with an artificial bait with a single hook;~~
~~(24)[(28)] Elkhorn Creek, downstream from the confluence of the North and South forks to the first shoal located 3,400 feet above its confluence with the Kentucky River, as posted with signs. Largemouth bass and smallmouth bass.~~
 (a) There shall be a slot limit between twelve (12) and sixteen (16) inches.
 (b) The daily creel limit shall not include more than two (2) fish greater than sixteen (16) inches;
~~(25)[(29)] Elmer Davis Lake, Owen County.~~
 (a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.

~~(b) Channel catfish size limit, twelve (12) inches.~~
~~(c)] A person shall not possess shad or use shad as bait;~~
~~(26)[(30)] Fishtrap Lake.~~
 (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
 (b) Crappie size limit, nine (9) inches.
 (c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches;
~~(27)[(34)] Floyd's Fork Creek, from Highway 60 downstream to Bardstown Road in Jefferson County. Largemouth and smallmouth bass size limit, fifteen (15) inches; daily creel limit, one (1);~~
~~(28)[(32)] Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish daily creel limit, five (5); size limit, fifteen (15) inches;~~
~~(29)[(33)] General Butler State Park Lake, Carroll County.~~
 (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
 (b) Channel catfish daily creel limit, four (4).
 (c) A person shall not possess shad or use shad as bait;
~~(30)[(34)] Grayson Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches;~~
~~(31)[(35)] Greenbo Lake, Greenup County.~~
 (a) A person shall not possess shad or use shad as bait.
 (b) Bluegill and sunfish daily creel limit, fifteen (15) fish;
~~(32)[(36)] Green River Lake.~~
 (a) Crappie size limit, nine (9) inches.
 (b) Muskellunge size limit, thirty-six (36) inches;
~~(33)[(37)] Guist Creek Lake, Shelby County. Channel catfish size limit, twelve (12) inches;~~
~~(38)] Hatchery Creek, upper section as established by signs, Russell County. Rainbow trout, brown trout, and brook trout, no size limit; daily creel limit, five (5), singly or in combination;~~
~~(34)[(39)] Hatchery Creek, lower section as established by signs, Russell County. A person fishing for trout shall:~~
 (a) Only use artificial bait; and
 (b) Release all trout;
~~(35)[(40)] Jericho Lake, Henry County.~~
 (a) Largemouth bass size limit, fifteen (15) inches.
 (b) A person shall not possess shad or use shad as bait;
~~(36)[(41)] Kentucky Lake and the canal connecting Kentucky and Barkley lakes.~~
 (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
 (b) Crappie size limit, ten (10) inches[;
~~(c) Sauger size limit, fourteen (14) inches;~~
~~(37)[(42)] Kentucky River WMA, Boone Tract, Benjy Kinman Lake.~~
~~[(a) Largemouth bass. Catch and release only.~~
~~(b)] Catfish daily creel limit, four (4);~~
~~(38)[(43)] Kentucky River WMA, Boone Tract, excluding Benjy Kinman Lake.~~
 (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).
 (b) Crappie daily creel limit, fifteen (15).
 (c) Sunfish daily creel limit, fifteen (15).
 (d) Catfish daily creel limit, four (4);
~~(39)[(44)] Kincaid Lake, Pendleton County. Channel catfish size limit, twelve (12) inches;~~
~~(45)] Lake Blythe, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;~~
~~(40)[(46)] Lake Chumley, and the department-owned property surrounding the lake, Boyle and Lincoln counties. Closed to public access from one-half (1/2) hour after sunset through one-half (1/2) hour before sunrise;~~
~~(41)[(47)] Lake Malone, Muhlenberg and Logan counties.[(a)] Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches[;~~
~~(b) Channel catfish size limit, twelve (12) inches];~~
~~(42)[(48)] Lake Mingo, Jessamine County. A person shall not possess shad or use shad as bait;~~
~~(43)[(49)] Lake Reba, Madison County.[(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches; daily creel limit, three (3).~~

~~(b) Channel and blue catfish size limit, twelve (12) inches.~~
~~(e)] A person shall not possess shad or use shad as bait;~~
~~(44)](50)] Lake Shelby, Shelby County.~~
(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
(b) Channel catfish daily creel limit, four (4).
(c) A person shall not possess shad or use shad as bait;
~~(45)](51)] Laurel River Lake.~~
(a) Largemouth bass size limit, fifteen (15) inches.
(b) Smallmouth bass size limit, eighteen (18) inches; daily creel limit, two (2).
(c) Crappie size limit, nine (9) inches; daily creel limit, fifteen (15);
~~(46)](52)] Lebanon City Lake (Fagan Branch), Marion County.~~
Largemouth bass and smallmouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
~~(47)](53)] Lincoln Homestead Lake, Washington County.~~
(a) A person shall not fish except during daylight hours.
(b) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
(c) Channel catfish daily creel limit, four (4).
(d) A person shall not possess shad or use shad as bait;
~~(48)](54)] Marion County Lake.~~
(a) Largemouth bass size limit, fifteen (15) inches.
(b) A person shall not possess shad or use shad as bait;
~~(49)](55)] McNeely Lake, Jefferson County. [(a) Channel and blue catfish size limit, twelve (12) inches.~~
~~(b)] A person shall not possess shad or use shad as bait;~~
~~(50)](56)] Mill Creek Lake, Powell County.~~
(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
(b) A person shall not possess shad or use shad as bait;
~~(51)](57)] New Haven Optimist Lake, Nelson County.~~
(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
(b) Channel catfish daily creel limit, four (4).
(c) A person shall not possess shad or use shad as bait;
~~(52)](58)] Nolin River Lake shall extend up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.~~
(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches.
(b) Crappie size limit, nine (9) inches;
~~(53)](59)] Ohio River.~~
~~(a)] Walleye, sauger, and any hybrid thereof, no size limit; daily creel limit, ten (10), singly or in combination.~~
~~(b)] White bass, striped bass, and any hybrid thereof, daily creel limit, thirty (30); no more than four (4) in the daily creel limit shall be fifteen (15) inches or greater.~~
~~(b)](e)] The blue catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer.~~
~~(c)](d)] The channel catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be twenty-eight (28) inches or longer.~~
~~(d)](e)] The flathead catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer;~~
~~(54)](60)] Otter Creek, Meade County.~~
(a) Smallmouth and largemouth bass. There shall be a slot limit between twelve (12) and sixteen (16) inches.
(b) Daily limit shall not include more than one (1) smallmouth or largemouth bass over sixteen (16) inches;
~~(55)](61)] Paint Creek, between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County. Trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only;~~
~~(56)](62)] Paintsville Lake. [(a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.~~
~~(b)] Smallmouth bass size limit, eighteen (18) inches;~~
~~(57)](63)] Parched Corn Creek, Wolfe County. A person shall only fish with an artificial bait with a single hook;~~
~~(58)](64)] Pikeville City Lake, Pike County. A person shall release largemouth bass;~~

~~(59)](65)] Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall only fish with an artificial bait with a single hook;~~
~~(60) Rockcastle River WMA, all ponds collectively, Pulaski County.~~
~~(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).~~
~~(b) Bluegill and sunfish daily creel limit, ten (10).~~
~~(c) Catfish daily creel limit, four (4).~~
~~(d) Crappie daily creel limit, fifteen (15); [(66) Reformatory Lake, Oldham County. Channel and blue catfish size limit, twelve (12) inches;]~~
~~(61)](67)] Rough River Lake.~~
(a) Crappie size limit, nine (9) inches.
(b) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches;
~~(62)](68)] Shanty Hollow Lake, Warren County.~~
(a) Largemouth bass size limit, fifteen (15) inches.
~~(b)] Channel catfish size limit, twelve (12) inches.~~
~~(c)] A person shall not possess shad or use shad as bait;~~
~~(63)](69)] Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall only fish with an artificial bait with a single hook;~~
~~(64)](70)] Spurlington Lake, Taylor County. A person shall not possess shad or use shad as bait;~~
~~(65)](71)] Sympson Lake, Nelson County. Largemouth bass size limit, fifteen (15) inches;~~
~~(66)](72)] Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.~~
(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
(b) Blue and channel catfish:
1. Aggregate daily creel limit of fifteen (15); and
2. Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.
(c) Crappie size limit, ten (10) inches; daily creel limit, fifteen (15);
~~(67)](73) Tennessee River downstream from Kentucky Lake Dam. Sauger size limit, fourteen (14) inches;~~
~~(74)] Trammel Creek, Allen County.~~
(a) Brown trout size limit, sixteen (16) inches; daily creel limit, one (1).
(b) Rainbow trout daily limit, five (5);
~~(68)](75)] Willisburg Park Pond, Washington County.~~
(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).
(b) Catfish daily creel limit, four (4).
(c) Sunfish daily creel limit, fifteen (15);
~~(69)](76)] Wood Creek Lake. Largemouth and smallmouth bass size limit, fifteen (15) inches; and~~
~~(70)](77)] Yatesville Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches.~~

Section 4. Creel and Size Limits for Waters Containing Rockcastle Strain Walleye. (1) Rockcastle Strain Walleye Waters.

(a) Barren River and tributaries upstream from Lock and Dam 1, including Barren River Lake;
(b) Cumberland River and tributaries above Cumberland Falls;
(c) Kentucky River and tributaries upstream from Lock and Dam 14;
(d) Middle Fork Kentucky River and tributaries;
(e) North Fork Kentucky River and tributaries, including Carr Fork below Carr Creek Lake;
(f) South Fork Kentucky River and tributaries;
(g) Levisa Fork River and tributaries upstream from Fishtrap Lake, including Fishtrap Lake;
(h) Martins Fork Lake; and
(i) Wood Creek Lake.
(2) There shall be a slot limit between eighteen (18) and twenty-six (26) inches and a daily creel limit of two (2) for walleye in the waters established in subsection (1) of this section.

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

Section 5. Seasonal Catch and Release for Trout. (1) There shall be a catch and release trout season from October 1 through March 31 for the bodies of water established in subsection (3) of this section.

(2) A person shall:

- (a) Only use artificial bait; and
- (b) Release all trout.

(3) The streams established in paragraphs (a) through (n) of this subsection shall be open for the catch and release trout season:

- (a) Bark Camp Creek in Whitley County;
 - (b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;
 - (c) Big Bone Creek within Big Bone Lick State Park in Boone County;
 - (d) Cane Creek in Laurel County;
 - (e) Casey Creek in Trigg County;
 - (f) Clear Creek from mouth upstream to 190 Bridge in Bell County;
 - (g) East Fork of Indian Creek in Menifee County;
 - (h) Elk Spring Creek in Wayne County;
 - (i) Floyd's Fork Creek in Jefferson County from Highway 60 downstream to Bardstown Road;
 - (j) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;
 - (k) Middle Fork of Red River in Natural Bridge State Park in Powell County;
 - (l) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park;
 - (m) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County; and
 - (n) Trammel Creek in Allen County.
- (4) There shall be a seasonal catch and release trout season for Swift Camp Creek in Wolf County from October 1 through May 31.

Section 6. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:

- (a) Size limits for selected species;
- (b) Daily creel limits for selected species;
- (c) Eligible participants; and
- (d) Dates and times of special limits.

(2) An event sponsor shall post signs informing anglers of any special limits for a minimum of twenty-four (24) hours before the event.

Section 7. Creel and Size Limits for Special Lakes and Ponds. (1) The requirements established in paragraphs (a) through (e) of this subsection shall apply to all bodies of water established in the Special Lakes and Ponds list; [subsection (2) of this section:]

- (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1);
- (b) Catfish daily creel limit, four (4);
- (c) Sunfish or bream daily creel limit, fifteen (15);
- (d) Rainbow trout daily creel limit, five (5); and
- (e) A person shall not possess shad or use shad as bait. [(2) Special lakes and ponds:

- (a) Alexandria Community Park Lake, Campbell County;
- (b) Anderson County Community Park Lake, Anderson County;
- (c) Bloomfield Park Lake, Nelson County;
- (d) Bob Noble Park Lake, Nelson County;
- (e) Brickyard Pond, Knox County;
- (f) Camp Ernst, Boone County;
- (g) Carlson Lake, Meade County in Fort Knox;
- (h) Cherokee Park Lake, Jefferson County;
- (i) Easy Walker Park Pond, Montgomery County;
- (j) Fisherman's Park lakes, Jefferson County;
- (k) Flemingsburg Old Reservoir, Fleming County;
- (l) Jacobson Park Lake, Fayette County;
- (m) James D. Beville Park Lake, Grayson County;
- (n) Kentucky Horse Park lakes, Fayette County;
- (o) Kess Creek Park Lake, Graves County;

- (p) Kingdom Come State Park Lake, Harlan County;
- (q) Lake Mingo, Jessamine County;
- (r) Lake Pollywog, Grant County;
- (s) Leary Lake, Grant County;
- (t) Logan Hubble Park Lake, Lincoln County;
- (u) Lower Sportsman's Lake, Franklin County;
- (v) Lusby Lake, Scott County;
- (w) Madisonville City Park lakes, Hopkins County;
- (x) Maysville-Mason County Recreation Park Lake, Mason County;

County;

- (y) Middleton Mills Long Pond, Kenton County;
- (z) Middleton Mills Shelterhouse Pond, Kenton County;
- (aa) Mike Miller Park Lake, Marshall County;
- (bb) Miles Park lakes, Jefferson County;
- (cc) Millennium Park Pond, Boyle County;
- (dd) Panther Creek Park Lake, Daviess County;
- (ee) Prisoner's Lake, Kenton County;
- (ff) Rotary Park Lake, Hickman County;
- (gg) Scott County Park Lake, Scott County;
- (hh) Southgate Lake, Campbell County;
- (ii) Three Springs Lake, Warren County;
- (jj) Tom Wallace Park Lake, Jefferson County;
- (kk) Upper Sportsman's Lake, Franklin County;
- (ll) Waverly Park Lake, Jefferson County;
- (mm) Waymond Morris Park Lake, Daviess County;
- (nn) Whitehall Park Lake, Madison County; and
- (oo) Yellow Creek Park Lake, Daviess County.]

Section 8. Special Catfish Size Limit Lakes. All lakes established in the Special Catfish Size Limit Lakes list shall have a twelve (12) inch size limit on catfish.

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

- (a) "Special Catfish Size Limit Lakes", 2018 edition; and
- (b) "Special Lakes and Ponds", 2018 edition.

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

FRANK JEMLEY III, Acting Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: July 6, 2018

FILED WITH LRC: July 12, 2018 at 10 a.m.

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** **(As Amended at ARRS, September 11, 2018)**

301 KAR 1:410. Taking of fish by nontraditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.235, 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair,

reasonable, equitable, and safe use of all waters of the state. This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods.

Section 1. Definitions. (1) "Angler" means a person holding a valid resident or nonresident fishing license and includes those persons who are license exempt pursuant to KRS 150.170.

(2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(3) "Asian carp" means bighead carp, silver carp, black carp, and grass carp.

(4) "Bow fishing" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment, a crossbow, or a pneumatic arrow launching device.

(5) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without the aid from an archer.

(6) "Cull" means to release a previously caught fish that an angler has kept as a part of a daily creel limit and replace it with another fish of the same species.

(7) "Pneumatic arrow launching device" means a device designed to fire an arrow through the use of a compressed air cartridge.

(8) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(9) "Temporary aquatic area" means an area temporarily inundated from, but still connected to, a stream, river, or reservoir and that persists only for the duration of the elevated water levels.

(10) "Temporary pool" means an area temporarily inundated from, but not connected to, a stream, river, or reservoir.

Section 2. General Provisions. (1) The possession limit for paddlefish shall be two (2) times the daily creel limit.

(2) A person shall release any:

(a) Lake sturgeon; or

(b) Alligator gar.

Section 3. Skin Diving, Scuba Diving, and Underwater Spear Fishing. (1) Skin diving or scuba diving shall be prohibited in all lakes owned by the department, except as established in subsections (2), (3), and (4) of this section.

(2) Skin diving and scuba diving shall be allowed in salvage operations if the diver receives prior written permission from:

(a) The department's Division of Law Enforcement; or

(b) The local conservation officer who is assigned to the particular department-owned lake.

(3) Skin diving or scuba diving shall be permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a drowning victim.

(4) Skin diving and scuba diving shall be allowed in Greenbo Lake:

(a) In a designated cove marked with signage and buoys;

(b) From April 1 through October 31; and

(c) From 10:00 a.m. to 6:00 p.m. daily.

(5) A person who is skin diving or scuba diving in a designated cove pursuant to subsection (4) of this section shall display an international diving flag pursuant to 301 KAR 6:030.

(6) Recreational boating and angling shall be prohibited in the designated cove marked with signage and buoys during the times open to skin diving and scuba diving as established in subsection (4) of this section if an international diving flag is present in the cove.

(7) Underwater spearing of fish with a hand held spear or mechanically-propelled spear shall be legal throughout the year in lakes 1,000 acres in size or larger, as measured at the normal summer pool level as established in paragraphs (a) and (b) of this subsection.

(a) A participant who is spearing fish shall:

1. Be completely submerged in the water where spearing

takes place;

2. Possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170; and

3. Only spear rough fish.

(b) The daily limit shall be fifteen (15) rough fish, no more than five (5) of which shall be catfish.

Section 4[3]. Sport Fishing Trotlines, Jugging, and Setlines.

(1) Each sport fishing trotline, jug line, or setline shall be permanently labeled or tagged with the customer identification number found on the current sport fishing license of the person using it.

(2) Each trotline, jug line, or setline shall be checked by the owner at least once every twenty-four (24) hours, at which time the owner shall:

(a) Bait all hooks; and

(b) Remove all caught fish.

(3) A trotline, setline, or jug line shall be confiscated if it is not:

(a) Properly labeled or tagged; or

(b) Checked or baited at least once every twenty-four (24) hours.

(4) An angler shall not use more than:

(a) Two (2) sport fishing trotlines;

(b) Twenty-five (25) setlines; or

(c) Fifty (50) jug lines.

(5) Multiple anglers in one (1) boat shall not use more than fifty (50) jug lines per boat.

(6) A person using a sport fishing trotline shall:

(a) Set the trotline at least three (3) feet below the water's surface;

(b) Not have more than fifty (50) single or multi-barbed hooks; and

(c) Have all hooks at least eighteen (18) inches apart on the trotline.

(7) A person shall not use a jug line or setline with more than one (1) single or multi-barbed hook.

(8) A sport fishing trotline, jug line, or setline shall not be used in the waters established in paragraphs (a) through (d) of this subsection:

(a) In the Tennessee River within 700 yards of Kentucky Dam;

(b) In the Cumberland River below Barkley Dam to the Highway 62 bridge;

(c) In any lake less than 500 surface acres owned or managed by the department, except:

1. Ballard Wildlife Management Area lakes, Ballard County;

2. Peal Wildlife Management Area lakes, Ballard County; and

3. Swan Lake Wildlife Management Area lakes, Ballard County; or

(d) In the areas of the Ohio River established in subparagraphs 1. through 8. of this paragraph:

1. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;

2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike;

3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;

4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;

5. McAlpine Dam downstream to the K & I railroad bridge;

6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;

7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; or

8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

(9) An angler using a trotline, jug line, or setline shall follow all sport fish daily creel limits and size limits pursuant to 301 KAR 1:201.

Section 5[4]. Temporary Aquatic Areas and Temporary Pools.

(1) The department, with consent of the landowner, may delineate temporary aquatic areas and temporary pools where rough fish may be taken by any method except:

- (a) Poison;
- (b) Electrical devices;
- (c) Firearms; or
- (d) Explosives.

(2) The department shall be authorized to establish the exact dates and times when rough fish may be taken in temporary aquatic areas and temporary pools.

(3) A person shall be required to possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170.

(4) A person with a valid commercial fishing license may use nets and seines if the nets and seines are appropriately tagged, as established in [pursuant to] 301 KAR 1:146.

(5) A person shall first obtain the permission of the landowner before taking rough fish from a temporary pool.

Section 6[5]. Giggling and Snagging. (1) Giggling and snagging season shall be February 1 through May 10, except as established in subsections (7) and (9) of this section.

(2) A person shall not:

(a) Gig or snag a sport fish, as established in [pursuant to] 301 KAR 1:060, except as established in subsections (7) and (9) of this section;

(b) Gig or snag from a platform;

(c) Gig from a boat in a lake with a surface area of less than 500 acres;

(d) Gig at night from a boat; or

(e) Snag from a boat.

(3) A snagging rod shall be equipped with:

- (a) Line;
- (b) Guides;
- (c) A reel; and

(d) One (1) single hook or treble hook attached to the line, except that five (5) hooks, either single or treble, may be used while snagging in:

- 1. The Green River and its tributaries; or
- 2. The Rolling Fork River and its tributaries.

(4) A person who accidentally gigs or snags a sport fish shall immediately return the fish to the water, except as established in subsections (7) and (9) of this section.

(5) A person shall not gig or snag in the areas or bodies of water established in paragraphs (a) through (f) of this subsection:

(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, including Hatchery Creek;

(b) Any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;

(c) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County;

(d) The Rough River, below Rough River Lake Dam downstream to the State Highway 54 bridge in Breckinridge and Grayson Counties;

(e) Cave Run Lake; or

(f) Within 200 yards of any dam on a river or stream, except as established in subsection (7) of this section.

(6) A person shall not gig in the Tennessee River below Kentucky Lake Dam.

(7) A person may snag sport fish or rough fish in the Tennessee River below the Kentucky Lake Dam to the U.S. 62 bridge:

(a) For twenty-four (24) hours a day from January 1 through May 31; and

(b) From sunset to sunrise from June 1 through December 31.

(8) A person shall not snag in that section of the Tennessee River from the U.S. 62 bridge to the Interstate 24 bridge.

(9) A person may snag sport fish or rough fish year-round in the section of the Tennessee River from the Interstate 24 bridge to the Ohio River.

(10) A person shall not snag on the Tennessee River:

(a) Under the U.S. 62 bridge;

(b) Under the P & L Railroad bridge; or

(c) From the fishing piers located below the U.S. 62 bridge.

(11) There shall not be a daily creel limit for rough fish except:

(a) The daily creel limit for rough fish in the Cumberland River below Barkley Lake Dam shall be eight (8), except there shall not be a creel limit on Asian Carp;

(b) The daily aggregate creel limit for snagging of rough and sport fish in the Tennessee River below Kentucky Lake Dam shall be eight (8), except there shall not be a creel limit on Asian Carp; and

(c) 1. The statewide daily creel limit for paddlefish shall be two (2), in all areas outside those established in paragraphs (a) and (b) of this subsection; and

2. In an area established in paragraph (a) or (b) of this subsection, up to eight (8) paddlefish may be taken.

(12) A person shall immediately retain, and not release or cull, any gigged or snagged paddlefish.

(13) All snagged fish in the Tennessee River below Kentucky Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(14) All gigged or snagged rough fish in the Cumberland River below Barkley Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(15) A person shall immediately cease snagging if:

(a) A daily limit of paddlefish is reached; or

(b) A daily limit of sport fish has been caught in the Tennessee River below Kentucky Lake Dam, even if the creel limit for that sport fish is less than eight (8).

Section 7[6]. Grabbing. (1) The grabbing season for rough fish shall be June 1 to August 31 during daylight hours.

(2) Grabbing shall be permitted in all waters.

(3) The daily creel limit for grabbing shall be fifteen (15) fish, no more than five (5) of which may be catfish, except anglers grabbing at Barren River Lake, Dewey Lake, Fishtrap Lake, or Taylorsville Lake, may only harvest one (1) blue or channel catfish over twenty-five (25) inches.

Section 8[7]. Bow Fishing. (1) An angler using archery equipment, a crossbow, or a pneumatic arrow launching device shall not take:

(a) Sport fish;

(b) Alligator gar;

(c) More than five (5) catfish daily; ~~or~~

(d) More than two (2) paddlefish daily; or

(e) Lake sturgeon.

(2) Any paddlefish or catfish shot with archery equipment, a crossbow, or a pneumatic arrow launching device shall:

(a) Be immediately retained, and not released or culled; and

(b) Count toward a person's daily limit.

(3) Bow fishing shall be open statewide, except:

(a) In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek;

(b) In any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line, from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream; or

(c) From a boat in restricted areas below navigation, power generating, or flood control dams.

FRANK JEMLEY III, Acting Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: July 6, 2018

FILED WITH LRC: July 12, 2018 at 10 a.m.

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.

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(As Amended at ARRS, September 11, 2018)

400 KAR 1:040. Administrative discovery.

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

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

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

Section 1. General Provisions Governing Discovery. (1) Discovery methods. Parties to administrative hearings may obtain discovery by one (1) or more of the following methods, which shall not be limited except as established in subsection (3) of this section:

- (a) Depositions upon oral examination or written questions;
- (b) Written interrogatories;
- (c) Production of documents or things or, for parties other than the cabinet, permission to enter upon land or other property, for inspection and other purposes; and
- (d) Requests for admission. ~~Unless the hearing officer orders otherwise under subsection (3) of this section, the frequency of use of these methods is not limited.~~

(2) Scope of discovery.

(a) 1. [In general.] Parties may obtain discovery regarding any matter, not privileged or confidential under KRS 224.10-210, 224.10-212, 353.660, 353.6603 through 353.6606, or under any other privilege recognized by statute or at common law, whether it relates to a claim or defense of the party seeking discovery or to a claim or defense of any other party, which is relevant to the subject matter involved in the administrative hearing, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

2. It shall not be [is not] grounds for objection that the information sought will be inadmissible at the administrative hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

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

(c) Hearing preparation; ~~[is]~~ materials.

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

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

(d) Hearing preparation. [preparations:] experts. Discovery of facts known and opinions held by experts, otherwise discoverable under this administrative regulation and acquired or developed in anticipation of or preparation for the administrative hearing, may be obtained only as established in subparagraphs 1. and 2. of this paragraph. [follows:]

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

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

(3) Protective orders.

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

- 1. That the discovery not be had;
- 2. That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- 3. That the discovery may be had only by a method of discovery other than selected by the party seeking discovery;
- 4. That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- 5. That discovery be conducted with no one present except persons designated by the hearing officer;
- 6. That a deposition after being sealed be opened only by order of the cabinet; or
- 7. That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

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

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

(5) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made shall not be [is] under ~~[no]~~ duty to supplement that response

to include information thereafter acquired, except as established in paragraphs (a) through (c) of this subsection.~~[follows:]~~

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

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

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

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

Section 3. Stipulations Regarding Discovery Procedure. Unless the hearing officer orders otherwise, the parties may, by agreement, provide that:

(1) Depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions~~[,]~~ and

(2) Modify the procedures provided by this administrative regulation for other methods of discovery.

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

(2) General requirements.

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

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

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

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

(e) A party may in the notice and in a subpoena, name as the

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

(3) Examination and cross-examination.

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

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

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

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

(6) Certification and filing by person taking deposition.

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

(b) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the

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

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

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

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

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

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

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

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

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

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

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

(a) Any deposition may be used by any party for the purpose of

contradicting or impeaching the testimony of the deponent as a witness.

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

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

1. The witness is dead;

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

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

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

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

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

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

8. The hearing officer finds that [such] circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the administrative hearing, to allow the deposition to be used.

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

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

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

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

(4) Effect of errors and irregularities.

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

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

(c) As to taking of deposition.

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

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

3. Objections to the form of written questions shall be [are]

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

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

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

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

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

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

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

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

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

(2) Scope; use at administrative hearing.

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

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

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

copies, compilations, abstracts or summaries.

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

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

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

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

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

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

(3) The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objection is justified, the hearing officer shall order that an answer be served. If the hearing officer determines that an answer does not comply with the requirements of this section, the hearing officer may order either that the matter is admitted or that an amended

answer be served. The hearing officer may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference. The provisions of Section 10(3) of this administrative regulation apply to the award of expenses incurred in relation to the motion.

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

Section 10. Failure to Make Discovery; [f:] Sanctions. (1) Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as established in paragraphs (a) through (c) of this subsection.[follows:]

(a) Motion.

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

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

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

(c) Award of expenses of motion.

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

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

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

(2) Failure to comply with order.

(a) Sanctions by the hearing officer. If a party or an officer, director, or managing agent of a party, or a person designated under Section 4(2)(e) or 5(1)(b) of this administrative regulation to testify on behalf of a party fails to obey an order to provide or

permit discovery, including an order made under subsection (1) of this section, the hearing officer may make an order regarding the failure if appropriate. The order may include:[such orders in regard to the failure as are just, and among others the following:]

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

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

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

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

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

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

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

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

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

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 3, 2018

FILED WITH LRC: July 13, 2018 at noon

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

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(As Amended at ARRS, September 11, 2018)

400 KAR 1:090. Administrative hearings practice provisions.

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

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

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

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

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

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

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

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

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

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

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

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

(e) The agency interest number, if known;

(f) The petitioner name;

(g) The respondent name; and

(h) Any intervenor name.

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

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

indicate the case to which the document applies.

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

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

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

1. Facsimile.

a. A person filing a pleading in the office may file the pleading by facsimile at the facsimile number listed for the office.

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

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

2. Electronic mail.

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

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

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

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

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

(d) Filing of discovery material.

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

a. Interrogatory;

b. Request for production or inspection; and

c. Request for admission.

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

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

(2) Official record.

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

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

(3) Signature and record address.

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

1. Mailing address;

2. Electronic mail address, if available;

3. Facsimile number, if available; and

4. Telephone number.

(b) Change of contact information. If any of the information that

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

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

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

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

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

(6) Electronic recording and transcript.

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

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

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

(d) Requirement to file transcript with the office.

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

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

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

Section 4. Time. (1) Computation.

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

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

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

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

(2) Extensions of time.

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

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

Section 5. Administrative Summons and Service of Process. The provisions of this section shall not apply to hearings conducted

pursuant to KRS Chapter 353. Information related to administrative summons and service of process for hearings conducted pursuant to KRS Chapter 353 shall be as established[found] in Section 24 of this administrative regulation. (1) Upon receipt of an initiating document, the office shall serve a copy of the initiating document upon each party designated on the initiating document to be served along with an administrative summons. The office shall serve the initiating document in accordance with the method designated on the initiating document and subsection (4) this section.

(2) The administrative summons shall:

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

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

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

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

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

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

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

1. A partner or managing agent of the partnership;

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

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

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

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

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

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

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

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

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

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

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

attorney.

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

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

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

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

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

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

(a) Certified mail.

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

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

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

(b) Personal service.

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

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

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

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

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

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

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

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

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

(e) To the extent the United States postal regulations, 39 C.F.R., allow authorized representatives of local, state, or federal

governmental offices to accept and sign for "addressee only" mail, signature by the authorized representative shall constitute service on the addressee.

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

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

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

(c) Every document relating to discovery required to be served upon a party.

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

(3) How service is made.

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

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

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

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

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

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

(4) Proof of service.

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

(b) Proof may be by:

1. Certificate of a member of the bar;

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

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

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

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

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

(a) Administer oaths and affirmations;

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

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

(d) Rule on procedural requests or similar matters;

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

(f) Regulate the course of the administrative hearing;

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

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

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

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

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

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

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

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

(3) Ex parte communication.

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

1. A party to the proceeding;

2. A person interested in the proceeding; or

3. A representative of a party.

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

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

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

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

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

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

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

(3) A subpoena may be served by:

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

(b) Certified mail, return receipt requested.

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

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

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

determined by that final order.

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

(2) Filing of notice of entry of appearance.

(a) An attorney representing a party before the office shall file a written notice of entry of appearance in each case before the attorney may practice in that case before the office.

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

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

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

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

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

(1) Simplify and clarify the issue;

(2) Receive a stipulation and admission;

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

(4) Address any motions.

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

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

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

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

(2) Supporting memorandum.

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

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

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

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

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

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

hearing officer.

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

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

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

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

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

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

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

(6) Proposed order.

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

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

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

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

(7) Hearing on a motion.

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

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

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

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

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

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

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

(2) Criteria to intervene.

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

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

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

(b) If the criteria set forth in paragraph (a) of this subsection does not apply, the hearing officer shall consider the following in

determining if intervention is appropriate:

1. The nature of the issues;

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

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

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

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

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

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

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

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

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

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

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

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

(2) The hearing officer shall exclude:

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

(b) Evidence designated as confidential by statute; and

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

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

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

(a) An administrative hearing will be expedited; and

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

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

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

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

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

evaluation of the evidence.

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

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

- (a) A deposition,
- (b) An answer to an interrogatory,
- (c) An admission, or
- (d) Any document produced upon request to verify such allegation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Response.

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

- 1. Specifically admits or denies the facts alleged in the order;
- 2. Sets forth other matters to be considered on review; and
- 3. Sets forth evidence, if any, that the condition or activity does not violate the provisions of KRS 224.10-410.

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

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

(4) Burden of proof. The cabinet shall have the burden of going

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

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

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

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

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

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

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

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

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

(2) Preponderance of the Evidence.

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

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

(3) Civil Penalty Determination.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The secretary may:

(a) Remand the matter to the hearing officer;

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

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

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

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

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

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

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

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

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

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

(2) Mediator.

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

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

(c) Disqualification of a mediator.

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

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

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

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

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

(a) Subject to disclosure through discovery;

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

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

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

(5) Mediation conference.

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

(b) Scheduling a Mediation Conference.

1. The mediator shall schedule a mediation conference within

thirty (30) days of the mediation status conference unless otherwise agreed to by the parties.

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

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

(d) Appearance at mediation conference.

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

2. Counsel may also be present.

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

(f) The mediation conference shall continue until:

1. A settlement is reached;

2. Any party is unwilling to proceed further; or

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

(6) Reporting to the hearing officer.

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

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

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

1. Full Settlement.

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

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

2. Partial settlement.

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

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

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

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

(2) The administrative summons shall:

(a) Notify the respondent that:

1. An initiating document has been filed against the respondent; and

2. Unless a written defense is timely served, **the respondent shall be subject to action adverse to the respondent's interest[may be taken].**

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

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

(3) Service shall be made pursuant to one (1) of the methods **established** in subparagraphs (a) through (k) of this subsection and subsection (4) **of this section**.

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

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

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

1. A partner or managing agent of the partnership;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

KRS 353, shall provide proof to the office that it gave notice consistent with the requirements of KRS 353.510(45).

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

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

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

(c) The office shall file the return receipt or returned envelope in the record. ~~by~~

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

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

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

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

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

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

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

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

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

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

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

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 3, 2018

FILED WITH LRC: July 13, 2018 at noon

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

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(As Amended at ARRS, September 11, 2018)

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

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

STATUTORY AUTHORITY: KRS 146.270, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 224.10-100,

224.10-410, 224.10-420, 224.10-440, 224.40-310, 353.660, 353.6603, 353.6604, 353.6605, 353.6606

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

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

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

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

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

Section 2. Location of Administrative Hearing. An administrative hearing shall be held in Frankfort at the location designated by the hearing officer unless an alternative location is agreed to by each party or authorized by KRS 224.40-310(5)(e) or KRS Chapter 353.

Section 3. Administrative Hearing Initiated by the Cabinet. (1) Criteria for filing. The cabinet may initiate an administrative hearing and may seek a remedy identified in subsection (2) of this section if:

(a) The cabinet has reason to believe that a violation of:

1. KRS Chapters 146, 149, 151, 223, 224, or 353;

2. KAR Titles 400, 401, 402, or 805 KAR Chapter 1; or

3. An administrative regulation, a permit, registration, or certification condition has occurred or is occurring; or

(b) The cabinet has reason to believe a remedy should be sought or an order should be entered against any person to protect the environment or the health and safety of the public.

(2) Remedies. In an administrative hearing initiated by the cabinet, the cabinet may seek one (1) or a combination of the following:

(a) Permit revocation, termination, denial, modification, or suspension;

(b) Bond and other financial assurance forfeiture;

(c) Civil penalty;

(d) A determination, if expressly authorized by statute, that a person shall not be eligible to receive another permit or conduct future activity;

(e) Cost recovery if expressly authorized by statute; or

(f) Any other relief to which the cabinet may be entitled by KRS Chapters 146, 149, 151, 223, 224, 353, KAR Titles 400, 401, and 402, and 805 KAR Chapter 1.

(3) Procedure for an administrative hearing initiated by the cabinet.

(a) The cabinet shall initiate an administrative hearing by filing an administrative complaint with the office incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief;

2. A request for specific relief; and

3. A copy of any notice or order upon which relief is sought.

(b) Answer or responsive pleading.

1. The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the administrative complaint.

2. The answer shall contain:

a.(i) A statement specifically admitting or denying the facts stated in the administrative complaint or amended administrative complaint; or

(ii) If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

b. Any defense to each claim for relief; and

c. Any other matter to be considered on review.

3. Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

4. An allegation in a pleading to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

5. An allegation in a pleading to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(c) Amendment.

1. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

2. The respondent shall have ten (10) days from the filing of an amended administrative complaint or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading to the amended administrative complaint.

3. If the hearing officer grants a motion to amend the administrative complaint, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(4) Burden of proof.

(a) The cabinet shall bear the ultimate burden of persuasion.

(b) A respondent shall have the burden of persuasion to establish an affirmative defense.

(c) A respondent claiming an exemption shall have the burden of persuasion to establish qualification for the exemption.

(5) Default.

(a) If the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, on his own initiative or upon motion, issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

Section 4. Review of a Cabinet Order and Final Determination.

(1) Who may file. A person who considers himself aggrieved by an order or final determination of the cabinet may file a petition for review of the order or final determination. The petition for review shall be filed pursuant to this section. This section also applies to a petition for review of a draft permit for construction or expansion of a waste disposal facility, made pursuant to KRS 224.40-310(6), if the expansion results in substantial additional capacity.

(2) Time for filing.

(a) A person filing a petition for review under this section shall file in the office a petition within thirty (30) days after the person has had actual notice of the order or final determination

complained of, or could reasonably have had notice.

(b) The hearing officer shall not grant an extension of time for filing a petition for review.

(c) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall dismiss a petition that is not filed in accordance with subsection (2)(a) of this section stating that the person waived his right to an administrative hearing.

(3) Content of the petition. The petition for review shall contain:

(a) A statement of the facts entitling the person requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's determination;

(c) A request for specific relief;

(d) If the petition challenges an order or final determination on a permit, the name of the permittee and the permit number; and

(e) If the petition challenges an order or final determination other than a permit, a copy of the order or final determination sought to be reviewed.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend the petition, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(6) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's order or final determination pending completion of administrative review.

(7) Burden of proof.

(a) The petitioner shall bear the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

(b) A responding party shall have the burden of persuasion to establish an affirmative defense.

(c) A responding party claiming an exemption shall have the burden of persuasion to establish qualification for the exemption.

(8) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his discretion or upon motion, issue an order to show cause why the petitioner should not be deemed to have waived the right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the

hearing officer shall recommend to the secretary the entry of a final order dismissing the petition since the petitioner waived the right to an administrative hearing.

(c) If the petitioner fails to appear at an administrative hearing, the petitioner shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order dismissing the petition since the petitioner waived the right to an administrative hearing.

Section 5. Procedure for an Order for Remedy under KRS 151.297. (1) Notice.

(a) If the secretary issues an order for remedy pursuant to KRS 151.297, the secretary shall file a copy of the order for remedy in the office.

(b) Upon the filing of an order for remedy, the office shall issue an administrative summons pursuant to 400 KAR 1:090, Section 5 and shall set the time and place for an administrative hearing. The office may schedule the administrative hearing within five (5) working days from the date the order for remedy was signed by the secretary.

(2) Response.

(a) Unless paragraph (b) of this subsection applies, the person named in the order for remedy prior to or at the administrative hearing shall file a response to the order that:

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

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

3. Sets forth evidence, if any, that the condition or activity does not violate the provisions of KRS 151.297.

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

(3) Hearing procedure. The administrative hearing shall be held in accordance with 400 KAR 1:090.

(4) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the order for remedy. The person named in the order for remedy shall have the ultimate burden of persuasion that the condition or activity does not violate KRS 151.297, or that the condition or activity has been discontinued, abated or alleviated.

(5) Default. The hearing officer shall prepare a report stating that the hearing was waived and the order for remedy stands as issued if:

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

(b) The person failed to appear at the administrative hearing.

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

Section 6. Judicial Review, Effect, and a Subsequent Proceeding. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 151.186, ~~or~~ 224.10-470, or 353.700, as applicable.

(2) Effect of final order pending judicial review. The commencement of a proceeding for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by a court of competent jurisdiction.

(3) Remand from a court. If a matter is remanded from a court for a further proceeding, and to the extent the court's directive and time limitations will permit, each party shall file with the office a report recommending the procedure to be followed in order to comply with the court's order. The hearing officer shall review each report and enter a special order governing the handling of the matter remanded for a further proceeding.

Section 7. Requirement to File Written Direct Testimony and Its Use in an Administrative Proceeding Subject to KRS 224.10-440. In proceedings subject to KRS 224.10-440:

(1) In addition to the provisions of 400 KAR 1:090, Section 16(4), pertaining to the admission of written testimony, the hearing

officer may require the filing of the written testimony of a witness as if on direct examination, which shall be prepared and filed in the record in advance of the formal administrative hearing.

(2) The hearing officer may require written testimony to be supplemented by additional evidence.

(3) Written testimony shall be accompanied by an affidavit of the witness verifying that the written direct testimony is a true and accurate record of the witness' testimony as if given orally, and that the answers to the questions propounded to the witness are true.

(4) Any witness whose written testimony is prefiled shall appear at the formal administrative hearing unless all parties agree to waive the appearance of the witness.

(5) At the formal administrative hearing, the witness shall again verify that the written direct testimony is a true and accurate record of the witness' testimony as if given orally and that the answers to the questions propounded to the witness are true and the witness shall be available for cross examination.

(6) If a witness fails to verify his written direct testimony or is not available for cross examination at the formal administrative hearing, the written testimony of that witness shall be excluded from the record, unless each party agrees otherwise.

(7) Written testimony shall be set forth in a "question and answer" format.

(8) If written testimony, that is based upon a separate document or writing is submitted into the record, that document or writing shall be authenticated and entered into the record as an accompanying exhibit to the written testimony.

(9) Each party shall have a reasonable opportunity prior to the formal administrative hearing to:

(a) Object to all or portions of any written testimony and any accompanying exhibit; and

(b) Obtain a ruling on objections to written testimony or exhibits prior to their introduction at the administrative hearing.

(10) Written testimony and accompanying exhibits shall be subject to the same standards of authentication and admissibility as all other testimony and exhibits offered in an administrative hearing.

Section 8. Administrative Proceedings Subject to KRS 224.10-440. (1) Waiver.

(a) In proceedings subject to KRS 224.10-440, if each party agrees to waive the deadline of KRS 224.10-440(3), a waiver agreement executed by each party or the party's counsel shall be filed in the office.

(b) Waiver of the KRS 224.10-440(3) deadlines shall not be subject to revocation by a party without consent of all parties and the approval of the hearing officer.

(2) Motion for extension of time.

(a) A party or hearing officer seeking an extension of the deadline for completion of the administrative hearing process set forth in KRS 224.10-440(3) shall file in the office a motion for extension that includes a proposed date certain by which the report and recommended order shall be completed.

(b) The motion for extension shall be filed forty-five (45) days prior to the deadline for the hearing officer to transmit the report and recommended order to the secretary, unless good cause is shown for not filing the motion prior to forty-five (45) days before the deadline.

(c) A party or hearing officer objecting to the extension shall file any response in opposition to the motion within seven (7) calendar days from receipt of the motion. The mail rule provisions set forth in 400 KAR 1:090, Section 4(1)(d) shall not be applicable in calculating the deadline for filing the response.

(d) Upon expiration of the time period for a motion and a response to the motion, the office shall tender the motion and any response to the secretary or the secretary's designee.

(e) The secretary or the secretary's designee shall rule on the motion within ten (10) days from expiration of the time period for filing an objection to any motion for extension.

Section 9. Confidentiality in Administrative Hearings Subject to KRS Chapter 353. In all proceedings conducted pursuant to KRS Chapter 353, the hearing officer may, upon motion by any party,

order that evidence be filed in the record under seal. The hearing officer shall grant the motion only if the moving party makes a sufficient demonstration that the offered evidence qualifies for protection pursuant to KRS 353.660 or KRS 353.6603 to KRS 353.6606. (1) Disclosure of sealed evidence by any party to nonparties, including requests made pursuant to KRS 61.872, shall be prohibited. With the exception of the party ~~that~~which originally offered sealed material into evidence, any other party that causes the intentional disclosure of sealed evidence to nonparties may be subject to an action filed by the nondisclosing party in Franklin Circuit Court seeking recovery of reasonable expenses, including attorney's fees, caused by the disclosure.

(2) Upon request, any party to the proceeding may inspect the sealed evidence during the regular office hours of the office. The evidence shall not be removed from the premises, and the duplication or transmittal of sealed materials ~~shall be~~is prohibited.[Such] Inspections shall be at all times supervised and limited to authorized party representatives, legal counsel, and retained expert witnesses who have been previously identified in administrative filings by the party. The office shall keep a log of all persons who inspect~~[such]~~ records, including a photocopy of the inspecting person's driver's license or other government issued identification card. If the record has been submitted on appeal, the reviewing party shall make appropriate arrangements with the court.

(3) The hearing officer shall later unseal the evidence when the applicable confidentiality period allowed under KRS 353.660 has expired, or if the evidence is determined to be a trade secret, it shall be unsealed pursuant to KRS 353.6604(3).

(4) Nothing in this section shall prevent the hearing officer, secretary, commission, or reviewing court from considering the entire record of a case before it, though sealed evidence ~~shall~~must be viewed in camera and ~~shall~~may not be unsealed unless:

(a) The confidentiality period has ended; or

(b) A court of law determines the application of KRS 353.660 or KRS 353.6603 to KRS 353.6606 to the evidence was erroneous.

(5) Testimony pertaining to evidence under seal shall be closed to the public and subject to the same confidentiality period as the evidence being discussed. The record of closed testimony shall be put under seal and kept separate from the public record until the confidentiality period expires.

(6) To the extent the hearing officer bases their findings and conclusions on sealed evidence, the hearing officer's report and recommended order shall sufficiently describe the nature of the evidence without disclosing confidential or proprietary information.

Section 10. Review of a Cabinet Determination Pursuant to KRS 353.060. (1) Who may file. An owner or coal operator who determines the proposed location of well will endanger the present or future use or operation of the workable coal bed. The petition for review shall be filed pursuant to this section.

(2) Time for filing.

(a) A person filing a petition for review under this section shall file in the office a petition within fifteen (15) days from the receipt of the plat by him and by the Department for Natural Resources for the proposed location of the well.

(b) The hearing officer shall not grant an extension of time for filing a petition for review.

(c) If the hearing officer, upon motion or his ~~or her~~ own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall dismiss a petition that is not filed in accordance with subsection (2)(a) of this section stating that the person waived ~~the~~his right to an administrative hearing.

(3) Content of the petition. The petition for review shall contain the specific objections to the proposed location of the well.

(4) Answer or responsive pleading.[(a)] The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(5) Determination by the hearing officer.

(a) At the hearing, the well operator and the coal operator or

owner, in person or by a representative, shall consider the objections and either agree upon the location as proposed or change it so as to satisfy any or all objections and meet the approval of the department. Any new location thus selected and agreed upon shall be indicated on a plat in accordance with KRS 353.050, and ~~[thereupon]~~ the department shall issue to the well operator a drilling permit approving the location and authorizing the well operator to drill at the location.

(b) If the coal operator and well operator, or the owner and the well operator, are unable to agree, the hearing officer shall make a recommendation to the secretary, in view of the purposes and intent of KRS Chapter 353 ~~[and in compliance therewith]~~, to fix a location on the tract as near the proposed location as possible.

(6) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his ~~or her~~ discretion or upon motion, issue an order to show cause why the petitioner should not be deemed to have waived the right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order dismissing the petition ~~because[since]~~ the petitioner waived the right to an administrative hearing.

(c) If the petitioner fails to appear at an administrative hearing, the petitioner shall be deemed to have waived ~~the[his]~~ right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order dismissing the petition ~~because[since]~~ the petitioner waived the right to an administrative hearing.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 3, 2018

FILED WITH LRC: July 13, 2018 at noon

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

ENERGY AND ENVIRONMENT CABINET

Office of the Secretary

(As Amended at ARRS, September 11, 2018)

400 KAR 1:110. Administrative hearings~~[and assessment conferences]~~ relating to matters brought under KRS Chapter 350 or KRS ~~[Chapter]~~ 351.310 through 351.375~~[relating to surface coal mining and reclamation operations, and coal exploration operations]~~.

RELATES TO: KRS 224.10-410, 350.010, 350.028, 350.0301, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 351.315, 351.345, 351.350, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.0301, 350.255, 350.465, 350.610, 351.315, 351.345, 351.350, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. KRS Chapter 351 authorizes the cabinet to promulgate rules and administrative regulations pertaining to explosives and blasting operations. This administrative regulation ~~establishes[sets forth]~~ hearing, conference, notice, penalty assessment, and other procedural and due process provisions for the permanent regulatory program under KRS Chapter 350, and the hearing procedures pursuant to KRS Chapter 351.

Section 1. Definitions. (1) "Applicant" is defined by 405 KAR 7:001.

(2) "Application" is defined by 405 KAR 7:001. (3) "Cessation order" is defined by 405 KAR 7:001.

(4) "Coal" is defined by 405 KAR 7:001.

(5) "Coal exploration" is defined by 405 KAR 7:001.

(6) "Department" is defined by ~~[405 KAR 7:001 and]~~ KRS 351.310.

(7) "Knowingly" is defined by 405 KAR 7:001.

(8) "Notice of noncompliance and order for remedial measures" is defined by 405 KAR 7:001.

(9) "Operations" is defined ~~by~~ [in] KRS 350.010(6).

(10) "Operator" is defined ~~by~~ [in] KRS 350.010(8).

(11) ~~["Order for cessation and immediate compliance" is defined by 405 KAR 7:001.~~

~~(12) "Performance bond" is defined by 405 KAR 7:001.~~

~~(13) "Permit" is defined by 405 KAR 7:001.~~

~~(12) [(14)] "Permit area" is defined by 405 KAR 7:001.~~

~~(13) [(15)] "Permittee" is defined by~~ [in] KRS 350.010(21).

~~(14) [(16)] "Reclamation" is defined by~~ [in] KRS 350.010(12).

~~(15) [(17)] "Secretary" is defined by~~ [in] KRS 350.010(11).

~~(16) [(18)] "Significant, imminent environmental harm" is defined by 405 KAR 7:001.~~

~~(17) [(19)] "SMCRA" is defined by 405 KAR 7:001.~~

~~(20) "Surface coal mining and reclamation operations" is defined by KRS 350.010(1).~~

~~(18) [(21)] "Transfer, assignment, or sale of permit rights" is defined by 405 KAR 7:001.~~

~~(19) [(22)] "Willfully" and "willful violation" is defined by 405 KAR 7:001.~~

Section 2. Applicability. This administrative regulation shall govern the conduct by the cabinet of all administrative hearings:

~~(1) [(a) The conduct by the cabinet of all administrative hearings]~~ And conferences arising under KRS Chapter 350 relating to surface coal mining and reclamation operations and coal exploration operations, including those matters initiated by a petition for hearing filed on or before August 4, 2017; ~~and~~ ;

~~(2) [(b) The conduct by the cabinet of all administrative hearings]~~ Authorized by KRS Chapter 351 relating to explosives and blasting operations.

Section 3. Proposed Penalty Assessment and Request for Assessment Conference and Administrative Hearing. (1) Notification. The cabinet shall notify a person issued a notice of noncompliance and order for remedial measures or a cessation order in writing of the cabinet's proposed penalty assessment. The proposed penalty assessment shall be made by authorized personnel of the department.

(2) Criteria. The department, in determining the amount of the proposed penalty assessment, shall give consideration to:

(a) History of previous violations of the permittee or operator at the particular surface coal mining and reclamation operation;

(b) The seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;

(c) Whether or not the permittee, operator, or person was negligent; and

(d) The demonstrated good faith of the permittee, operator, or person in attempting to achieve rapid compliance after notification of the violation, except that good faith consideration shall not be applicable to any violation determined not to be correctable.

(3) Service method; time.

(a) The department shall serve the notice of proposed penalty assessment along with copies of applicable worksheets, to the person to whom the notice or order was issued within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order.

(b) The department shall serve the notice of proposed penalty assessment by utilizing one (1) of the following:

1. ~~A service method established~~ Service methods authorized] in 400 KAR 1:090, Section 5(3) and (4); or

2. ~~[By]~~ Electronic mail pursuant to KRS 350.130.

(c) Service shall be deemed effective pursuant to 400 KAR 1:090, Section 5(5) or upon delivery of the notice of proposed penalty assessment with copies of worksheets to the recipient's inbox by electronic mail as electronically communicated to the

department by an electronic registered receipt.

(d) Failure to serve the proposed penalty assessment within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order shall not be grounds for dismissal of all or part of the assessment unless:

1. The person against whom the proposed penalty has been assessed proves actual and substantial prejudice as a result of the delay; and

2. The person makes a timely written objection to the delay on or before the last date to request an assessment conference under subsection (4)(b) of this section.

(4) Options of person issued notice of proposed penalty assessment.

(a) Waiver of rights to challenge proposed penalty assessment if no petition was filed challenging the fact of the violation.

1. The person shall notify the department that the person elects not to contest the proposed penalty assessment.

2. If the person did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

a. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

b. The fact of the violation is deemed admitted; and

c. The proposed penalty is due and payable within thirty (30) days after the entry of the final order.

(b) Waiver of rights to challenge penalty assessment and the person filed a petition challenging the fact of the violation.

1. The person shall notify the department that the person elects not to contest the proposed penalty assessment.

2. If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

a. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

b. The proposed penalty is due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

(c) Request for an assessment conference. The person shall request in writing an assessment conference within thirty (30) days:

1. [Within thirty (30) days] Of receipt of the notice of proposed penalty assessment; or

2. [Within thirty (30) days] From the date the notice of proposed penalty assessment is returned to the department as undeliverable, unclaimed or refused. [; or]

(d) Petition for administrative hearing.

1. The person shall contest the proposed penalty assessment or the fact of the violation by submitting a petition for an administrative hearing in accordance with Section 6 or 7 of this administrative regulation, or contest both by filing a petition for an administrative hearing in accordance with Sections 6 and 7.

2. The fact of the violation shall not be contested if it has been adjudicated by a final order of the secretary pursuant to an administrative hearing commenced under Section 7 of this administrative regulation.

(5) Failure to Request a Penalty Assessment Conference. If a person issued a proposed penalty assessment fails to request in writing an assessment conference in a timely manner as set forth in subsection (4)(c) of this section or has not filed a timely petition in accordance with Section 6 of this administrative regulation, then the cabinet shall consider the failure to request an assessment conference a waiver of the person's right to a conference. The secretary shall enter a final order pursuant to paragraph[paragraphs] (a) or (b) of this subsection.

(a) If the person did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall

issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

2. The fact of the violation shall be/is deemed admitted; and

3. The proposed penalty shall be/is due and payable within thirty (30) days after the entry of the final order.

(b) If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

2. The proposed penalty shall be/is due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

Section 4. Procedures for Assessment Conference. (1) Date and location of conference; failure to timely schedule; substantial prejudice.

(a) If an assessment conference is requested, the cabinet shall schedule the assessment conference within sixty (60) days after the cabinet's receipt of the request, unless all parties agree otherwise.

(b) An assessment conference shall be held in the department's regional office of the mine site subject to the proposed penalty assessment unless the parties agree otherwise.

1. If all the parties or their counsel request to participate by telephone or other electronic means, then the conference officer may hold the assessment conference telephonically or by any other electronic means agreed to by the parties.

2. Any person who attends the assessment conference in person at the department's regional office shall have access to the telephonic conference line or the electronic means utilized during the assessment conference.

(c) Failure by the cabinet to timely schedule an assessment conference shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed makes a timely objection on or before the date of the assessment conference and proves actual and substantial prejudice as a result of the delay.

(d) The scheduling of the assessment conference shall not operate as a stay of any notice of noncompliance and order for remedial measures or cessation order.

(2) Service; public participation.

(a) The cabinet shall serve notice of the assessment conference pursuant to 400 KAR 1:090, Section 5.

(b) The cabinet shall also send a copy of the notice of the assessment conference to any person who filed a report that led to the issuance of the notice of noncompliance and order for remedial measures or cessation order being contested.

(c) The cabinet shall post notice of the assessment conference at the department's regional office of the mine site subject to the proposed penalty assessment at least five (5) days before the assessment conference.

(d) Any person shall have the right to attend and participate in the assessment conference.

(3) Conference officer; requirements for administrative hearings not applicable. The office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by the requirements for administrative hearings in 401 KAR 1:090 or by the provisions of 400 KAR 1:040.

(4) Report of conference officer. The conference officer shall consider all relevant information pertaining to the proposed penalty assessment. Within thirty (30) days after the assessment conference is held, the conference officer shall issue a report recommending to the secretary to either affirm, raise, lower, or dismiss the proposed penalty assessment.

(5) Service of report; documentation. The conference officer's

report shall be served by mail, postage prepaid, and shall include a worksheet if the penalty has been raised or lowered. The reasons underlying the conference officer's report shall be fully documented.

(6) Failure to attend; report to issue. If the person requesting an assessment conference fails to attend the scheduled assessment conference, the assessment officer shall within thirty (30) days of the date of the scheduled assessment conference issue a report to the secretary recommending that the proposed penalty assessment be affirmed.

(7) Statements not to be introduced at an administrative hearing. In any administrative hearing commenced under Section/Sections 6 or 7 of this administrative regulation, ~~no~~ evidence as to statements made by a party at an assessment conference shall not be introduced by another party as evidence or to impeach a witness.

(8) Challenge to conference officer's report.

(a) Any person issued a proposed penalty assessment may file a petition requesting an administrative hearing to contest the conference officer's recommended penalty. A petition shall comply with/pursuant to the requirements of Section 6 of this administrative regulation.

(b) The cabinet may file a petition to request under Section 5 of this administrative regulation an administrative hearing to contest the conference officer's recommended penalty.

(9) Failure to timely file a petition challenging the conference report. If a person issued a proposed penalty assessment fails to timely file a petition in accordance with Section 6 of this administrative regulation challenging the conference report, the secretary shall issue a final order pursuant to paragraph/paragraphs (a) or (b) of this subsection.

(a) If the person also did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of the administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

2. The fact of the violation shall be/is deemed admitted; and

3. The proposed penalty shall be/is due and payable within thirty (30) days after the entry of the final order.

(b) If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of the administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

2. The proposed penalty shall be/is due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

Section 5. Administrative Hearing Initiated by the Cabinet. (1) Criteria for filing.

(a) The cabinet may initiate an administrative hearing if:

1. The cabinet has reason to believe that a violation of KRS Chapter 350 or/ 405 KAR Chapters 7 through 24 has occurred or is occurring;

2. A violation of a permit condition has occurred or is occurring;

3. A permittee, operator, or person has failed to:

a. Pay a civil penalty assessed by the cabinet;

b. Undertake remedial measures mandated by an order of the cabinet; or

c. Abate violations the permittee, operator, or person was determined to have committed by an order of the cabinet;

4. The provisions of KRS 350.990(9) apply;

5. The cabinet has reason to believe additional remedies should be sought or an order should be entered against a person to protect the environment or the health and safety of the public; ~~or~~

6. The criteria of 405 KAR 10:050, Section 3(2) or (3) apply;

7. The cabinet has determined that revocation of a license under KRS 351.345 is warranted; or

8. An explosive user or seller notified the cabinet pursuant to KRS 351.350 that they intend to challenge a citation issued under KRS 351.315 to 351.375.

(b) The cabinet may initiate an administrative hearing to contest a conference officer's recommended penalty and seek any combination of the relief set forth in subsection (2) of this section.

(c) The cabinet shall initiate an administrative hearing and shall seek revocation of the permit and forfeiture of the bond or suspension of the permit pursuant to KRS Chapter 350 if:

1. The permittee, operator, or person has willfully failed to comply with a cessation order; or

2. The criteria of 405 KAR 10:050, Section 3(1) apply.

(2) Remedies.

(a) In an administrative hearing pursuant to KRS Chapter 350 initiated by the cabinet or in a counter claim filed in response to a petition filed in accordance with Section 6, 7, 8, or 9, the cabinet may seek one (1) or a combination of the following:

1. ~~[(a)]~~ Permit suspension or revocation;

2. ~~[(b)]~~ Bond forfeiture;

3. ~~[(c)]~~ Civil penalty;

4. ~~[(d)]~~ A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person shall not be eligible to receive another permit or conduct future operations;

5. ~~[(e)]~~ A determination, pursuant to KRS 350.990(9), that any director, officer, or agent of a corporation willfully and knowingly authorized, ordered, or carried out a violation or failed or refused to comply with any final order; or

6. ~~[(f)]~~ Any other relief to which the cabinet may be entitled by KRS Chapter 350.

(b) In an administrative hearing pursuant to KRS Chapter 351 initiated by the cabinet, the cabinet may seek one (1) or a combination of the following:

1. Revocation of license or permit pursuant to KRS 351.345 or KRS 351.315; ~~or~~

2. Civil penalty pursuant to KRS 351.350; ~~or~~

3. Any other relief to which the cabinet may be entitled by KRS 351.315 to 351.375.

(3) Procedure for an administrative hearing initiated by the cabinet.

(a) Filing of administrative complaint. The cabinet shall initiate an administrative hearing by filing an administrative complaint with the office incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief;

2. A request for specific relief;

3. A copy of any notice, order, citation, or determination upon which relief is sought; and

4. In a bond forfeiture action, the cabinet shall attach documentation to the petition that the cabinet contacted the bonding company or financial institution providing the bond, to determine if it wanted the right to perform the measures necessary to secure bond release in accordance with KRS 350.130.

(b) Answer or responsive pleading.

1. The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the administrative complaint.

2. The answer shall contain:

a. (i) A statement specifically admitting or denying the alleged facts stated in the administrative complaint or amended administrative complaint; or

(ii) If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

b. Any defense to each claim for relief; and

c. Any other matter to be considered on review.

3. Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

4. An allegation in a pleading to which an answer or responsive pleading is not required or permitted shall be taken as denied or avoided.

5. An allegation in a pleading to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(c) Amendment.

1. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

2. The respondent shall have ten (10) days from the filing of an amended administrative complaint or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading to the amended administrative complaint.

3. If the hearing officer grants a motion to amend the administrative complaint, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(4) Burden of proof.

(a) The cabinet shall have the ultimate burden of persuasion.

(b) A respondent shall have the burden of persuasion to establish an affirmative defense.

(c) A respondent claiming an exemption shall have the burden of persuasion to establish the qualification for the exemption.

(5) Default.

(a) If the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer may on his or her own initiative or upon motion, issue an order to show cause why the person should not be deemed to have waived the[his] right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be deemed to have waived the[his] right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

Section 6. Administrative Hearing for Review of Proposed Assessment. (1) Who may file. Any person issued a proposed penalty assessment may file with the office a petition for an administrative hearing to review the penalty.

(2) Filing petition; waiver.

(a) A person filing a petition for review of a proposed penalty assessment who did not make a request for a Penalty Assessment Conference pursuant to Section 4 of this administrative regulation shall file the petition in the office within thirty (30) days of:

1. Receipt of the proposed penalty assessment; or

2. The return receipt date in the department of the notice of proposed penalty assessment, if the proposed penalty assessment is returned undeliverable, unclaimed, or refused.

(b) If the person made a timely request for an assessment conference pursuant to Section 4 of this administrative regulation, the person shall file a petition for review in the office within thirty (30) days of:

1. Receipt of the conference officer's report; or

2. The return receipt date in the office of the conference officer's report, if the conference officer's report is returned undeliverable, unclaimed, or refused;

(c) The hearing officer shall not grant an extension of time for filing a petition for review of a proposed penalty assessment.

(d) If the hearing officer, upon motion or his or her own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order in accordance with Section 4(9)(a) or (b) of this administrative regulation.

(3) Content of the petition. The petition shall include:

(a) A short and plain statement indicating the reasons why the amount of the penalty is being contested;

(b) If the amount of penalty is being contested based upon a misapplication of the penalty formula, a statement indicating how the penalty formula contained in 405 KAR 7:095 was misapplied, along with a proposed penalty utilizing the penalty formula; and

(c) Identification by reference to the number for the notice of noncompliance and order for remedial measures or cessation order number.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of that[such] defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed, which shall be set forth in the order granting the motion.

(6) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the amount of the penalty assessment and the ultimate burden of persuasion as to the amount of the penalty assessment.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer, may at his or her discretion or upon motion, issue an order to show cause why the person should not be deemed to have waived the[his] right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with Section 4(9)(a) or (b) of this administrative regulation.

(c) If the person against whom the proposed penalty is assessed fails to appear at an administrative hearing, the person shall be deemed to have waived the[his] right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with Section 4(9)(a) or (b) of this administrative regulation.

(8) Hearing officer report; contents. If an administrative hearing is conducted, the hearing officer shall incorporate in the[his] report and recommended order concerning a civil penalty, findings of fact on each of the four (4) criteria set forth in 405 KAR 7:095, Section 3 and conclusions of law.

Section 7. Administrative Review of a Notice of Noncompliance and Order for Remedial Measures and a Cessation Order. (1) Who may file. A person who considers himself aggrieved by the

issuance of a notice of noncompliance and order for remedial measures or cessation order by the cabinet pursuant to the provisions of KRS Chapter 350 or administrative regulations may file a petition for review with the office.

(2) Time for filing.

(a) A person filing a petition for review under this section shall file in the office a petition within:

1. Thirty (30) days of the receipt of a notice of noncompliance and order for remedial measures or cessation order;

2. Thirty (30) days of receipt of notice of modification, vacation, or termination of the notice of noncompliance and order for remedial measures or cessation order; or

3. Thirty (30) days of the return receipt date in the department of the notice of noncompliance and order for remedial measures or cessation order if the notice of noncompliance and order for remedial measures or cessation order is returned as undeliverable, unclaimed, or refused.

(b) The hearing officer shall not grant an extension of time for filing a petition for review.

(c) If the hearing officer, upon motion or his or her own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall dismiss a petition that is not filed in accordance with subsection (2)(a) of this section finding that the person waived the[his] right to an administrative hearing and affirming the notice of noncompliance and order for remedial measures or cessation order.

(3) Content of the petition. A person filing a petition for review shall incorporate in the petition regarding each claim for relief:

(a) A statement of facts entitling that person to administrative relief;

(b) A request for specific relief;

(c) An explanation of each specific alleged error in the cabinet's determination;

(d) A copy of the notice of noncompliance and order for remedial measures or cessation order sought to be reviewed; and

(e) A statement as to whether or not the person waives the opportunity for an evidentiary hearing;

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert those defenses in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(6) Requirement to file subsequent notice of noncompliance and order for remedial measures or cessation order.

(a) Within ten (10) days of receipt, a petitioner shall file a copy of any subsequent notice of noncompliance and order for remedial measures or cessation order that[which] modifies, vacates, or terminates the notice of noncompliance and order for remedial measures or cessation order sought to be reviewed.

(b) Within ten (10) days of receipt, a petitioner shall file a copy of any subsequent cessation order for failure to timely abate the violation that[which] is the subject to the notice sought to be reviewed.

(c) If a petitioner desires to challenge a subsequent notice of noncompliance and order for remedial measures or cessation order, the petitioner shall[must] file:

1. A separate petition for review in accordance with this section; or

2. A motion to amend a pending petition with the amended petition attached in accordance with this section and within the time requirements of subsection (2) of this section.

(d) A petition for review of a related notice of noncompliance and order for remedial measures or cessation order shall be/is subject to consolidation.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his or her discretion or upon motion, [shall] issue an order to show cause why the petitioner should not be deemed to have waived the[his] right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order affirming the notice of noncompliance and order for remedial measures or cessation order and dismissing the petition.

(c) If the petitioner fails to appear at an administrative hearing, the person shall be deemed to have waived the[his] right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order affirming the notice of noncompliance and order for remedial measures or cessation order and dismissing the petition.

(8) Burden of proof. In review of a notice of noncompliance and order for remedial measures or cessation order or the modification, vacation, or termination thereof under this section, the cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the notice of noncompliance and order for remedial measures or cessation order, or modification, vacation, or termination thereof. The ultimate burden of persuasion shall rest with the petitioner.

Section 8. Request for Review of Permit Determinations Pursuant to KRS Chapter 350. (1) Who may file. The permit applicant, permittee, or person having an interest that[which] is or may be adversely affected by a permit determination of the cabinet may file a petition for review of the following:

(a) Application for a new permit;

(b) Application for a permit revision and amendment, permit renewal, and the transfer, assignment, or sale of rights granted under permit;

(c) Permit revision and amendment ordered by the cabinet, except challenges of permit revision ordered as a remedial measure in a notice of noncompliance shall be reviewed in an administrative hearing pursuant to Section 7 of this administrative regulation; and

(d) Application for a coal exploration permit.

(2) Time to file; waiver.

(a) The permit applicant, permittee, or person having an interest that is or may be adversely affected by a permit determination of the cabinet shall file a petition for review with the office within thirty (30) days from the date the permit applicant, permittee, or person had actual notice of the determination or could reasonably have had notice.

(b) If the hearing officer, upon motion or his or her own initiative, finds that the permit applicant, permittee, or person failed to timely file the petition for review in accordance with this section,

the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order stating that the permit applicant, permittee, or person waived the[his] right to an administrative hearing.

(3) Content of the petition. The petition for review shall include:

(a) A clear statement of the facts entitling the person requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's decision, including reference to the statutory and regulatory provisions allegedly violated;

(c) A request for specific relief; and

(d) A statement whether or not the person requests or waives the opportunity for an evidentiary hearing.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of that[such] defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or a responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(6) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his or her discretion or upon motion, issue an order to show cause why the person should not be deemed to have waived the[his] right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived the[his] right to an administrative hearing and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived the[his] right to an administrative hearing and dismissing the petition.

(8) Burden of proof.

(a) Petition to review application for a new permit.

1. If the permit applicant is seeking review, he or she shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that:

a. The permit application complies with the requirements of KRS Chapter 350 and administrative regulations; or

b. The permit terms or conditions are improper.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that:

a. The permit application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations; or

b. The cabinet should have imposed certain terms or conditions on the permit that were not imposed.

(b) Petition to review the approval or disapproval of an application for a permit renewal.

1. A party opposing the renewal of a permit shall have the burden of going forward to establish a prima facie case; and

2. The ultimate burden of persuasion that the permit renewal application should be disapproved or that the cabinet should have imposed certain terms or conditions on the renewal permit that were not imposed.

(c) Petition to review the approval or disapproval of an application for a permit revision or amendment, or an application for the transfer, assignment, or sale of rights granted under permit.

1. If the permit applicant is seeking review, the permit applicant shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations.

(d) Petition to review a permit revision or amendment ordered by the cabinet.

1. The cabinet shall have the burden of going forward to establish a prima facie case that the permit should be revised or amended; and

2. The permittee shall have the ultimate burden of persuasion that the revision or amendment is not appropriate.

(e) Petition to review a decision on an application for a coal exploration permit.

1. If the permit applicant is seeking review, he or she shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations.

Section 9. Review of a Cabinet Determination. (1) Who may file. A person who considers himself or herself aggrieved by a determination of the cabinet made under KRS Chapter 350 for which an administrative hearing is not specifically provided in any other section of this administrative regulation may file a petition for review of the determination pursuant to this section.

(2) Time to file; waiver.

(a) A person filing a petition for review under this section shall file in the office a petition within thirty (30) days after the person has had actual notice of the determination complained of, or could reasonably have had notice.

(b) The hearing officer shall not grant an extension of time for filing a petition for review pursuant to this section.

(c) If the hearing officer, upon motion or his or her own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order stating that the person waived his right to an administrative hearing.

(3) Content of the petition. The petition for review shall contain:

(a) A statement of the facts entitling the person to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's determination;

(c) A copy of the written determination to be reviewed if applicable; and

(d) A request for specific relief.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or other responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of that[such] defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(6) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his or her discretion or upon motion, issue an order to show cause why that person should not be deemed to have waived the[his] right to an administrative hearing and why the[his] petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived the[his] right to an administrative hearing and dismissing the petition.

(c) If the petitioner fails to appear at an administrative hearing, the petitioner shall be deemed to have waived the[his] right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order finding that he or she has waived the[his] right to an administrative hearing and dismissing the petition.

(8) Burden of proof. The petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

Section 10. Proceeding for the Suspension or Revocation of a Permit Pursuant to KRS Chapter 350 Because of a Pattern of Violations. (1) Initiation of the proceeding.

(a) A proceeding on a show cause order issued by the cabinet pursuant to KRS 350.028(4), 350.465(3)(f), and 405 KAR 12:020, Section 8, shall be initiated by the filing of a copy of the show cause order by the cabinet with the office at the same time the order is issued to the permittee.

(b) A show cause order shall set forth:

1. A list of the unwarranted or willful violations that contribute to a pattern of violations;

2. A copy of each order or notice that contains the violations listed as contributing to a pattern of violations;

3. The basis for determining the existence of a pattern of violations; and

4. A recommendation whether or not the permit should be suspended or revoked, including the length and terms of a suspension.

(2) Answer. The permittee shall have thirty (30) days from service of the show cause order within which to file an answer with the office, which shall state:

(a) The reasons in detail why a pattern of violations, as established in 405 KAR 12:020, Section 8, does not exist or has not existed including all reasons for contesting:

1. The fact of the violations alleged by the cabinet as constituting a pattern of violations;

2. The willfulness of the violations; or

3. Whether or not the violations were caused by the unwarranted failure of the permittee;

(b) Mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;

(c) Other alleged relevant facts; and

(d) Whether or not an evidentiary hearing on the show cause order is desired.

(3) Burden of proof. In a show cause proceeding, the cabinet shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

(4) Determination by the hearing officer.

(a) Upon a determination by the hearing officer pursuant to 405 KAR 12:020, Section 8, that a pattern of violations exists or has existed, the hearing officer shall recommend the permit either be suspended or revoked and the permittee be directed to complete necessary remedial measures and reclamation operations. In making the recommendation, the hearing officer need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

(b) If the permit is suspended, the hearing officer may recommend preconditions to be satisfied prior to the suspension being lifted.

(5) Default. If the permittee fails to timely file an answer or appear at the administrative hearing, the permittee shall be deemed to have waived the[his] right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order containing the following:

(a) That each violation listed in the show cause order occurred;

(b) That the violations were caused by the permittee's unwarranted failure or were willfully caused;

(c) That a pattern of violations exists; and

(d) That the permit shall be suspended or revoked in accordance with the recommendation contained in the show cause order.

Section 11. Temporary Relief. (1) Temporary relief available. **Except as established in subsection (2) of this section and** pending the completion of the investigation and hearing provided for in this administrative regulation, a hearing officer may, subject to review by the secretary, grant temporary relief from **[a]**:

(a) Notice of noncompliance and order for remedial measures or a cessation order issued pursuant to KRS Chapter 350 or administrative regulations; **[or]**

(b) A permit or bond release decision of the cabinet; **or** **[-]**

(c) Any action taken by the cabinet pursuant to KRS Chapter 351.

(2) Temporary relief not available. A hearing officer shall not grant temporary relief for:

(a) The issuance of a permit if the cabinet made a determination to deny a permit in whole or in part; or

(b) The release of a bond if the cabinet made a determination to deny a bond release request.

(3) A hearing officer shall grant or deny temporary relief from a cessation order issued pursuant to KRS 350.130(1) or (4), or from a bond release decision within five (5) working days of receipt by the office of a temporary relief request, unless waived by the

petitioner.

(4) Contents of the petition. A person shall file a written petition for relief with the office. The petition shall contain:

(a) The permit number, the name of the permittee, the date and number of the notice of noncompliance and order for remedial measures or cessation order from which relief is requested, if applicable, and the name and telephone number of the petitioner;

(b) A detailed statement setting forth reasons why *[such]* relief should be granted;

(c) Facts supporting a substantial likelihood that the person requesting the relief will prevail on the merits of the final determination of the proceeding;

(d) A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources;

(e) If the petition relates to a cessation order issued pursuant to KRS 350.130(1) or (4) or a decision to release a bond, a statement of whether or not the person waives the requirement for the hearing officer to grant or deny the request for temporary relief within five (5) working days of receipt of the petition by the office; and

(f) A statement of the specific relief requested.

(5) Hearing process.

(a) In addition to the service requirements of 400 KAR 1:090, Section 5, the petitioner shall serve other parties with a copy of the petition simultaneously with the filing of the petition in the office. If service is accomplished by mail, the petitioner shall inform the other parties by telephone at the time of mailing that a petition is being filed in the office and the contents of the petition.

(b) The representative of the cabinet and any other party may indicate their objection to the application by communicating the objection to the hearing officer and the petitioner by telephone. Ex parte communication as to the merits of the proceeding shall not be conducted with the hearing officer. The representative of cabinet and any other party may simultaneously reduce their objections to writing. Written objections shall be immediately filed with the office and immediately served upon the petitioner.

(c) Scheduling a hearing.

1. Upon receipt of communication that there is an objection to the petition, the hearing officer shall immediately order a location, time, and date for the administrative hearing by communicating the information to the cabinet, any other party, and the petitioner by telephone.

2. The hearing officer shall reduce the communication to writing in the form of a memorandum to the file.

3. The administrative hearing on the request for temporary relief shall be held in the locality of the permit area, or at any other location acceptable to the cabinet, the petitioner, and any other person named in the action.

4. If the petitioner did not waive the requirement for the hearing officer to grant or deny temporary relief within five (5) working days of the office's receipt of the petition for temporary relief as set forth in subsections (3) and (4)(e) of this section, the hearing officer shall schedule the administrative hearing within (5) five days of the office's receipt of the petition for temporary relief.

(d) If an evidentiary hearing is held the hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the evidentiary hearing, which may be orally supplemented on the record at the hearing.

(e) If at any time, the petitioner requests a delay or acts in a manner so as to frustrate the expeditious nature of the proceeding or fails to supply the information required by the hearing officer, the action shall constitute a waiver of the five (5) day requirement in subsection (3) of this section.

(6) Standard of review. A hearing officer may grant temporary relief if:

(a) The person requesting relief shows that there is substantial likelihood that the findings on the merits in an administrative hearing conducted by the cabinet will be favorable to the person; and

(b) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(7) Timing of hearing officer's determination.

(a) A hearing officer shall grant or deny relief expeditiously.

(b) If the petitioner did not waive the requirement for a hearing officer to grant or deny the request for temporary relief within five (5) days of the office's receipt of the petition as required in subsections (3) and (4)(e) of this section, the hearing officer shall either:

1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within three (3) working days; or

2. Within twenty-four (24) hours of completion of the administrative hearing issue a written decision stating the reasons for the finding.

(c) If the petitioner waived the requirement for a hearing officer to grant or deny the request for temporary relief within five (5) days of the office's receipt of the petition in accordance with subsections (3) and (4)(e) of this section, or the petitioner did not request temporary relief from a cessation order or a bond release hearing, then hearing officer shall either:

1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within twenty (20) working days; or

2. Within fifteen (15) days of completion of the administrative hearing issue a written decision stating the reasons for the finding.

Section 12. Petition for Recovery of Costs and Expenses. (1) Who may file and time to file.

(a) A person may file a petition for an award of costs and expenses, including attorneys' fees reasonably incurred, as a result of the person's participation in a proceeding held pursuant to this administrative regulation for an action brought pursuant to KRS Chapter 350 that results in an order of the secretary.

(b) A person shall file, with the cabinet within forty-five (45) days of the date of entry of the final order, a petition for an award of costs and expenses, including attorneys' fees.

(c) Failure of a person to timely file the petition shall constitute a waiver of the person's right to an award.

(2) Content of the petition. A person shall include in the petition filed under this section the name of the party from whom costs and expenses are sought and the following:

(a) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(b) Receipts or other evidence of the costs and expenses; and

(c) If attorneys' fees are claimed, evidence concerning:

1. The hours expended on the case;

2. The customary commercial rate of payment for the services in the area; and

3. The experience, reputation, and ability of the individual or individuals performing the services.

(3) Answer.

(a) The respondent shall file with the office within thirty (30) days from service of the petition an answer or other responsive pleading.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of *that[such]* defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(4) Criteria for awarding of costs.

(a) Appropriate costs and expenses including attorneys' fees may be awarded to a person from the permittee, if:

1. The person initiated an administrative proceeding reviewing an enforcement action, and a Secretary's Order was issued finding that, on or after May 18, 1982:

a. A notice of noncompliance and order for remedial measures or a cessation order was properly issued for violations of KRS Chapter 350, KAR Title 405 or a permit condition; or

b. An imminent hazard existed; or

2. The person participated in an administrative proceeding reviewing an enforcement action, and a Secretary's Order was issued finding that, on or after May 18, 1982:

a. A notice of noncompliance and order for remedial measures or a cessation order was properly issued for violations of KRS Chapter 350, KAR Title 405, or a permit condition; or

b. An imminent hazard existed; and

c. The hearing officer finds and the secretary concurs that the person made a substantial contribution to the full and fair determination of the issues.

(b) Appropriate costs and expenses including attorneys' fees may be awarded to a person other than a permittee or his representative from the cabinet, if:

1. The person initiated or participated in any proceeding under KRS Chapter 350; and

2. The hearing officer finds and the secretary concurs that the person made a substantial contribution to a full and fair determination of the issues.

(c) Appropriate costs and expenses including attorneys' fees may be awarded to a permittee from the cabinet if the permittee demonstrates that the cabinet initiated an administrative hearing or issued a notice of noncompliance and order for remedial measures or a cessation order:

1. In bad faith; and

2. For the purpose of harassing or embarrassing the permittee.

(d) Appropriate costs and expenses including attorneys' fees may be awarded to a permittee from a person if the permittee demonstrates that the person initiated an administrative hearing under this administrative regulation or participated in an administrative hearing or conference:

1. In bad faith; and

2. For the purpose of harassing or embarrassing the permittee.

(e) Appropriate costs and expenses including attorneys' fees may be awarded to the cabinet from a person if the cabinet demonstrates that:

1. A person applied for review pursuant to this administrative regulation in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth; or

2. A party participated in an administrative hearing or conference in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth.

(5) An award under this section may include reimbursement for costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred.

Section 13. Location of an Administrative Hearing. (1) An administrative hearing conducted in accordance with this administrative regulation shall be held at the location designated by the hearing officer unless a written request for a hearing at or close to the mine site is submitted with the initiating document or an answer.

(2) The department's regional office for the mine site shall be deemed reasonably close, unless a closer location is requested by a party to the case and agreed to by the hearing officer.

(3) An administrative hearing pursuant to KRS Chapter 351.315 to 351.375 shall be held in Frankfort at the location designated by the hearing officer.

Section 14. Judicial Review, Effect, and Subsequent Proceeding. (1) Judicial review. Judicial review may be taken from

a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 350.032 or 350.0305, as applicable.

(2) Effect of final order pending judicial review. The commencement of a proceeding for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by the court of competent jurisdiction.

(3) Remand from a court.

(a) If a matter is remanded from a court for a further proceeding, and to the extent the court's directive and time limitations will permit, each party shall be allowed an opportunity to submit to the hearing officer, a report recommending a procedure to be followed in order to comply with the court's order.

(b) The hearing officer shall review each report and enter a special order governing the handling of the matter remanded to it for further proceedings by a court.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 3, 2018

FILED WITH LRC: July 13, 2018 at noon

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

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, September 11, 2018)**

401 KAR 5:002. Definitions for 401 KAR Chapter 5.

RELATES TO: KRS 224.1-010[224.01-040], 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[~~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)[~~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)[, 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)[(40)] "Available" means located within the planning area and:

(a) Located within one and zero-tenths (1.0) mile of a regional facility for a WWTP with an average daily design capacity larger than 1,000 gpd; or

(b) For new construction if the distance is one and zero-tenths (1.0) mile or more, where it is cost-effective to connect as determined by a twenty (20) year present worth cost analysis.

(15)(12)[(14)] "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)[, 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 100[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 complies with/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)] **"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)] **"Day"** means a twenty-four (24) hour period.

[(40)][(31)] **"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)] **"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)] **"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)] **"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)] **"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)] **"Division"** means the Kentucky Division of Water, within the Department for Environmental Protection, Energy and Environment Cabinet.

[(46)][(37)] **"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)] **"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)] **"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)] **"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)] **"Effluent limitation"** is defined by KRS 224.1-010[224.01-040(42)].

[(51)][(42)] **"Effluent limitations guideline"** is defined by 40 C.F.R. 122.2, effective July 4, 2008].

[(52)][(43)] **"Environmental Protection Agency", "EPA", or "U.S. EPA"** means the U.S. Environmental Protection Agency.

[(53)][(44)] **"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 comply with/meet/ the requirements of 401 KAR 5:320.

[(55)][(45)] **"Exceptional water"** means a surface water categorized as exceptional by the cabinet pursuant to 401 KAR 10:030.

[(56)][(46)] **"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)] **"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)] **"Facility"** means:

(a) In 401 KAR 5:005 or [401 KAR] 5:006, a sewage system as defined by [in] KRS 224.1-010[224.01-040] 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 if/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 by/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 complies with/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 "KNODOP" 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) [(#)] 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 an area/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)~~~~(85)~~ "µg/l" means micrograms per liter, same as ppb, assuming unit density.

~~(106)~~~~(85)~~~~(86)~~ "mgd" or "MGD" means million gallons per day.

~~(107)~~~~(86)~~~~(87)~~ "Milligrams per liter" or "mg/l" means the

milligrams of substance per liter of solution and is equivalent to parts per million in water, assuming unit density.

~~(108)~~~~(87)~~~~(88)~~ "Minor industry" means a fee category as established in 401 KAR 5:310 for an industry that generates and discharges process-related wastewater while engaged in commercial activities and has a design flow rate of less than 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants.

~~(109)~~~~(88)~~~~(89)~~ "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)~~~~(90)~~ "Mixing zone" means a domain of a water body contiguous to a treated or untreated wastewater discharge with quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

~~(111)~~~~(90)~~~~(91)~~ "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)][(400)] "Operator" means a person involved in the operation of a facility or activity.

(122)[(400)][(404)] "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)[(404)][(402)] "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)[(402)][(403)] "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)[(403)][(404)] "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)[(404)][(405)] "Overflow" means any intentional or unintentional diversion of flow from a facility.

(127)[(405)][(406)] "Owner" means a person who has legal ownership of a facility or activity regulated pursuant to 401 KAR Chapter 5.

(128)[(406)][(407)] "Package WWTP" means a factory-built WWTP that is transported to and assembled or set in place at the site.

(129)[(407)][(408)] "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)[(408)][(409)] "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)[(409)][(410)] "Planning area" means the geographic area proposed to be served by a regional planning agency in a projected twenty (20) year period.

(133)[(410)][(414)] "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)[(414)] "Pollutant" is defined by KRS 224.1-010.

(135)[(412)] "POTW" means publicly owned~~[publicly-owned]~~ treatment works as defined in KRS 224.1-010~~[224.01-010]~~.

(136)[(413)] "POTW treatment plant" is defined by 40 C.F.R. 403.3(r)~~], effective July 1, 2008]~~.

(137)[(414)] "Pretreatment" is defined by 40 C.F.R. 403.3(s)~~], effective July 1, 2008]~~.

(138)[(415)] "Pretreatment requirement" is defined by 40 C.F.R. 403.3(r)~~], effective July 1, 2008]~~.

(139)[(416)] "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)[(417)] "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)[(418)] "Privately owned~~[Privately-owned]~~ treatment works" is defined by 40 C.F.R. 122.2~~], effective July 1, 2008]~~.

(143)[(419)] "Production area" means, for animal feeding operations, the area defined by 40 C.F.R. 122.23(b)(8)~~], effective July 1, 2008]~~.

(144)[(420)] "Professional engineer" or "engineer" is defined by KRS 322.010(2).

(145)[(421)] "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)[(422)] "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)[(423)] "Public water system" is defined by 40 C.F.R. 141.2~~], effective July 1, 2008]~~.

(148)[(424)] "Publicly owned treatment works" or "POTW" is defined by KRS 224.1-010.

(149)[(425)] "RCRA" means the Resource Conservation Recovery Act as amended, 42 U.S.C. 6901 - 6992k.

(150)[(426)] "Recommencing discharger" means a source that recommences discharge after terminating operations.

(151)[(427)] "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)[(428)] "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)[(429)] "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)[(430)] "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)[(431)] "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)] [(134)] "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)] [(132)] "Run-off coefficient" means the fraction of total rainfall that will appear at a conveyance as run-off.

(158) [(134)] [(133)] "SARA" means the Superfund Amendments and Reauthorization Act, 42 U.S.C. 9601 – 9675.

(159) [(135)] [(134)] "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with KRS Chapter 224 and 401 KAR Chapters 4 through 11.

(160) [(136)] [(135)] "SDWA" means Safe Drinking Water Act, 42 U.S.C. 300f – 300j-26.

(161) [(137)] [(136)] "Secondary treatment" means that degree of treatment that results in an effluent quality that meets the minimum requirements of 401 KAR 5:045.

(162) [(138)] [(137)] "Service area" means that geographic area currently being served by a regional facility.

(163) [(139)] [(138)] "Seven-Q-ten" or "7Q₁₀" means that minimum average flow that occurs for seven (7) consecutive days with a recurrence interval of ten (10) years.

(164) [(140)] [(139)] "Sewage" means the water-carried human or animal wastes from residences, buildings, or other places, together with industrial wastes or underground/groundwater, surface, storm/water, stormwater, [underground, surface, storm] or other water[,] as may be present.

(165) [(141)] [(140)] "Sewage sludge" is defined by 40 C.F.R. 122.2[, effective July 1, 2008].

(166) [(142)] [(141)] "Sewer line" means a device used for collecting, transporting, pumping, or disposing of sewage, but not a building sewer that serves an individual building. A sewer line begins at the junction of two (2) building sewers that serve different buildings. Sewer lines include gravity sewer lines, pump stations, and force mains.

(167) [(143)] [(142)] "Sewer line extension" means a proposed construction project which extends a sewer system; it includes gravity sewer lines, pump stations, and force mains.

(168) [(144)] [(143)] "Sewer system" means the network of sewer lines, pump stations, and force mains that discharge to a common WWTP.

(169) [(145)] [(144)] "SIC" means standard industrial classification.

(170) [(146)] [(145)] "Significant industrial user" or "SIU" is defined by 40 C.F.R. 403.3(v)[, effective July 1, 2008].

(171) [(147)] [(146)] "Silvicultural point source" is defined by 40 C.F.R. 122.27.27(b)(1)[, effective July 1, 2008].

(172) [(148)] [(147)] "Sinkhole" means a naturally occurring topographic depression in a karst area. Its drainage is subterranean and serves as a recharge source for groundwater. It is formed by the collapse of a conduit or the solution of bedrock.

(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)] [(148)] "Site" means, as used in 401 KAR 5:060 through 5:080, the land or water area where a facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(175) [(150)] [(149)] "Sludge requirements" is defined by 40 C.F.R. 403.7(a)(ii)[, effective July 1, 2008].

(176) [(151)] [(150)] "Small concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(b)(9)[, effective July 1, 2008].

(177) [(152)] [(151)] "Small facility" means a WWTP with an

average daily design capacity less than 10,000 GPD or a sewer line of less than 2,500 feet in length including appurtenances.

(178) [(153)] [(152)] "Small nonpublicly-owned treatment works" means a facility that has a design flow rate of less than 10,000 gpd of wastewater containing only conventional pollutants and that is not a POTW.

(179) [(154)] [(153)] "Small WWTP" means a WWTP with an average daily design capacity of less than 10,000 gpd.

(180) [(155)] [(154)] "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)] [(155)] "Stormwater" ["Storm—water"] is defined by 40 C.F.R. 122.26(b)(13)[, effective July 1, 2008].

(183) [(157)] [(156)] "Stormwater" ["Storm—water"] discharge associated with industrial activity" is defined by 40 C.F.R. 122.26(b)(14)[, effective July 1, 2008].

(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)(174)(170)~~ "Wastewater system" means a sewage system as defined by ~~in~~ KRS 224.1-010~~[224.04-040(25)]~~.

~~(200)(172)(174)~~ "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~~[224.04-040(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, 1285j, 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.

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Water

(As Amended at ARRS, September 11, 2018)

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)~~ 2. A pretreatment facility regulated by a pretreatment program or intermunicipal agreement, approved pursuant to 401 KAR 5:055~~[5:057]~~; or

~~3.(c)~~ 3. 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)~~ (b) 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:

- Obtain a KNDOP permit;
- Comply with Sections 2, 25, 27, and 30(1)(e) through (h) of this administrative regulation; and
- 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:

- Comply with Section 4(2) of this administrative regulation~~[the Five Mile Limit Policy]~~;
- Obtain a KPDES permit to discharge into the waters of the Commonwealth;
- Comply with any other applicable standard or requirement of 401 KAR Chapter 5; and
- 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~~:

1.~~[that]~~ 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

2.~~[that the]~~ Wastewater treatment plant discharge ~~shall~~~~[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 if/when[by the cabinet based on the cabinet's best professional judgment that the practices are] necessary for the protection of public health and the environment.

(c) Other practices may[shall] be approved by the cabinet if sufficient operational experience is available from previous similar installations to indicate operational problems have not occurred, that water quality standards have not been violated, and design calculations and documentation to support the other practice have been submitted to the cabinet.

(2) The applicant shall demonstrate that the effluent from a proposed facility shall:

(a) Protect those minimum conditions listed in 401 KAR 10:031 that are applicable to all waters of the Commonwealth;

(b) Not cause those waters designated by 401 KAR 10:026 or categorized by 401 KAR 10:030 to be of lesser quality than the numeric criteria applicable to those waters in 401 KAR 10:031 or the requirements of 401 KAR 10:030; and

(c) Be in accordance with any facility requirement established in 401 KAR Chapter 5.

(3) Each WWTP shall have a flow measuring device at the plant capable of measuring the anticipated flow, including variations, with an accuracy of \pm ten (10) percent.

(a) The flow measuring device shall measure all flow discharged by the WWTP including any bypasses.

(b) An indicating, recording, and totalizing flow measuring device shall be installed at each large WWTP.

(c) A flow measuring device for new large WWTPs shall meet the requirements of Section 12 of this administrative regulation.

(4) A bypass or overflow structure of any type shall not be constructed in a sewer line or pump station or at a WWTP unless construction of the bypass or overflow structure is necessary to prevent loss of life, personal injury, or severe property damage and there is not an[a] alternative.

Section 8. Requirements for Sewer Line Extensions. (1) If the applicant does not own all of the proposed sewer line extension, the applicant shall identify the owner and the portion of the sewer line extension owned by the other person.

(2) The applicant shall submit letters from the owner of the:

(a)[~~The owner of the~~] Sewer line extension stating that the owner shall accept operation and maintenance responsibilities for the sewer line extension as it is constructed;

(b)[~~The owner of the~~] Sewer system stating that the owner approves the connection and accepts responsibility for the additional flow; and

(c)[~~The owner of the~~] WWTP stating that the owner approves the connection and accepts responsibility for the additional flow.

(3)(a) The applicant shall demonstrate that the portion of the sewer system used by the connection has adequate capacity to transport the current and anticipated peak flow to the WWTP and that the portion of the sewer system used by the connection shall not be subject to excessive infiltration or excessive inflow.

(b) The cabinet may deny a sewer line extension for that portion of the sewer system if the portion of the system is subject to excessive infiltration or excessive inflow unless a plan for investigation and remediation that addresses these conditions has been submitted and is being implemented.

(4)(a) The applicant shall demonstrate that the WWTP that receives the waste has adequate capacity to treat the current and the anticipated flow and is not subject to excessive infiltration or excessive inflow.

(b) The cabinet may deny the sewer line extension if the WWTP does not have adequate capacity to treat the flow or is subject to excessive infiltration or excessive inflow unless a plan for investigation and remediation that addresses these conditions has been submitted and the plan is being implemented.

(5) The entrance of groundwater into, or loss of waste from, a new gravity sewer line shall be limited to 200 gpd per inch of diameter per mile of the gravity sewer line and shall include[-This limitation includes] manholes, gravity sewer lines, and appurtenances.

(6)(a) The integrity of a new gravity sewer line shall be verified by either the infiltration-exfiltration or low pressure air testing method.

1. An infiltration-exfiltration test shall be performed with a minimum positive head of two (2) feet.

2. A deflection test shall be performed for each new flexible pipe; pipe deflection shall not exceed five (5) percent.

3. Each new manhole shall be tested for watertightness.

(b) The integrity of a new force main shall be verified by leakage tests. The applicant shall describe the proposed testing methods and leakage limits in the specifications submitted with the permit application.

(7) The construction of a new combined sewer shall not be permitted unless it is a consolidation sewer, flood relief sewer, or a replacement of a combined sewer that:

(a) Conforms with the long-term CSO control plan that complies with the Combined Sewer Overflow (CSO) Control Policy, U.S. EPA, 59 Federal Register 18688, April 1994;

(b) Enhances water quality; and

(c) Protects public health and safety.

(8) A gravity sewer line and a force main shall be designed and constructed to give mean velocities, when flowing full, of not less than two and zero-tenths (2.0) feet per second.

(a) The roughness coefficient used in the Manning or Kutter's formula shall be 0.013, or the "C" factor used in the Hazen-Williams Formula shall be 100.

(b) If the specifications allow only plastic pipe, a roughness coefficient of 0.011 or a "C" factor of 120 may be used.

(c) A roughness coefficient between 0.013 and 0.011 may be used for other pipe materials if sufficient documentation of experimental testing is submitted to the cabinet and if the testing supports the use of the design roughness coefficient.

(9) A gravity sewer line and a force main shall have a minimum of thirty (30) inches of cover or provide comparable protection.

(10) If a gravity sewer line and a force main are to be constructed in fill areas, the fill areas shall be compacted to ninety-five (95) percent density as determined by the Standard Proctor Density test or to a minimum of ninety (90) percent density as determined by the Modified Proctor Density test prior to the installation of the sewer lines.

(11) The minimum diameter for a conventional gravity sewer line shall be eight (8) inches, except that:

(a) The minimum diameter for an extension to an eight (8) inch or larger sewer line if a future extension is not feasible shall be six (6) inches;

(b) The minimum diameter for an extension to a six (6) inch sewer line shall be six (6) inches; and

(c) A sewer line shall be sized based upon engineering calculations consistent with current engineering practices.

(12) A manhole shall be provided at the junction of two (2) building sewers. This subsection shall not apply to building sewers that serve a single-family residence.

(13) The following building sewers shall be exempt from the requirements of this administrative regulation:

(a) A gravity sewer that:

1. Discharges directly to the sewer main; and
2. Serves a single building; and

(b) A force main sewer, regardless of the location of the pump station that:

1. Discharges directly to a gravity sewer main; and
2. Serves a single building.

(14) Except as provided in paragraph (b) of this subsection, a sewer line shall be located at least fifty (50) feet away from an intermittent or perennial stream except where the sewer alignment crosses the stream.

(a) The distance shall be measured from the top of the stream bank.

(b) The applicant may request a variance from the requirement established in this subsection.

(15) A gravity sewer line and a force main that cross streams shall be constructed by a method that maintains normal stream flow and allows for a dry excavation.

(a) Water pumped from the excavation shall be contained and allowed to settle prior to reentering the stream.

(b) Excavation equipment and vehicles shall operate outside of the flowing portion of the stream.

(c) Spoil material from the sewer line excavation shall not be allowed to enter the flowing portion of the stream.

(16) A pump station wetwell shall be sized ~~so~~[such] that, based on the average flow, the time to fill the wetwell from the pump-off elevation to the pump-on elevation shall not exceed thirty (30) minutes.

(17) A pump station wetwell shall have a vent.

(18) A pump station shall provide a minimum of two (2) hours of detention, based on the average design flow, above the high level alarm elevation or provide an alternate source of power with wetwell storage providing sufficient time for the alternative power source to be activated.

(19) Each high point in the force main shall have an automatic air release valve.

(20) The applicant shall submit a performance curve for a proposed pump station.

(21) A simplex design shall be used only for a pump station that serves an individual residence or business, and a spare pump shall be available for immediate installation.

Section 9. Municipal Water Pollution Prevention Program. This section applies to owners of regional WWTPs, sewer systems served by regional WWTPs, and political subdivision facilities with KISOPs. (1) For each regional WWTP, the cabinet shall review the WWTP's reported monthly flows and organic loads for the most recent twelve (12) months. If the annual average flow or organic load, or for systems with combined sewer lines the lowest monthly flow and associated organic load, exceed the following values, the cabinet shall advise the owner of the WWTP of the need to address the potential overload condition pursuant to ~~subsections~~[subsection] (2) and (3) of this section:

(a) For a regional WWTP with a design capacity of ten (10) mgd or less, ninety (90) percent of the WWTP's average daily design capacity; or

(b) For a regional WWTP with a design capacity of more than ten (10) mgd, ninety-five (95) percent of the WWTP's average daily design capacity.

(2) The cabinet shall give written notice to the owner of the WWTP that the wastewater collection system shall not accept any additional flow until the owner of the WWTP:

(a) Agrees to address the potential overload condition established[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

shall[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 ~~of~~ of.

(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; or

(e) ~~Another disinfection process approved based on a demonstration that the process provides~~ Other disinfection processes may be approved if they provide equivalent treatment.

(2) Tablet type chlorination equipment shall not be used in an intermediate or large WWTP.

Section 12. Requirements for Flow Measuring Devices. This section shall apply to a new large WWTP. (1)(a) Each flow measuring device shall be capable of measuring the anticipated flow, including variations, with an accuracy of \pm ten (10) percent.

(b) The flow measuring device shall measure all flow received at the WWTP.

(c) An indicating, recording, and totalizing flow measuring device shall be installed at each large WWTP.

(2)(a) If the influent and effluent flow are expected to be significantly different, flow measuring devices shall be provided for both the influent and the effluent flow.

(b) Multiple flow measuring devices shall be provided for a WWTP the following:

1. [A WWTP] That stores and hydrographically controls the release of effluent;

2. [A WWTP] With flow equalization facilities that are designed to store more than the volume required to dampen the diurnal flow variations;

3. [A WWTP] With a lagoon that has a detention time of greater than twenty-four (24) hours;

4. [A WWTP] With the capability to bypass a treatment process; and

5. [A WWTP] With more than one (1) discharge point.

(3) Sharp crested weirs shall be used for measuring effluent flow only and shall have the following characteristics:

(a) The weir shall be installed perpendicular to the axis of flow, and there shall not be leakage at the weir edges or bottom;

(b) The weir plate shall be level and adjustable;

(c) The sides of a rectangular contracted weir shall be vertical;

(d) The angles of a V-notch weir shall be cut precisely;

(e) The thickness of the weir crest shall be less than one-tenth (0.1) of an inch;

(f) The distance from the weir crest to the bottom of the approach channel shall be more than one (1) foot or two (2) times the maximum weir head, whichever is greater;

(g) For a weir other than a suppressed, rectangular weir, the distance from the sides of the weir to the sides of the approach channel shall be more than one (1) foot or two (2) times the maximum weir head, whichever is greater;

(h) Air shall circulate freely under, and on both sides of, the nappe;

(i) The measurement of head on the weir shall be made at least four (4) times the maximum weir head upstream from the weir crest;

(j) 1. The cross-sectional area of the approach channel shall be at least eight (8) times the area of the nappe.

2. The approach channel shall be straight and uniform upstream from the weir for a distance of fifteen (15) times the maximum weir head;

(k) The minimum acceptable weir head shall be two-tenths (0.2) foot;

(l) The maximum downstream pool level shall be at least two-tenths (0.2) foot below the crest elevation;

(m) The weir length for a rectangular, suppressed, or cipoletti weir shall be at least three (3) times the maximum weir head; and

(n) A reference staff gauge shall be provided.

(4) Parshall flumes may be used to measure influent or effluent flows and shall have the following characteristics:

(a) The approach channel upstream of the flume shall be straight and have a width uniform for the length required by the following:

1. If the flume throat width is less than one-half (1/2) the width of the approach channel, the straight upstream channel length shall be twenty (20) times the throat width;

2. If the flume throat width is equal to or larger than one-half (1/2) the width of the approach channel, the straight upstream length shall be greater than ten (10) times the approach channel width; and

3. If the cross-sectional area of the inlet to the approach channel is smaller than the cross-sectional area of the approach channel, additional straight upstream channel length may be required to dissipate the velocity if necessary to maintain laminar flow;

(b) The throat section walls shall be vertical;

(c) The head measuring point shall be at two-thirds (2/3) the length of the converging sidewall;

(d) The flow shall be evenly distributed across the channel, shall be free of turbulence or waves, and shall not be located after transition sections;

(e) The longitudinal and lateral axes of the converging crest flow 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:~~

$$V = \frac{t}{24} \times Q$$

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.

(5) 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) 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 ~~including subdivisions, condominiums, apartments, and mobile home parks shall comply with at least one (1) or more of the requirements established in subsections (1) through (3) of this section.~~ following measures for additional reliability: (1) Blowers and motors shall be installed sufficient to handle the organic load if the largest unit is not available for service.;

(2) An alternate source of power.;

(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 shall/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:

(a) Contains the information required by subsection (2) of this section; and

~~(b) and that~~ is consistent with:

1. The Agriculture Water Quality Act, KRS 224.71-100 through 224.71-145; ~~or~~

2. 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)~~~~5.~~ Commencement of a routine point source discharge shall result in a permit revocation.

~~(h)~~~~6.~~ 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

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

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)];~~

~~(c)[(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];~~

~~(d)[(e)] "Change in Ownership Certification for Sewer Line Extensions, DEP 7071-CO (9/96)", Facilities Construction Branch];~~

~~(e)[(f)] "Transfer of Permit Request" ["Change in Ownership Certification], DEP 7032-CO (3/2018)[(2/2009)];~~

~~(f)[(g)] "No Discharge Certification, DEP 7032-NDC (3/2018)[(2/2009)];~~

~~(g)[(h)] "Kentucky No Discharge Operational Permit for Closed Loop and Spray Irrigation Systems Application, DEP 7033-ND (3/2018)[(2/2009)];~~

~~(h)[(i)] "Kentucky No Discharge Operational Permit Application for Agricultural Wastes Handling Systems, Short Form B, DEP 7033-B-ND (3/2018)[(2/2009)];~~

~~(i)[(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~~

~~(j)[(h)] "NRCS Conservation Practice Standard Nutrient Management Code 590 for Kentucky, NRCS, Kentucky, (January 2013)[(5/24/04)].~~

~~(k) "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/own0111.pdf>.~~

~~(c) "NRCS Conservation Practice Standard Nutrient Management Code 590 for Kentucky, NRCS, Kentucky, (January 2013)" may also be obtained at [https://efotg.sc.egov.usda.gov/references/Delete/2013-11-9/Nutrient_Management_Std_\(590\).pdf](https://efotg.sc.egov.usda.gov/references/Delete/2013-11-9/Nutrient_Management_Std_(590).pdf).~~

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: 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.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, September 11, 2018)

401 KAR 5:006. Wastewater planning requirements for regional planning agencies.

RELATES TO: KRS Chapters 67, 67A, 74, 76, 96, 108, 220, 224.10-100, 224.70-100, 224.70-110, 424, 33 U.S.C. 1251-1387

STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110, 40 C.F.R. 130, 33 U.S.C. 1288, 1313

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 and 224.70-100 require[requires] the Energy and Environment Cabinet to develop a comprehensive plan for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. 33 U.S.C. 1313(e) requires each state to establish and maintain a continuing planning process to provide for the control of water pollution. 33 U.S.C. 1288 requires the governor of the state or local officials to designate a boundary for areas within the state and a single representative organization within each area to develop a wastewater treatment management plan applicable to all wastewater generated within an area. 40 C.F.R. 130.6 requires the state and areawide agencies to update the plans as needed to reflect changing water quality conditions, results of implementation actions, and new requirements, or to remove conditions in prior conditional or partial plan approvals. This administrative regulation establishes Kentucky's regional facility planning process for publicly-owned wastewater treatment works that are, or result in, point sources of water pollution in designated planning areas.

Section 1. Applicability. (1) A governmental entity, such as a city, county, or other public body created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220, may apply for designation as a regional planning agency. An applicant for designation as a regional planning agency shall submit a regional facility plan to the cabinet.

(2) The cabinet shall designate a regional planning agency in accordance with 33 U.S.C. 1288(a)(2) and (3).

(3) The cabinet shall de-designate a regional planning agency if the regional planning agency:

(a)[The regional planning agency] Requests de-designation;

(b)[The regional planning agency] Fails to meet its planning obligations as specified in a grant agreement, contract, or memorandum of understanding; or

(c)[The regional planning agency] No longer has the resources or the commitment to continue water quality planning activities within the designated boundary.

(4) If a regional planning agency is de-designated, the cabinet shall assume responsibility for continued water quality planning and oversight of implementation of planning activities within the regional planning area.

(5) The cabinet shall not designate an entity as a regional planning agency if that entity does not have authority to meet the requirements established in 33 U.S.C. 1288(c)(2)(A) through (I).

Section 2. Requirement to Submit a Regional Facility Plan. (1) An applicant for designation as a new regional planning agency shall submit a regional facility plan to the cabinet.

(2) An existing regional planning agency shall submit a regional facility plan if:

(a) A new wastewater treatment facility is proposed for construction within the planning area;

(b) An existing regional planning agency proposes to expand the average daily design capacity of an existing wastewater treatment facility by more than thirty (30) percent; or

(c) The equivalent population served by an existing wastewater collection system or a system with a Kentucky Inter-System Operating Permit is proposed for expansion by more than thirty (30) percent of the population served in the previously approved regional facility plan.

(3) A regional planning agency shall request a pre-planning meeting with the cabinet before submitting a regional facility plan.

(4) One (1)[Two (2)] paper copy[copies] and one (1) electronic copy of the regional facility plan shall be submitted to the cabinet and [One (1) copy] shall be certified in a manner that meets the requirements established in 201 KAR 18:104.

Section 3. Contents of a Regional Facility Plan. (1) A regional facility plan shall include adequate information to allow for an environmental assessment of the projects proposed in the regional facility plan that are ready to begin construction within [the first] twenty-four (24) months of the cabinet's approval of the

plan[planning period] and to assure that a cost-effective and environmentally sound means of achieving the established water quality goals can be implemented.

(2) A regional facility plan [shall be consistent with the Regional Facility Plan Guidance and] shall include:

(a) An executive[A regional facility plan] summary of the findings presented in subsequent sections;

(b) A statement of the purpose of and need for the regional facility plan, including documentation of existing water quality or public health problems related to wastewater in the planning area;

(c) A description of the:

1. Physical characteristics of the planning area;

2. [(d) A description of the] Socioeconomic characteristics of the planning area;

3. [(e) A description of the] Existing environment in the planning area;

4. [(f) A description of the] Existing wastewater collection and treatment facilities in the planning area; and

5. Discharge permit conditions and compliance with those conditions;

(d) [(g)] A forecast of flows and waste loads for the planning area;

(e) [(h)] A detailed evaluation of each alternative, including [which shall include] alternatives, along with]

1. A twenty (20) year present worth cost analysis for each alternative, with sufficient detail to determine the most cost-effective alternatives; f.]

2. All wastewater management alternatives considered, including no action, and the basis for the engineering judgment for selection of the alternatives chosen for detailed evaluation; f.] shall be included; f.]

3. Sufficient detail [shall be provided] to allow for a thorough cost analysis [to be conducted]; f.]

4. Nonmonetary effectiveness criteria shall include [be limited to] implementability, environmental impact, constructability [engineering—evaluation], public support, decentralization, and regionalization; f.]

5. Intended sources of funding and estimated user fees; and; f.]

6. How [The] alternatives [shall] reflect a comprehensive regional plan for the planning area and [shall] minimize the number of point source discharges; f.] Intended sources of funding shall be listed along with estimated user fees;

(f) [(h)] Cross-cutter correspondence and mitigation, which shall include certification from the regional planning agency of its commitment to all required mitigative action;

(g) [(i)] An evaluation of the recommended regional facility plan; and

(h) [(k)] Documentation of public participation.

1. A certified copy of the advertisement for the public hearing required by Section 5 of this administrative regulation, an attendance log or sign-in sheet, a copy of the minutes of the public hearing, and written comments and responses shall be submitted as part of the regional facility plan.

2. If more than one (1) public hearing is held or if there are public meetings or public notices about the project, a copy of all documentation of these events shall be submitted as part of the regional facility plan. [3. At the required public hearing, the scope of the project, cost of the project, alternatives considered, and estimated user charges and hook-up fees shall be discussed.]

(3) The items required in subsection 2(c) through (f) [(2)(f) through (h)] of this section shall be prepared by, or under the direct supervision of, a professional engineer licensed in Kentucky.

Section 4. Requirement to Submit an Asset Inventory Report.

(1) (a) An asset inventory report shall be submitted to the cabinet if:

1. [(a)] It has been ten (10) years since the cabinet approved the last [regional planning agency submitted a] regional facility plan or asset inventory report; and

2. [(b)] Section 2(2) of this administrative regulation does not require the regional planning agency to submit a regional facility plan.

(b) 1. [(c)] A major facility shall submit the regional facility plan

using the Water Resources Inventory System (WRIS).

2. A minor facility may submit the regional facility plan using WRIS or the Asset Inventory Report form.

(2) The regional planning agency shall submit~~the following information on the Asset Inventory Report Form~~:

- (a) Wastewater facility data;
- (b) Revenue and expenses;
- (c) Asset inventory;
- (d) Project prioritization;
- (e) Funding plan;
- (f) Copies of supporting documentation; and
- (g) Certification statement from a designated official.

(3) The cabinet shall issue to the regional planning agency an assessment report that provides recommendations related to facility planning, operation, and management that ensure continuing compliance and protection of surface water and groundwater.

(4) The cabinet shall provide public notice of its assessment of the Asset Inventory Report on its Web site for thirty (30) days.

(5) The public shall have an opportunity to comment on the cabinet's assessment of the asset inventory report and the period for comment shall remain open for thirty (30) days from the date of the first publication of the report.~~[(6)(a) If it has been ten (10) years or more since the approval of a regional planning agency's regional facility plan, the regional planning agency shall submit an asset inventory report to the cabinet by July 1, 2012.~~

~~(b) A subsequent asset inventory report shall be due to the cabinet ten (10) years from the approval date of the regional facility plan or asset inventory report, whichever is most recent.]~~

Section 5. Public Notice, Public Comment, and Public Hearing Requirements. (1) Prior to final agency action on the regional facility plan, the regional planning agency shall publish notice of its draft plan and shall hold a public hearing on the draft plan. Public notice of the draft plan and the public hearing shall be provided pursuant to KRS Chapter 424.

(2) A public notice issued pursuant to this administrative regulation shall contain~~the following information~~:

- (a) The name and address of the regional planning agency that is proposing the plan;
- (b) A brief description of the contents of the draft plan and the area to be served;
- (c) The name, address, and telephone number of persons from whom interested persons may obtain further information and a copy of the draft regional facility plan;
- (d) A brief description of the public's right to comment on the draft regional facility plan and the procedures for commenting;
- (e) The date of previous public notices relating to the draft regional facility plan;
- (f) The date, time, and place of the public hearing on the draft plan; and
- (g) A brief description of the nature and purpose of the hearing.

(3) The planning agency shall provide a copy of the public notice and the draft plan to the cabinet for publication on its Web site at least thirty (30) days prior to the public hearing.

(4) At the required public hearing, the scope of the project, cost of the project, alternatives considered, and estimated user charges and hook-up fees shall be discussed.

~~(5) [(4)]~~ The public shall have an opportunity to comment on the draft plan and the period for comment shall remain open for thirty (30) days from the date of the first publication of the notice of the public hearing or until the termination of the hearing, whichever is later. The regional planning agency may extend the public comment period, on request, if it believes additional public input is necessary.

~~(6) [(5)]~~ A person may submit written or oral comments and data to the regional planning agency concerning the draft regional facility plan. In the interest of time and efficiency, limits may be set up on the time allowed for oral statements and the submission of statements in writing may be required.

~~(7) [(6)]~~ All persons who believe any condition of the draft plan is inappropriate, inaccurate, incomplete, or otherwise not in the best interest of the public and the environment, shall raise all

reasonably ascertainable issues and submit all reasonably available arguments and factual background supporting their position, including all supporting materials, by the close of the public comment period.

Section 6. Regional Facility Plan Review. (1) The cabinet shall prepare an environmental assessment report summarizing the regional facility plan.

(a) The cabinet shall submit the environmental assessment report to the State Clearinghouse for review and comments to identify potentially adverse impacts resulting from the proposed projects~~[that are ready to begin construction within the first twenty-four (24) months of the planning period]~~.

(b) The cabinet shall provide public notice of the environmental assessment report on its Web site for thirty (30) days.

(c) The public shall have an opportunity to comment on the environmental assessment report, and the period of comment shall remain open for thirty (30) days from the date of the first publication of the report.

(d) The cabinet may identify measures in the environmental assessment report to avoid, minimize, or reduce potentially adverse environmental impacts.

(2) The cabinet shall issue a determination to approve or deny a regional facility plan within 120 calendar days of receipt of a complete regional facility plan.

(3) If the regional facility plan is submitted consistent with the requirements of this administrative regulation and addresses water quality or public health problems related to wastewater, the cabinet shall approve the regional facility plan.

(4) KPDES and facility construction permit decisions shall be made in accordance with approved regional facility plans, as established in 40 C.F.R. 130.12(a) and (b).

Section 7. Incorporation by Reference. (1) The~~following material is incorporated by reference~~:

~~(a) "Regional Facility Plan Guidance", February 2011; and~~
~~(b) "Asset Inventory Report Form", DEP No. DOW0501, February 2011, is incorporated by reference.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained through the Division of Water's Web site at <http://water.ky.gov>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

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.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, September 11, 2018)

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 ~~establishes[requires]~~ that releases of pollutants or contaminants ~~that[which]~~ could result in or contribute to pollution of the waters of the Commonwealth from any source other than a KPDES-

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

permitted facility, shall spills and bypasses from sewage systems as defined in KRS 224.01-010(25)] be reported to the division. This administrative regulation establishes reporting timeframes and mechanisms that [Such reports] enable the division to determine what action is necessary [it need initiate] to protect public safety and mitigate or reduce the effect of the release [such spill or bypass].

Section 1. Any person having knowledge in advance of the necessity to release a "pollutant or contaminant", 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. [(1)] 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 that could [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 Section [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;

(c) Specific pollutant or contaminant or hazardous substance;

(d) 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 could [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. A person [Persons] failing to report as required by [in] Sections 1 through 3[, 2, 3 and 4] of this administrative regulation shall be [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. 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.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, September 11, 2018)

401 KAR 5:037. Groundwater protection plans.

RELATES TO: KRS 151.110, [151.232,] 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] [224.01-010] [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)[2] and (3)[and (4)] of this section, a [any] person responsible for conducting any of the [following] activities **listed in paragraphs (a) through (p) of this subsection [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 **established [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 **established [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, ~~or[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 ~~prevents[will prevent]~~ groundwater pollution. ~~A[This section describes the contents of site-specific and generic groundwater protection plans. Any] person conducting an activity established[identified] in Section 1(1)(2)(1)[2(2)] of this administrative regulation shall determine if an exclusion of Section 1(2) or (3)(2)(2) or (3)[2(3) or (4)] of this administrative regulation applies to that activity.~~

(2) Deadlines for preparation and implementation. Except for activities excluded by Section 1(2) or (3)(2)(2) or (3)[2(3) or (4)] of this administrative regulation, ~~a[any] person required to prepare and to implement a groundwater protection plan pursuant to Section 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 ~~established[identified]~~ in Section 1(1)(2)(1)[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;

(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 could[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 ~~established[identified]~~ in Section 1(1)(2)(1)[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[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 requirements established in paragraphs (a) through (e)[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 ~~that[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 subsections (1) and (2) [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 ~~that[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 subsections (1) and (2) [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 ~~comply with[meet]~~ the requirements of subsection (7) of this section while the person conducting the activities remains in compliance with the other program.

(b) Variances from the provisions of subsection (5) of this section may be granted by the cabinet ~~if the applicant for a variance demonstrates that a variance will not result in pollution of groundwater [upon a showing of good cause], but a [in no event shall any] person required to prepare a groundwater protection plan pursuant to this section shall not take any actions contrary to the provisions of subsection (5) of this section without prior written approval of the cabinet.~~

(7) Incorporation of requirements of other regulatory programs.

(a) Groundwater protection activities required by other federal, state, or local regulatory programs may be incorporated into a site-specific or generic groundwater protection plan by reference if the other regulatory program contains ~~[the following]:~~

1. Management and design standards;

2. Mandatory monitoring for groundwater pollution or methods of detecting discharges, spills, or releases to groundwater; and

3. Specific corrective action criteria.

(b) 1. The plan shall identify each activity covered by the other regulatory program. The person responsible for implementing the plan shall certify compliance with the other regulatory program.

2. The provisions of the other program shall be the groundwater protection plan for purposes of this administrative regulation for the activities covered by the other regulatory program.

3. If activities identified in Section ~~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 established[identified] in Section 1(1)[2(1)] [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 ~~established[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 ~~established[identified]~~ in the generic groundwater protection plan are substantially identical;

2. The factors ~~established[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 ~~established[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. ~~[1.]~~ 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 comply with[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[er];
- 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.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, September 11, 2018)

401 KAR 5:045. Treatment requirements; compliance; biochemically degradable wastes[; treatment].

RELATES TO: KRS 224.10-100, 224.70-100, 224.70-110

STATUTORY AUTHORITY: KRS 224.10-100(19), (21)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(19) requires the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into waters of the

Commonwealth. KRS 224.10-100(21) authorizes the cabinet to require technological levels of treatment and effluent limitations. This administrative regulation establishes minimum treatment requirements, requires all persons discharging pollutants through point sources to apply these measures, or more stringent as required, to **comply with/meet** water quality standards, and requires a minimum of secondary treatment or best conventional pollutant control technology for a facility that receives biochemically degradable wastes.

Section 1. Treatment Requirements. (1) This administrative regulation shall apply to all discharges to surface waters of the Commonwealth as defined by 401 KAR 10:001.

(2) All persons who discharge through a point source shall, as a minimum, apply the secondary treatment, or equivalent, considering the:

(a) Total cost of the application of such technology in relation to the effluent reduction benefits to be achieved;

(b) Age of the equipment and facilities involved;

(c) Process employed;

(d) Engineering aspects of the application of various types of control techniques; and

(e) Nonwater quality environmental impact.

(3) All persons who discharge through a point source shall apply the best available waste control technology, or equivalent, considering:

(a) The factors in subsection (2) of this section;

(b) Any operating and maintenance procedures;

(c) Schedules and prohibitions of activities; and

(d) Other management practices to control site run-off, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

(4) The cabinet may deny, revoke, or modify a permit to any applicant if the discharge does not **comply with/conform to** KRS 224.70-100[Applicability].

Section 2. Biochemically Degradable Wastes; Treatment. (1) A facility that receives an influent that is biochemically degradable and discharges into waters of the Commonwealth shall provide a minimum of secondary treatment to that influent prior to its discharge.

(2) A facility subject to treatment requirements established in 401 KAR 5:080, Section 2 shall be exempt from the requirements of this administrative regulation.

Section 3[2]. Secondary Treatment of Biochemically Degradable Wastes. Secondary treatment shall be the degree of treatment that results in an effluent quality that **complies with/meets** the minimum requirements established in this section. (1) Biochemical oxygen demand, five (5) days.

(a) The arithmetic mean of the values for effluent samples collected during a period of thirty (30) consecutive days shall not exceed thirty (30) milligrams per liter.

(b) The arithmetic mean of the values for effluent samples collected during a period of seven (7) consecutive days shall not exceed forty-five (45) milligrams per liter.

(2) Suspended solids.

(a) The arithmetic mean of the values for suspended solids in effluent samples collected during a period of thirty (30) consecutive days shall not exceed thirty (30) milligrams per liter.

(b) The arithmetic mean of values for suspended solids in effluent samples collected during a period of seven (7) consecutive days shall not exceed forty-five (45) milligrams per liter.

Section 3. Continuation of a Permit. A person responsible for an existing facility that receives biochemically degradable influent and discharges into waters of the Commonwealth shall apply for a permit to continue to discharge to the waters of the Commonwealth not later than 180 days prior to the expiration of the current permit.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public 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.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water**

(As Amended at ARRS, September 11, 2018)

401 KAR 5:055. Scope and applicability of the KPDES Program and pretreatment requirements.

RELATES TO: KRS 61.870-61.884, 224.1-010, 224.1-070, 224.1-400, 224.18-100[224.01-010, 224.01-070, 224.01-400], 224.70-100, 224.70-120, 224.99-010, 33 C.F.R. 153, 40 C.F.R. 122, 123.44, 124.62, 131, 136, 144, 258, 261, 300, 401-471[300, 401-45], 33 U.S.C. 1251 -1387, 42 U.S.C. 300f - 300j, 6907

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-050, 224.18-100, 224.70-100, 224.70-110, 224.73-120, 40 C.F.R. 1.25(e), 25, 122.21, 300, 33 U.S.C. 1251 -1387, 42 U.S.C. 6901, 6902, 6907

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to provide for the prevention, abatement, and control of water pollution, to issue, continue in effect, revoke, modify, suspend or deny permits to discharge into waters of the Commonwealth, and authorizes the cabinet to require[for persons discharging into the waters of the Commonwealth, by administrative regulation,] technological levels of treatment and effluent limitations. KRS 224.16-050(1) authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 - 1387[subject to the conditions imposed in 33 U.S.C. 1342(b) and (d). KRS 224.16-050(1) requires that any exemptions granted in the issuance of these permits shall be pursuant to 33 U.S.C. 1311, 1312, and 1326(a)]. KRS 224.16-050(4) requires that the cabinet shall not ~~issue/impose under~~ any permit[issued] pursuant to this administrative regulation[an effluent limitation, monitoring requirement, or other condition] that is more stringent than[the effluent limitation, monitoring requirement, or other condition that would have been applicable under the federal regulation] if the permit was issued by the federal government. KRS 224.73-120 authorizes the cabinet to apply and enforce against users of publicly owned treatment works the requirements of monitoring, recordkeeping and reporting, effluent limitations, and pretreatment standards for the introduction of pollutants into treatment works. This administrative regulation establishes the scope and applicability of the KPDES program and identifies categories of point sources required to obtain a KPDES permit, requirements pertaining to exclusions and prohibitions, requirements for general permits, requirements for disposal into wells and into publicly-owned treatment works (POTW), and requirements for disposal by land application. This administrative regulation implements 33 U.S.C. 1311, 1314, 1317, 1318, 1319, 1342, and 1345 related to the cabinet's pretreatment program and establishes responsibilities of the Commonwealth of Kentucky, local government, industry, and the public to implement the national pretreatment program to control pollutants as established in 40 C.F.R. 403.1.

Section 1. Definitions. Definitions established in 40 C.F.R. 122.2 shall apply for the interpretation of federal regulations that are cited within this administrative regulation.

Section 2. Applicability of the KPDES Requirements. (1) A KPDES permit shall be required to discharge pollutants from a point source into waters of the Commonwealth.

(2) Compliance with the KPDES program requirements shall constitute compliance with the operational permit requirements of 401 KAR 5:005.

(3) Failure to obtain a KPDES permit shall not relieve a discharger whose discharge is subject to the KPDES program from

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

complying with the applicable performance standards of the KPDES program, 401 KAR ~~5:045~~~~[5:050]~~ through 5:080.

Section 3. Point Source Categories Requiring a KPDES Permit. (1) The following categories of point sources shall require a KPDES permit to discharge:

(a) A point source discharge identified in 40 C.F.R. 122.~~4~~~~[~~~~effective July 1, 2012]~~;

(b) A concentrated animal feeding operation;

(c) A concentrated aquatic animal production facility;

(d) A discharge into aquaculture projects;

(e) A discharge from separate storm sewers; and

(f) A silviculture point source.

(2) A facility covered by a general permit issued pursuant to Section 8 of this administrative regulation~~[.]~~ may be required to obtain an individual permit based on contributions to water pollution.

(3) If an individual permit is required pursuant to this section, except as provided in subsection (4) of this section, the cabinet shall notify the discharger of that decision and the reasons for it in writing.

(a) The discharger shall apply for a permit pursuant to 401 KAR 5:060 within sixty (60) days of notice, unless an extension **request is granted/is requested by the applicant and approved by the cabinet**.

(b) The question of if the permit determination was proper shall remain open for consideration during the public comment period pursuant to 401 KAR 5:075 and in a subsequent hearing pursuant to KRS 224.10-420(2).

(4)(a) Prior to a determination that an individual permit shall be required for a stormwater~~[storm-water]~~ discharge, the cabinet may require the discharger to submit information regarding the nature of the discharge as established in 40 C.F.R. 122.21(e)~~[~~~~effective July 1, 2012]~~ if:

1. The provisions of the general permit are not sufficient to protect human health and the environment; or

2. The discharger has a history of noncompliance with the provisions of the general permit.

(b) If an individual permit is required pursuant to this section, the cabinet shall notify the discharger of that decision and the reasons for it in writing.

(c) The discharger shall apply for a KPDES permit within sixty (60) days of notice, unless an extension **request is granted/is requested by the applicant and approved by the cabinet**.

(d) The question of if the initial determination was proper shall remain open for consideration during the public comment period pursuant to 401 KAR 5:075 and in a subsequent hearing pursuant to KRS 224.10-420(2).

Section 4. Exclusions. An exclusion from the requirement to obtain a KPDES permit shall be:

(1) A discharge identified in 40 C.F.R. 122.3~~[~~~~effective July 1, 2012]~~ or KRS 224.16-050(6);

(2) An authorization by permit or by rule that is prepared to assure that underground injection will not endanger drinking water supplies, pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f-300j, and that are issued under a state or federal Underground Injection Control program;

(3) An underground injection control well that is permitted pursuant to 40 C.F.R. 144 if those permits are protective of public health and welfare and prevent the pollution of ground and surface waters; or

(4) A discharge that is not regulated by the U.S. EPA under the Clean Water Act Section 402, 33 U.S.C. 1342.

Section 5. Prohibitions. The cabinet shall not issue a KPDES permit if:

(1) The conditions of the permit would violate the provisions of KRS Chapter 224;

(2) The regional administrator has objected to issuance of the permit in writing pursuant to the procedures specified in 40 C.F.R. 123.44~~[~~~~effective July 1, 2012]~~;

(3) The conditions of the permit do not comply with the water

quality standards established in 401 KAR ~~Chapter 10~~~~[40:034]~~; or

(4) A prohibition is established in 40 C.F.R. 122.4~~[~~~~effective July 1, 2012]~~.

Section 6. Variance Requests from ~~Technology-Based~~~~[Technology-based]~~ Effluent Limitations. (1) A non-POTW may request a variance from otherwise applicable effluent limitations as established in 40 C.F.R. 122.21(m)~~[~~~~effective July 1, 2012]~~.

(2) A non-POTW may request an expedited variance as established in 40 C.F.R. 122.21(o)~~[~~~~effective July 1, 2011]~~.

Section 7. Effect of a Permit. The effect of a KPDES permit shall be as established in 40 C.F.R. 122.5~~[~~~~effective July 1, 2012]~~.

Section 8. A General permit shall be issued as established in 40 C.F.R. 122.28~~[~~~~effective July 1, 2012]~~.

Section 9. Disposal of Pollutants into Underground Injection Control Wells, into Publicly Owned Treatment Works, or by Land Application. (1) An adjustment of effluent limitations related to disposal of pollutants into wells, into publicly owned treatment works, or by land application shall be as established in 40 C.F.R. 122.50~~[~~~~effective July 1, 2012]~~.

(2) The cabinet may issue permits to control the disposal of pollutants into wells if necessary to protect the public health and welfare and to prevent the pollution of ground and surface waters.

Section 10. Variances from Technology-Based Treatment Requirements Available to KPDES Applicants. Consistent with KRS 224.16-050, the variance provisions in this section and in 401 KAR 5:080, Sections 2 and 4, establish those variances from technology-based requirements available to KPDES applicants. (1) Economic capability. The cabinet, with the concurrence of U.S. EPA, may modify BAT requirements for a point source if the owner or operator demonstrates that the variance satisfies the requirements of 33 U.S.C. 1311(c).

(2) Environmental considerations. The cabinet, with the concurrence of U.S. EPA, may modify the BAT requirement for a point source that does not discharge toxic pollutants identified in 40 C.F.R. 401.15~~[~~~~effective July 1, 2012]~~, conventional pollutants, or the thermal component of that discharge, if the owner or operator demonstrates that the modification is consistent with the conditions established in 33 U.S.C. 1311(g).

(3) Innovative technology. The cabinet shall establish a date for complying with the deadline for achieving BAT not later than two (2) years after the date for compliance with the effluent limitation would otherwise be applicable, if the innovative technology is as established in 33 U.S.C. 1311(k) and after consultation with the U.S. EPA Regional Administrator, as required by 40 C.F.R. 124.62(a)(2)~~[~~~~effective July 1, 2012]~~.

(4) Thermal pollution. An alternative effluent limitation for the thermal component of a discharge shall be as established in 33 U.S.C. 1326(a).

Section 11. KPDES Pretreatment Requirements. (1) This administrative regulation shall not affect pretreatment requirements established by local law if those requirements are not less stringent than those established in state or national pretreatment standards or other requirements or prohibitions established under the National Water Pollution Control Act, 33 U.S.C. 1251-1387 or this administrative regulation.

(2) Prohibited discharges shall be as established in 40 C.F.R. 403.5.

(3) Categorical standards shall be as established in 40 C.F.R. 403.6.

(4) The granting of removal credits shall be as established in 40 C.F.R. 403.7.

(5) The development by a POTW of pretreatment program requirements shall be as established in 40 C.F.R. 403.8.

(6) The submission for approval of a pretreatment program or authorization to revise pretreatment standards shall be as established in 40 C.F.R. 403.9.

(7) The approval procedures for POTW pretreatment programs and POTW granting of removal credits shall be as established in 40 C.F.R. 403.11.

(8) The reporting requirements for POTWs and industrial users shall be as established in 40 C.F.R. 403.12.

(9) Variances from categorical pretreatment standards as a result of fundamentally different factors shall be as established in 40 C.F.R. 403.13.

(10) Confidentiality.

(a) Information submitted to the cabinet pursuant to this Section may be claimed as confidential if the claim of confidentiality complies with/by the submitter pursuant to KRS 224.10-210 and 224.10-212.

(b) All other information submitted to the POTW shall be available to the public at least to the extent provided by KRS 61.870 through 61.884.

(11) Net-gross calculation shall be as established in 40 C.F.R. 403.15.

(12) Upset provisions shall be as established in 40 C.F.R. 403.16.

(13) Bypasses shall be as established in 40 C.F.R. 403.17.

(14) Modification of POTW pretreatment programs shall be as established in 40 C.F.R. 403.18.

(15) Pretreatment program reinvention pilot projects under Project XL shall be as established in 40 C.F.R. 403.20.

Section 12. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in ~~[Sections 1 through 10 of]~~ this administrative regulation.

(2) "Cabinet" shall be substituted for "Director" ~~in [if the authority to administer] the federal regulations cited in [Sections 1 through 10 of] this administrative regulation [has been delegated to the cabinet].~~

(3) "KPDES" shall be substituted for "NPDES" ~~in the [if the cabinet has been delegated authority to implement] federal regulations cited in [Sections 1 through 10 of] this administrative regulation.~~

(4) "Standard metropolitan statistical areas as defined by the University of Louisville Urban Studies Center, consistent with the U.S. Office of Management and Budget" shall be substituted for "Standard metropolitan statistical areas as defined by the Office of Management and Budget" in 40 C.F.R. 122.28(a)(1)(vi).

(5) "Urbanized areas as designated by the University of Louisville Urban Studies Center consistent with the U.S. Bureau of the Census" shall be substituted for "Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202, effective May 1, 1974" in 40 C.F.R. 122.28(a)(1)(vi).

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

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.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, September 11, 2018)**

401 KAR 5:075. Cabinet review procedures for KPDES permits and permit timetables for 401 KAR Chapter 5.

RELATES TO: KRS ~~224.1-010, 224.1-070, 224.1-400~~ [224.01-040, 224.01-070, 224.01-400], 224.10-420, 224.10-440, 224.10-470, 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. 124 ~~[33 U.S.C. 1251-1387]~~

STATUTORY AUTHORITY: KRS 224.10-100 ~~[(49)]~~, 224.10-220, 224.16-050, 224.70-110, 33 U.S.C. 1251-1387

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(19) authorizes the cabinet to issue, continue in effect, revoke, modify, suspend or deny permits to discharge into any waters of the Commonwealth. KRS 224.16-050(1) authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387 ~~[subject to the conditions imposed in 33 U.S.C. 1342(b) and (d)].~~ KRS 224.10-220 requires the cabinet to establish timetables for the issuance of all permits by the cabinet, except those permits for which a timetable is established by statute. This administrative regulation establishes timetables for permits that are required by 401 KAR Chapter 5 ~~and~~ the procedures for receiving permit applications, preparing draft permits, issuing public notice, inviting public comment, and holding public hearings on draft permits.

Section 1. Review of the Application. An application for a KPDES permit shall be submitted and reviewed as established in 40 C.F.R. 124.3 ~~[effective July 1, 2009].~~

Section 2. Review Procedures for Permit Modification, Revocation and Reissuance, or Revocation. A KPDES permit modification, revocation and reissuance, or revocation shall be as established in 40 C.F.R. 124.5 ~~[effective July 1, 2009.]~~ except that a request for a hearing shall be made as established in Section 13 of this administrative regulation.

Section 3. Draft Permits. Preparation or denial of a draft permit shall be as established in 40 C.F.R. 124.6 ~~[effective July 1, 2009].~~

Section 4. Fact Sheets. A fact sheet shall be prepared as established in 40 C.F.R. 124.8 ~~[effective July 1, 2009].~~

Section 5. Public Notice of Permit Actions and Public Comment Period. Public notice of a permit action and the public comment period shall be as established in 40 C.F.R. 124.10 ~~[effective July 1, 2009].~~

Section 6. Public Comments and Requests for Public Hearings. Provisions for public comments and requests for a public hearing shall be as established in 40 C.F.R. 124.11 ~~[effective July 1, 2009].~~

Section 7. Public Hearings. A public hearing shall be conducted as established in 40 C.F.R. 124.12 ~~[effective July 1, 2009].~~

Section 8. Obligation to Raise Issues and Provide Information During the Public Comment Period. An obligation to raise issues and provide information during the public comment period shall be as established in 40 C.F.R. 124.13 ~~[effective July 1, 2009].~~

Section 9. Conditions Requested by the Corps of Engineers and Other Government Agencies. Conditions requested by the Corps of Engineers or another government agency shall be as established in 40 C.F.R. 124.59 ~~[established July 1, 2009].~~

Section 10. Reopening of the Public Comment Period. The public comment period shall be reopened as established in 40 C.F.R. 124.14 ~~[effective July 1, 2009].~~

Section 11. Issuance and Effective Date of Permit. (1) After the close of the public comment period established in Section 5 of this administrative regulation, the cabinet shall make a determination to issue, deny, modify, revoke and reissue, or revoke a permit.

(a) The cabinet shall provide written notice to ~~[notify]~~ the applicant and to each person who submitted written comments or requested notice of the determination.

(b) The notification shall include reference to the procedures to request a hearing to contest the determination.

(2) A final permit determination shall become effective thirty (30) days after the service of notice of the determination, unless:

(a) A later effective date is specified in the determination; or
(b) ~~[A stay is granted pursuant to KRS 224.10-420(2) and~~

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

Section 13 of this administrative regulation; or

(e) Comments did not request a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

(3) The determination, which is a condition precedent to demanding a hearing pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation, shall be the final permit decision.

Section 12. Response to Comments. Response to comments shall be as established in 40 C.F.R. 124.17[~~effective July 1, 2009~~].

Section 13. Hearings pursuant to KRS 224.10-420. (1) A determination pursuant to Section 11 of this administrative regulation shall be subject to a demand for a hearing pursuant to KRS 224.10-420(2).

(2) A hearing held pursuant to this section shall comply with[~~be subject to~~] the provisions of KRS 224.10-440 and 224.10-470.

(3) Failure to raise an issue pursuant to Section 8 of this administrative regulation shall not preclude an aggrieved person from making a demand for a hearing pursuant to KRS 224.10-420(2).

Section 14. Permit Timetables. (1) This section shall apply to permits required by 401 KAR 5:005.

(2) The cabinet shall issue its final decision on a complete permit application within the review time established[~~specified~~] in this section.

(3) A complete permit application shall contain all the administrative and technical information required by applicable statutes and administrative regulations.

(4)(a) The review time for construction or minor modification of a wastewater treatment plant shall be ninety (90) calendar days from the receipt of a complete permit application.

(b) The review time for all other permits required by 401 KAR 5:005 shall be forty-five (45) calendar days from receipt of a complete permit application except as established in Section 15 of this administrative regulation.

Section 15. Timetables for KPDES Permits. (1) This section shall apply for KPDES permits issued pursuant to KRS 224.16-050(1).

(2) The cabinet shall issue its final decision on a complete permit application within 180 calendar days after receipt of an administratively complete permit application, except as provided in Section 16 of this administrative regulation.

(3) A complete permit application shall contain all the administrative and technical information required by applicable statutes and administrative regulations.

(4) Within thirty (30) calendar days of initial receipt of an application for a KPDES permit, the cabinet shall notify the applicant as to whether the application is administratively complete, or if not complete, of the deficiencies that make the application administratively incomplete. A determination that the application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(5) If the application is determined to be administratively incomplete, the applicant shall correct identified deficiencies within thirty (30) calendar days of the date of notification. If the applicant does not correctly identify deficiencies within the time frame, the cabinet may return the application, and the fee[~~fees~~] may be retained by the cabinet.

(6) After the notification that the application is administratively complete, if the cabinet determines that the application is technically deficient, the cabinet shall notify the applicant of deficiencies that make the application technically incomplete or unapprovable. The applicant shall correct the technical deficiencies within thirty (30) days of the notification, or other time as agreed upon by the applicant and cabinet. If the technical deficiencies are not corrected within thirty (30) calendar days or the agreed upon time frame, the cabinet may deny the permit, and the fee may be

retained by the cabinet.

Section 16. Timetable Exclusions. The time periods that shall not be included in the cabinet's consideration of its decision on a KPDES shall include:

(1) Time waiting for the applicant to respond to a notice of deficiency;

(2) Time during which the permit, application, decision, or related matter is held in litigation, including administrative hearings;

(3) Time during which an opportunity for public hearing or public comment period on a draft or proposed permit is given, and time during which a public hearing is scheduled and held;

(4) Time waiting for federal, state, or local agencies to comment on the permit or to respond to written requests from the cabinet for additional information; and

(5) Other times as agreed to by the applicant and the cabinet.

Section 17. Timetable Extensions. (1) If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or applicant. If the permits are coordinated, the cabinet shall so notify the applicant and indicate the time frames under which the intermediate and final permit actions shall be accomplished. The established time frame for final action shall not exceed the last date for action that is provided for under applicable statutes and administrative regulations, based on all applications being considered and their filing dates.

(2) The applicant and the cabinet may agree that the timetables or review times established[~~specified~~] in this administrative regulation may be extended.

Section 18. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in this administrative regulation.

(2) "Cabinet" shall be substituted for "Director", "EPA", and "Regional Administrator" in the federal regulations cited in this administrative regulation.

(3) "KPDES" shall be substituted for "NPDES" in the federal regulations cited in this administrative regulation.

(4) "Mail", as used in 40 C.F.R. 124.10 and cited in Section 5 of this administrative regulation, shall include electronic transmissions.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

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.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (As Amended at ARRS, September 11, 2018)

401 KAR 5:320. Wastewater Laboratory Certification Program.

RELATES TO: KRS 224.1-010[224.01-040], 224.10-100, 224.10-670, 224.70-100, 224.70-110, 40 C.F.R. 136, 33 U.S.C. 1342

STATUTORY AUTHORITY: KRS 224.10-670

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-670 authorizes the cabinet to promulgate administrative regulations establishing standards for the operation of laboratories, fees for certification and competency evaluation of those laboratories, issuance of certificates of competency, and a certification program for laboratories that submit environmental data as it relates to

analyses and laboratory tests for activities subject to 33 U.S.C. 1342. This administrative regulation establishes the wastewater laboratory certification program, standards for the certification of wastewater laboratories, and fees for certification and evaluation of wastewater laboratories.

Section 1. ~~Definitions. (1) "Analysis category" means one (1) of the following analyte groups for which an analysis can be performed by a wastewater laboratory:~~

- ~~(a) Inorganic general chemistry;~~
- ~~(b) Inorganic metals;~~
- ~~(c) Organic chemistry volatiles;~~
- ~~(d) Organic chemistry semi-volatiles;~~
- ~~(e) Organic chemistry pesticides, herbicides, or PCBs;~~
- ~~(f) Organic chemistry dioxins;~~
- ~~(g) Microbiology;~~
- ~~(h) Whole effluent toxicity; and~~
- ~~(i) Field analysis.~~

~~(2) "Certified" means that the cabinet has determined that the wastewater laboratory meets the regulatory performance criteria and the standard of quality established in this administrative regulation and has issued a certification.~~

~~(3) "Equivalency of certification" means certification of a wastewater laboratory by an entity, other than the cabinet, whose requirements for certification are determined by the cabinet to meet the requirements of this administrative regulation.~~

~~(4) "Field analysis" means a measuring of [the following]:~~

- ~~(a) Dissolved oxygen;~~
- ~~(b) Residual chlorine;~~
- ~~(c) pH;~~
- ~~(d) Temperature;~~
- ~~(e) Conductivity; and~~
- ~~(f) Turbidity.~~

~~(5) "Field-only wastewater laboratory" means a wastewater laboratory that performs a measurement for only the parameters identified as field analysis, regardless of whether the measurement takes place outdoors, in an on-site room used as a laboratory, or in an off-site laboratory.~~

~~(6) "General wastewater laboratory" means a wastewater laboratory that performs an analysis for at least one (1) analysis category other than field analysis, regardless of whether the general wastewater laboratory also performs a field analysis measurement.~~

~~(7) "Interim certification" means a certification approved by the cabinet if it determines through documentation review that the wastewater laboratory meets the requirements of Section 10 of this administrative regulation. Interim certification is applicable to a method-analyte pairing until the cabinet has completed an on-site audit for that method-analyte pairing.~~

~~(8) "Primary analyst or technician" means an analyst or technician who performs a specific method-analyte pairing analysis more often than any other analyst or technician at that wastewater laboratory.~~

~~(9) "Wastewater laboratory" means a laboratory that performs an analysis, measurement, or laboratory test for an activity subject to 33 U.S.C. 1342.~~

~~Section 2. [Effective Date for this Administrative Regulation. The effective date for this administrative regulation shall be:~~

- ~~(1) January 1, 2014, for a general wastewater laboratory; and~~
- ~~(2) January 1, 2015, for a field-only wastewater laboratory.~~

~~Section 3. Requirement for Acceptance of Environmental Data. [(4)] In accordance with KRS 224.10-670(2) [and the schedule established in subsection (2) of this section], environmental data from analyses and laboratory tests submitted to the cabinet for activities subject to 33 U.S.C. 1342 shall be performed:~~

- ~~(1) [(a)] By a certified wastewater laboratory; and~~
- ~~(2) [(b)] In compliance with:~~

- ~~(a) [1-] An analytical method in 40 C.F.R. Part 136 or as established in the applicable permit;~~
- ~~(b) [2-] This administrative regulation; and~~
- ~~(c) [3-] The provisions of the Commonwealth of Kentucky~~

~~Wastewater Laboratory Certification Manual. [(2) The requirements established in subsection (1) of this section shall begin on:~~

- ~~(a) January 1, 2015, for a general wastewater laboratory; and~~
- ~~(b) January 1, 2016, for a field-only wastewater laboratory.]~~

Section 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[n application, the]~~ Kentucky Wastewater Laboratory Certification Program~~[-, KWLCP Form App.]~~ 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~~[-, KWLCP Form App.]~~ Application for Kentucky Laboratory Certification~~[-, KWLCP Form App.]~~.

(4)(a) If a fee is received by the cabinet after November 15 but on or before December 15, the wastewater laboratory shall incur a surcharge of fifteen (15) percent of the applicable certification fee (administrative fee plus analysis category fee).

(b) Payment of this surcharge shall be due thirty (30) days after notice is provided by the cabinet.

(5) If a fee is received by the cabinet after December 15, the wastewater laboratory shall incur a surcharge of twenty-five (25) percent of the applicable certification fee.

(a) The wastewater laboratory's certification shall expire after December 31 of that year and shall not be valid until the applicable certification fee and the surcharge are received by the cabinet.

(b) Payment of this fee and surcharge shall not reinstate certification for failure to timely submit an application for certification renewal pursuant to the expiration established in Section ~~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) ~~shall indicate,[-]~~ a 100 percent reduction (no administrative fee).~~[-]~~

(b) Less than or equal to 0.50 MGD but greater than 0.10 MGD ~~shall indicate,[-]~~ 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 ~~shall indicate,[-]~~ 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 ~~shall indicate,[-]~~ a twenty-five (25) percent reduction.~~[-]~~ ~~and]~~

(e) Greater than two and zero tenths (2.0) MGD ~~shall indicate,[-]~~ 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 ~~complies with/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~~[-, KWLCP Form App.]~~ 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[ef] 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[., KWLC 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, upon[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)]~~[14(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 comply with[meet] the requirements of Section ~~9(2)[10(2)]~~[14(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]. 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]. 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)[KWLC Form App, March 2013];~~

~~(c) "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms", Fourth Edition, U.S.EPA-821-R-02-013, October 2002; and~~

~~(d) "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms", Fifth Edition U.S. EPA-821-R-02-012, October 2002.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300

Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained through the Division of Water's Web site at <http://water.ky.gov>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: 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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Kentucky Department of Education
(As Amended at ARRS, September 11, 2018)

704 KAR 3:015. Kentucky All STARS for Preschool Programs.

RELATES TO: KRS ~~157.3175~~, 199.8943, ~~[157.3175]~~
 STATUTORY AUTHORITY: KRS 156.160, ~~199.8943~~
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 ~~requires[gives]~~ the Kentucky Board of Education ~~[specific authority]~~ to promulgate administrative regulations establishing guidelines for the preschool program. KRS 199.8943 requires the Kentucky Department of Education, in consultation with the Early Childhood Advisory Council, to promulgate administrative regulations that implement a quality-based graduated early childhood rating system for public-funded preschool. This administrative regulation establishes the Kentucky All STARS Program, a quality based graduated early childhood rating system ~~established in[defined by]~~ KRS 199.8943, for the state-funded preschool program.

Section 1. ~~[f:]~~ Definitions. (1) "Administrative and Leadership Practices" means a domain of standards related to the planning, implementing, and evaluating of early childhood program services.

(2) "Classroom and Instructional Quality" means a domain of standards related to developmentally appropriate teaching and learning practices in early childhood program settings.

(3) "Environment assessment" means a rating scale to assess quality in a preschool program setting and consists of the following evaluated items:

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

(4) "Expiration date" means the date the quality rating certificate issued by the Department of Education or its designee is no longer valid.

(5) "Family and community engagement" means a domain of standards related to involving parents, families, and communities in the early childhood program.

(6) "Issue date" means the date the quality rating certificate was issued by the Department of Education or its designee.

(7) "Kentucky All STARS Rating System" or "STARS" means the quality based-graduated early childhood rating system ~~established in[defined by]~~ KRS 199.8943 and the Kentucky All STARS Quality Rating Level requirements ~~established in[defined by]~~ 922 KAR 2:270.

(8) "Preschool" means program services as ~~established in[defined by]~~ KRS 157.3175.

(9) "Preschool site" means a location with a school ID code assigned by the Kentucky Department of Education providing program services as ~~established in[defined by]~~ KRS 157.3175.

(10) "Renewal year" means the year that a preschool site renews its quality rating certificate with the Department of Education.

Section 2. Preschool Site Participation. (1) A preschool site providing services pursuant to 704 KAR 3:410 and this administrative regulation shall participate in Kentucky All STARS Rating System:

- (a) At STARS Level 3;
- (b) At STARS Level 4; or
- (c) At STARS Level 5.

Section 3. ALL STARS Preschool Quality-Rating Level Requirements. (1) A preschool site shall undergo an environment assessment conducted by the department or its designee. A preschool site shall achieve a minimum environment assessment score per classroom observed, ~~as established[set forth]~~ in 922 KAR 2:270, ~~[in order]~~ to earn STARS Level 4 or 5.

(2) The department or its designee shall determine a preschool site's STARS level using the following four (4) domains:

~~(a) Family and community engagement, which shall include:~~

~~1. Professional development related to family engagement;~~

~~2. Implementation of family engagement initiatives; and~~

~~3. Partnership building with community agencies;~~

~~(b) Classroom and instructional quality, which shall include:~~

~~1. The use of developmental screenings, curriculum, and assessments; and~~

~~2. Participation in an environmental observation;~~

~~(c) Staff qualifications and professional development, which shall include:~~

~~1. The hours of staff training;~~

~~2. Professional development plans for staff that align with state requirements and staff credentials; and~~

~~(d) Administrative and leadership practices, which shall include:~~

~~1. Time for lesson plan development;~~

~~2. Implementation of a continuous improvement plan; and~~

~~3. Provision of staff benefits, such as health insurance](a) Family and community engagement, which shall include professional development related to family engagement, implementation of family engagement initiatives, and partnership building with community agencies.~~

~~(b) Classroom and instructional quality, which shall include the use of developmental screenings, curriculum, and assessments, as well as participation in an environmental observation.~~

~~(c) Staff qualifications and professional development, which shall include the hours of staff training, professional development plans for staff that align with state requirements, and staff credentials.~~

~~(d) Administrative and leadership practices, which shall include time for lesson plan development, implementation of a continuous improvement plan, and provision of staff benefits, such as health insurance].~~

(3) ~~[In order]~~ To hold a STARS Level 3, 4, or 5 quality rating certificate, a preschool site shall achieve at least the minimum total points in each domain ~~established[as set forth]~~ in 922 KAR 2:270 for each STARS level.

(4) Preschool program sites meeting the requirements ~~established[set forth]~~ in this ~~administrative~~ regulation shall be awarded a STARS level certification renewable every three (3) years pursuant to Sections 4 and 5 of this ~~administrative~~ regulation.

Section 4. Annual Quality Review. (1) During the three (3) year STARS certification period, a preschool site shall verify the site's STARS level annually with the department or its designee.

(2) A preschool site that does not report sustained adherence to the criteria and domains pursuant to Section 3 of this administrative regulation shall undergo a reevaluation of the site's rating ~~pursuant to[as detailed in]~~ Section 6 of this ~~administrative~~ regulation.

Section 5. Renewal. (1) The department or its designee shall

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

notify a preschool site at least ninety (90) calendar days in advance of the expiration of the preschool site's STARS certificate.

(2) The department or its designee shall determine a preschool site's STARS level for renewal based on the criteria and domains established/specified in Section 3 of this administrative regulation.

Section 6. ~~Reevaluation.~~~~[(1)]~~ The department or its designee shall reevaluate a preschool site's STARS certificate if the preschool site's location of preschool services changes, the preschool site requests a reevaluation within ninety (90) calendar days after receiving certification during its renewal year, or the preschool site does not report sustained adherence to the domains pursuant to Section 3 of this administrative regulation:

~~(a) Preschool site's location of preschool services changes;~~

~~(b) Preschool site requests a reevaluation within ninety (90) calendar days after receiving certification during its renewal year; or~~

~~(c) Preschool site does not report sustained adherence to the domains pursuant to Section 3 of this administrative regulation].~~

Section 7. Revocation.~~[(1)]~~ The department or designee may revoke, non-renew, or take other action regarding award of STARS certification to a preschool site pursuant to/in accordance with KRS 157.3175, 704 KAR 3:410, and 707 KAR Chapter 1.

Section 8. Appeals.~~[(1)]~~ If the department or its designee determines that a preschool site does not meet the standards for the STARS level for which the site is certified, a site shall accept a lower rating level or file a written request signed by the superintendent, upon approval of the local board of education, for reconsideration with the Commissioner of Education who shall respond in writing within thirty (30) days. If the preschool site disagrees with the response of the Commissioner of Education, it may request an administrative hearing pursuant to KRS Chapter 13B:

~~(a) Accept a lower rating level; or~~

~~(b) File a written request signed by the superintendent, upon approval of the local board of education, for reconsideration with the Commissioner of Education who shall respond in writing within thirty (30) days. If the preschool site disagrees with the response of the Commissioner of Education, it may request an administrative hearing in accordance with KRS 13B].~~

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, Ph.D., Commissioner of Education
MILTON SEYMORE, Chair

APPROVED BY AGENCY: June 11, 2018

FILED WITH LRC: June 12, 2018 at 9 a.m.

CONTACT PERSON: Todd Allen, Interim General Counsel,
Kentucky Department of Education, 300 Sower Boulevard, 5th
Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-
564-9321; email regcomments@education.ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Board of Education

Department of Education

(As Amended at ARRS, September 11, 2018)

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,

~~158.645~~, 158.6451, ~~158.6453~~, 160.290

STATUTORY AUTHORITY: 156.070, 156.160, 156.162, ~~160.290~~

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 established in/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. Minimum Content Requirements. 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.

PUBLIC PROTECTION CABINET

Department of Insurance

(As Amended at ARRS, September 11, 2018)

806 KAR 17:300. Provider agreement and risk-sharing agreement filing requirements.

RELATES TO: KRS 304.17A-150, ~~304.17A-235~~, 304.17A-500, 304.17A-527, 304.17A-530, 304.17A-532, 304.17A-560, 304.17A-575, ~~304.17A-577,~~ 304.17A-578, 304.17A-728, ~~304.17C-060, 304.17C-070~~, 304.99

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-527(1), ~~304.17C-060(1)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director to promulgate reasonable administrative regulations necessary to the effectuation of any

provision of the Kentucky Insurance Code[as defined in KRS 304.1-010]. KRS 304.17A-527(1) and KRS 304.17C-060(1) require [requires] the Department[~~office~~] to promulgate administrative regulations regarding the manner and form of required filings of sample copies of provider agreements.[EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department.] This administrative regulation establishes the filing requirements of provider agreements, subcontract [~~subcontractor~~] agreements, and risk sharing arrangements.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of Insurance.

(2) "Covered person" is defined in KRS 304.17A-500(3).

(3) "Department" means the Department of Insurance.

(4) "Enrollee" is defined in KRS 304.17A-500(5).

(5) "Insurer" is defined in KRS 304.17A-500(8).

(6) "Managed care plan" is defined in KRS 304.17A-500(9).

(7) "Nonparticipating provider" is defined in KRS 304.17A-575(4).

(8) "Participating health care provider" is defined in KRS 304.17A-500(10).

(9) "Provider agreement" means a contract between an insurer offering a managed care plan and a provider for the provision of health care services. [(10) "Risk sharing arrangement" is defined in KRS 304.17A-500(13).]

(2) [(14)] "Subcontract agreement" means a contract for the provision of health care services to:

(a) An enrollee, which is negotiated between a participating health care provider with a managed care plan and a nonparticipating provider with a managed care plan; or

(b) A covered person, which is negotiated between a risk sharing entity as identified in KRS 304.17A-500(13) and a provider.

Section 2. Filing Requirements. (1) An insurer, managed care plan, and limited health service benefit plan shall file a sample copy of the following[~~shall be filed~~] with the commissioner at least sixty (60)[~~ninety (90)~~] days before its use:

(a) Provider agreement;

(b) Risk sharing arrangement; and

(c) Subcontract agreement.

(2) A filing pursuant to subsection (1) of this section shall:

(a) Include:

1. A compensation arrangement, including a description of the: a. Payment methodology; and

b. Payor as defined in the agreement;

2. Any attachment, exhibit, or addendum to the items listed in subsection (1) of this section;

3. A completed and signed Face Sheet and Verification Form HIPMC-F1, incorporated by reference in 806 KAR 17:005; and

4. A filing fee, including:

a. Twenty-five (25) dollars for a provider agreement or subcontract agreement filing; or

b. Fifty (50) dollars for a risk sharing arrangement filing; and[-]

(b)1. Not be considered complete until the information required by paragraph (a) of this subsection is received by the department; and

2. Be disapproved if a complete filing is not received within sixty (60) days of the date of filing.

(3) If a managed care plan, insurer, or limited health service benefit plan[~~managed care plan~~] amends an existing provider agreement, subcontract agreement, or risk sharing agreement that[-]provider agreement or subcontract agreement; [~~which~~] was previously filed with the commissioner, affecting any requirements of this administrative regulation, the managed care plan shall submit:

(a) An amended filing at least sixty (60)[~~ninety (90)~~] days before its use; and

(b) A letter that[-]which identifies and explains each amendment.

(4) The failure of a managed care plan, insurer, or[~~and~~] limited health service benefit plan to file a sample copy of a provider agreement, subcontract agreement, or risk sharing

agreement[-]provider agreement or subcontract agreement, as required by subsections (1) and (3) of this section,] may result in imposition of a civil penalty in accordance with KRS 304.99.

(5) An insurer issuing, delivering, or renewing a limited health service benefit plan shall complete and attach Form HIPMC-F37, Limited Health Service Benefit Plan Summary Sheet - Form Filings (07/02), to each limited health service benefit plan filed with the commissioner[~~If an insurer amends an existing risk sharing arrangement or subcontract agreement that was previously filed with the commissioner, affecting any requirements of this administrative regulation, the insurer shall submit:~~]

(a) An amended filing at least ninety (90) days before its intended use; and

(b) A letter that identifies and explains each amendment.

(6) The failure of an insurer to file a sample copy of a risk sharing arrangement or subcontract agreement, as required by subsections (1) and (5) of this section, may result in imposition of a civil penalty in accordance with KRS 304.99.]

Section 3. Provider Agreement Requirements. (1) The[~~A~~] sample copy of a provider agreement for an insurer or managed care plan filed with the commissioner shall:

(a) [(1)] Comply with the requirements of KRS 304.17A-527(1);

(b) [(2)] Comply with the requirements of KRS 304.17A-728; and

(c) [(3)] Not include a:

1. [(a)] Most-favored nation provision in accordance with KRS 304.17A-560;

2. [(b)] Limitation on disclosure provision in accordance with KRS 304.17A-530;

3. [(c)] Condition of participation provision in accordance with KRS 304.17A-150(4); and

4. [(d)] Mandatory use of hospitalist provision in accordance with KRS 304.17A-532(2).

(2) The sample copy of a provider agreement for a limited health service benefit plan filed with the commissioner shall:

(a) Comply with the requirements of KRS 304.17C-060(1);

(b) Be governed by Kentucky law; and

(c) Not include a limitation on disclosure provision in accordance with KRS 304.17C-070.

Section 4. Subcontract Agreement Requirements. A sample copy of a subcontract agreement that[-]which is part of a provider agreement or risk sharing arrangement shall:

(1) Be filed with the commissioner by the managed care plan, limited health service benefit plan, or insurer in conjunction with the provider agreement or risk sharing arrangement; and]

(2) Meet[~~the~~] applicable requirements of Section 3 of this administrative regulation; [-] and

(3) Meet the requirements of KRS 304.17A-527(2) or 304.17C-060(3), as applicable.

Section 5. Risk Sharing Arrangement Requirements. (1) The[~~A~~] sample copy of a risk sharing arrangement filed with the commissioner[~~pursuant to Section 2 of this administrative regulation~~] shall:

(a) Meet the requirements of Section 3 of this administrative regulation; and

(b) Include a Risk Sharing Arrangement Information Sheet HIPMC-R1, incorporated by reference in 806 KAR 17:005; [-] and

(c) Meet the requirements of KRS 304.17A-527(2) or 304.17C-060(3), as applicable.

(2) On or before September 1 of each calendar year, an insurer, managed care plan, or limited health services benefit plan shall file with the commissioner the HIPMC-R1, incorporated by reference in 806 KAR 17:005, for each risk sharing arrangement currently effective.

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

(a)] "Limited Health Service Benefit Plan Summary Sheet - Form Filings HIPMC-F37", 07/18, is incorporated by reference[(07/18)]].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department's Web site at <http://insurance.ky.gov>.

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: July 11, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2018 at 09:30 a.m. Eastern Time at the Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by August 16, 2018, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2018 (11:59 p.m.). Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-2669, email Patrick.OConnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick D. O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for all insurers offering health benefit plans and limited health service benefit plans to file with the Department of Insurance template provider agreements, risk sharing agreements, and subcontracts. It provides the advance filing requirements, any additional accompanying documentation, and prohibited provisions.

(b) The necessity of this administrative regulation: This administrative regulation is required under the statutory directive of KRS 304.17A-527(1) and KRS 304.17C-060 to establish the manner and form of the filing of these documents.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.17A-527(1) directs the Department to establish the form and manner for filing provider agreements, risk sharing agreement, and subcontractor agreements. This administrative regulation includes the time for filing such agreements before use, and the required documentation to be included with each filing. This administrative regulation also lists the prohibited items and conditions, included in various statutes, that the Department will review for and determine if approval is appropriate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies the form and manner filing requirements for these specific documents to ease insurer compliance and make the Department's review more efficient.

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

(a) How the amendment will change this existing administrative regulation: The amendment incorporates the filing requirements for limited health service benefit plans into this administrative regulation. These organizations are under an identical filing requirement, so all entities can review one regulation to determine the form and manner of the filing requirements.

(b) The necessity of the amendment to this administrative

regulation: The amendment is necessary to promote clarity in the application of the administrative regulation and make administration of these requirements easier for all regulated entities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment does not add any additional requirements. Instead, it consolidates identical administrative regulations to streamline the compliance process for regulated entities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment eliminates duplicative administrative regulations, so regulated entities will only need to review one administrative regulation to determine the applicable requirements. Additionally, the prior notice time period was changed from ninety (90) to sixty (60) days to increase the flexibility of insurers use new contracts for these particular services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact all insurers licensed to offer health insurance plans to individuals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not need to take any affirmative action to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amended administrative regulation will not impose any cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will be able to employ new or revised agreements earlier, and will have to review only one administrative regulation for the applicable requirements.

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

(a) Initially: The department does not anticipate that there is any cost to implement this amendment.

(b) On a continuing basis: The department does not anticipate any continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: All funding for the review of these agreements is covered by the applicable filing established in the administrative regulation. The fee is not changed as a result of the amendment.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amended administrative regulation does not establish any new fees or increase any fees. The filing fee for these agreements is unchanged.

(9) TIERING: Is tiering applied? Tiering is not applicable as the requirements apply to all health insurance companies equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.17A-527 and KRS 304.17C-060 require the department to promulgate this administrative regulation.

3. Estimate the effect of this administrative regulation on the

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment to the administrative regulation will not result in any costs for state or local government agencies in the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment to the administrative regulation will not result in any costs for state or local government agencies in subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

**PUBLIC PROTECTION CABINET
Department of Insurance
(As Amended at ARRS, September 11, 2018)**

806 KAR 17:360. Prompt payment of claims.

RELATES TO: KRS 304.17A-005, 304.17A-700, 304.17A-702(1), 304.17A-704, 304.17A-706, 304.17A-708(1), 304.17A-720, 304.17A-722(3), 304.17A-730, 304.17C-090, 304.99-123, ~~2008 Acts ch. 127, Part XII, sec. 18-20~~

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-722(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the ~~commissioner~~~~[executive—director]~~ to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code~~[as defined in KRS 304.1-010]~~. KRS 304.17A-722(1) requires the office to promulgate administrative regulations establishing reporting requirements regarding the prompt payment of claims by insurers offering health benefit plans.~~[EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as the head of the department.]~~ This administrative regulation establishes requirements for insurers offering health benefit plans and insurers offering limited health service benefit plans for the provision of dental-only benefits.

Section 1. Definition~~[Definitions]~~. (1) ~~“Clean claim” is defined in KRS 304.17A-700(3).~~

(2) ~~“Commissioner” means Commissioner of Insurance.~~

(3) ~~“Covered person” is defined in KRS 304.17A-700(5).~~

(4) ~~“Department” means Department of Insurance.~~

(5) ~~“Health benefit plan” is defined in KRS 304.17A-005(22).~~

(6) ~~“Health care clearinghouse” means an entity that converts health care transactions into standardized formats and forwards them to an insurer. [(7) “Health care provider” or “provider” is defined in KRS 304.17A-700(9), as amended by 2008 Ky Acts ch. 127, Part XII, sec. 18.~~

(8) ~~“Health claim attachments” is defined in KRS 304.17A-700(10).~~

(9) ~~“Insurer” is defined in KRS 304.17A-005(27).~~

(10) ~~“Limited health service benefit plan” is defined in KRS~~

~~304.17C-010(5).]~~

Section 2. Requirements. (1) An attachment subject to the requirements of KRS 304.17A-706(2) shall be a standardized health claim attachment prescribed by 806 KAR 17:370.

(2) Pursuant to KRS 304.17A-704(4), an insurer response to a claim status inquiry by a provider shall either:

(a) Advise of no record of receiving the claim; or

(b) Provide the date the claim was received by an insurer, its agent, or designee, an insurer reference number for the claim, and one (1) of the following dated actions:

1. Claim is in process, but has not had a determination of denial, payment, contest, or suspension by the insurer;

2. Claim denial, in whole or in part, and reason for denial;

3. Determination to pay claim, in whole or in part;

4. Claim suspension, in whole or in part, and reason for suspension; or

5. Claim contest, in whole or in part, and reason for contest.

Section 3. Claim Payment Time Frame. (1) The payment date of a claim shall be:

(a) The posting date of an electronic payment to a provider account;

(b) The postmark date of a nonelectronic payment mailed to a provider; or

(c) The documented date of nonmailed delivery of a nonelectronic payment received by a provider.

(2) An insurer, its agent, or designee shall be required, as part of the acknowledgment process in accordance with KRS 304.17A-704(2)~~[as amended by 2008 Ky Acts ch. 127, Part XII, sec. 19,]~~ to notify a provider, its billing agent, or designee that submitted the claim, of an attachment that is missing or in error, if required pursuant to KRS 304.17A-706(2) or 304.17A-720.

(3) Except for a claim involving an organ transplant, an insurer shall be in compliance with KRS 304.17A-702(1) if a clean claim is paid within:

(a) Thirty (30) days of receipt of the claim; or

(b) Three (3) business days of the check date if the check issued for payment of the claim is dated on the 28th, 29th, or 30th day after the claim is received.

(4) An insurer shall be in compliance with KRS 304.17A-702(1) for a clean claim involving an organ transplant if the claim is paid within:

(a) Sixty (60) days of receipt of the claim; or

(b) Three (3) business days of the check date if the check issued for payment of the claim is dated on the 58th, 59th, or 60th day after the claim is received.

(5) The claim payment time frame of KRS 304.17A-702(1)~~[.]~~ shall:

(a) Include the time a claim is with a health care clearinghouse acting on behalf of an insurer; and

(b) Not include the time a claim is with a health care clearinghouse acting on behalf of a provider.

Section 4. Payment of Interest. (1) The method used to calculate an interest payment required by:

(a) KRS 304.17A-730(1)~~[as amended by 2008 Ky Acts ch. 127, Part XII, sec. 20,]~~ shall yield an amount not less than the result obtained by dividing the total number of days that a claim remains unpaid after the date payment was due by 365;

(b) Multiplying that quotient by the applicable interest rate established under KRS 304.17A-730(1)~~[as amended by 2008 Ky Acts ch. 127, Part XII, sec. 20;]~~ and

(c) Multiplying that product by the unpaid amount of the claim owed.

(2) An interest payment shall identify the claim for which it is paid by including the following information:

(a) Name of covered person;

(b) Covered person's insurer identification number;

(c) Name of provider;

(d) Date of service;

(e) Amount of interest paid; and

(f) Insurer reference number for the claim.

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

(3) Except for nonpayment of interest by a limited health service benefit plan for the provision of dental-only benefits as established under KRS 304.17C-090(3), an insurer shall pay the interest required by KRS 304.17A-730[~~as amended by 2008 Ky Acts ch. 127, Part XII, sec. 20;~~] within thirty (30) days after the date a claim is paid.

(4) An insurer shall not be required to pay interest on corrected payments made in accordance with KRS 304.17A-708(1).

Section 5. Contested Claims. (1) An insurer may contest a clean claim, pursuant to KRS 304.17A-706(1)(a), if an insurer, its agent, or designee has reasonable documented grounds, including:

(a) A covered person has notified the insurer that he has:

1. Another payment source; or

2. A preexisting condition;

(b) A provider has notified the insurer that a covered person has:

1. Another payment source; or

2. A preexisting condition;

(c) The insurer possesses file material establishing that:

1. Another insurer may be primarily responsible for the claim;

or

2. A preexisting condition exists;

(d) A health claim attachment indicates another payment source; or

(e) A billing instrument identifies another payment source or a preexisting condition.

(2) An insurer in possession of the documentation listed in subsection (1) of this section shall provide this information to a provider upon request.

Section 6. An insurer offering a limited health service benefit plan for the provision of dental-only benefits, its agent or designee shall be subject to the requirements established under this administrative regulation except for a requirement as established under Section 3(4) of this administrative regulation and KRS 304.17C-090.

Section 7. Insurer Offering a Health Benefit Plan Reporting Requirements. (1) Within the time frames established in KRS 304.17A-722(3), an insurer offering a health benefit plan shall submit to the department, on a calendar quarter basis, a report on the prompt payment of claims.

(2) If an insurer is unable to meet a time frame for reporting on the prompt payment of claims as established in **subsection (1) of this section**~~[this administrative regulation]~~ because of unforeseen computer system problems, an extension of time may be granted upon written request to the commissioner.

(3) The report required pursuant to subsection (1) of this section shall contain the **[prescribed]** information and data elements, as applicable, in the electronic format as prescribed by the Prompt Payment Reporting Manual, DIPR-PPR1-1.

(4) **A[All]** reporting **insurer[insurers]** shall update any information included within the report later determined to be inaccurate.

Section 8. Insurer Offering a Limited Health Service Benefit Plan Reporting Requirements. An insurer offering a limited health service benefit plan for the provision of dental-only benefits shall:

(1) Annually, no later than June 30 of each year, submit a report to the office on the prompt payment of claims as established under KRS 304.17C-090(2); and

(2) Except for Section 7(1) of this administrative regulation, be subject to the requirements of an insurer offering a health benefit plan as established in this administrative regulation.

Section 9. Incorporation by Reference. (1) "Prompt Payment Reporting Manual, DIPR-PPR1", **[7/2018, f]** is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601,

Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site: www.insurance.ky.gov.

NANCY G. ATKINS, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: July 11, 2018

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

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.

**PUBLIC PROTECTION CABINET
Department of Professional Licensing
Kentucky Athlete Agent Registry
(As Amended at ARRS, September 11, 2018)**

830 KAR 2:010. Registration and Fees.

RELATES TO: KRS 164.6907(1), 164.6909, 164.6911, 164.6915

STATUTORY AUTHORITY: KRS 164.6905(3), 164.6909(1), 164.6911(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.6905(3) authorizes the Department of Professional Licensing to promulgate administrative regulations necessary to implement the provisions of KRS 164.6901 to 164.6935. KRS 164.6909(1) requires the department[office] to prescribe an application form for registration as an athlete agent. KRS 164.6911(4) requires the Department to prescribe a registration renewal form. This administrative regulation establishes the procedures and fees for registration and registration renewal applications of an athlete agent.

Section 1. Application Procedures. (1) Initial registrations may be submitted at any time. An applicant for initial registration shall submit:

(a) A completed Athlete Agent Registry Application Form, Form AAR-002, with all attachments required by the form;

(b) An initial registration fee of \$300;

(c) A copy of each agent contract with a student athlete in the Commonwealth of Kentucky; and

(d) A copy of all licenses or permits under which the agent is providing representation, advice, or serving as an agent in any way.

(2) Renewal registrations shall[must] be submitted annually on or before March 31. Any athlete agent registration not renewed on or before March 31 shall be considered automatically revoked. An athlete agent applying for registration renewal shall submit:

(a) A completed Athlete Agent Registry Application Form, Form number AAR-002; and

(b) A renewal registration fee of \$200.

(3) The Department may request clarification and verification of information provided in the application prior to granting initial or renewal registration.

Section 2. Incorporation by Reference. (1) "Application for Athlete Agent Registry or Renewal", Form AAR-002, July 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ISAAC VANHOOSE, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: July 9, 2018

FILED WITH LRC: July 11, 2018 at noon

CONTACT PERSON: David C. Trimble, General Counsel, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-4818, email DavidC.Trimble@ky.gov.

PUBLIC PROTECTION CABINET
Department of Professional Licensing
Kentucky Athlete Agent Registry
(As Amended at ARRS, September 11, 2018)

830 KAR 2:020. Complaints.

RELATES TO: KRS 13B, 164.6913 – 164.6933

STATUTORY AUTHORITY: KRS 164.6905(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.6905(3) authorizes the Department of Professional Licensing to promulgate administrative regulations necessary to implement KRS 164.6901 to 164.6935. This administrative regulation establishes the procedure for review of a complaint against an athlete agent or student athlete.

Section 1. Complaint to the Kentucky Athlete Agent Registry.

- (1) All complaints shall be submitted in writing on Form AAR-001.
- (2) A complaint may be filed by:
 - (a) A person aggrieved in any fashion by an alleged violation of KRS 164.6901 to 164.6935, or 830 KAR Chapter 2; or
 - (b) A person or institution, including the department or appropriate college, university, or athletic regulatory body, based upon information in its possession.
- (3) A complaint shall not~~[No complaint may]~~ be filed anonymously. The department shall not take~~[Department will take no]~~ action on anonymous complaints.
- (4) Upon receipt of a complaint, the Department shall:
 - (a) Send a copy to the appropriate college, university, or athletic regulatory body via certified mail, return receipt requested; and
 - (b) Send a copy and request for response to the athlete agent and student athlete named in the complaint, and each other identified party, via certified mail, return receipt requested.

Section 2. Response. (1) The response shall be:

- (a) Filed with the Department within twenty (20) days from the date of receipt of mailing of the complaint; and
 - (b) Served upon the appropriate college, university, or athletic regulatory body, and any other party including the athlete agent and the student athlete.
- (2) Each response shall include any and all contracts or other documents executed by or between the parties~~[,]~~ and copies of any correspondence between the parties.
- (3) Failure of any party against whom allegations of violation(s) of KRS 164.6901 to 164.6935, or 830 KAR Chapter 2, to file a response in accordance with subsection (1)(a) of this section~~[a timely fashion]~~ may, at the sole discretion of the Department, be treated as a default of the obligation to file a response, and an admission of the alleged violation(s), unless good cause is shown for the failure.

Section 3. Notice and Service of Process. (1) Unless waived by the recipient, service of notice and other process shall be made by hand-delivery or delivery by certified mail, return receipt requested, to the individual's address provided to the office at the time of registration or, if known, by regular mail on the named individual's attorney or registered agent.

(2) The making and manner of service of process~~[and the manner of same]~~ shall be shown on any document filed in a proceeding before the department ~~as~~Department in the manner required by CR 5 of the Kentucky Rules of Civil Procedure.

(3) Refusal of service if by certified mail, or avoidance of service if hand-delivered, shall not prevent the office from proceeding.

Section 4. Department Review. (1) Within thirty (30) days of the department's receipt of responses from the parties, the department shall conduct a preliminary review to determine whether it has sufficient information upon which to base a decision.

(2) The complaint shall be dismissed and all parties notified of the~~[such]~~ dismissal if the department determines that:

- (a) The department does not have jurisdiction; or
 - (b) The charges do not warrant disciplinary action.
- (3) If the department determines that a violation of KRS 164.6901 to 164.6935 or 830 KAR Chapter 2 has occurred, it shall:

(a) Notify the parties of:
1. Its determination; and
2. The charges upon which its determination is based; and
(b) Suspend, revoke, or refuse renewal of registration pursuant to KRS 164.6913.~~[notify the parties of its determination, the charges upon which its determination is based, and shall suspend, revoke, or refuse renewal of registration pursuant to KRS 164.6913.]~~

(4) If the department determines that it lacks sufficient information with which to make a decision, it shall~~[so]~~ notify the parties. The department may then:

- (a) Appoint an investigator to conduct an investigation to determine the relevant facts;
- (b) Subpoena additional information from the parties; or
- (c) Refer the complaint to an Administrative Hearing Officer pursuant to KRS Chapter 13B for further proceedings.

Section 5. Incorporation by Reference. (1) "Athlete Agent Complaint" Form AAR-001~~["Athlete Agent Registry Complaint Form, Form AAR-001"]~~, July 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensure, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ISAAC VANHOOSE, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: July 9, 2018

FILED WITH LRC: July 11, 2018 at noon

CONTACT PERSON: David C. Trimble, General Counsel,
 Department of Professional Licensing, 911 Leawood Drive,
 Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-4818, email DavidC.Trimble@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, September 11, 2018)

902 KAR 20:008. License procedures and fee schedule.

RELATES TO: KRS 216.2925, 216.530, 216B.010, 216B.015, 216B.020(2)(c), (3), 216B.040, 216B.042, 216B.045-216B.055, 216B.075, 216B.105-216B.131, 216B.185, 216B.990

STATUTORY AUTHORITY: KRS 216.530(1), 216B.042(1)(a)
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1)(a) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function and to establish reasonable application fees for licenses. This administrative regulation establishes the fee schedule and requirements for obtaining a license to operate a health facility or health service, and establishes the procedure for obtaining a variance.

Section 1. Definitions. (1) "Adverse action" means action taken by the Cabinet for Health and Family Services, Office of Inspector General to deny, suspend, or revoke a health facility's or health service's license to operate.

(2) "Cabinet" is defined by KRS 216B.015(6).

(3) "Deemed hospital" means a hospital that has had its accreditation accepted by the Office of Inspector General pursuant to KRS 216B.185(1) as evidence that the hospital demonstrates compliance with the licensure requirements of KRS Chapter 216B.

(4) "Health facility" is defined by KRS 216B.015(13).

(5) "Health services" is defined by KRS 216B.015(14).

(6) "Inspector General" means the Inspector General of the Cabinet for Health and Family Services or designee.

(7) "Significant financial interest" means lawful ownership of a

health facility or health service, whether by share, contribution, or otherwise in an amount equal to or greater than twenty-five (25) percent of total ownership of the health facility or health service.

(8) "Variance" means the written approval of the Inspector General authorizing a health facility to depart from a required facility specification, upon meeting the conditions established in Sections 4 and 5 of this administrative regulation.

Section 2. Licenses. (1) Any person or entity, in order to lawfully operate a health facility or health service, shall first obtain a provisional license.

(2) A license required by KRS 216B.105(1), including a provisional license, shall be conspicuously posted in a public area of the health facility.

(3) An applicant for provisional licensure or annual renewal of licensure as a health facility or health service shall complete and submit to the Office of the Inspector General the appropriate application as follows:

(a) Application for License to Operate a Health Facility or Health Service;

(b) Application for License to Operate a Chemical Dependency Treatment Service, Group Home, Psychiatric Residential Treatment Facility, or Residential Hospice Facility;

(c) Application for License to Operate a Hospital;

(d) Application for License to Operate a Home Health Agency, Non-residential Hospice, or Private Duty Nursing Agency;

(e) Application for License to Operate a Renal Dialysis Facility, Freestanding or Mobile Technology[Health Service], or Hospital-owned Pain Management[Special Health] Clinic[, or Specialized Medical Technological Service];

(f) Application for License to Operate a Long Term Care Facility; or

(g) Application for License to Operate a Family Care Home.

(4) Provisional License. Upon receipt of an application for a license and appropriate licensure fee as established in Section 3 of this administrative regulation, the Office of Inspector General shall:

(a) Review the application for completeness, including documentation related to:

1. Ownership;

2. Personnel;

3. Operations and administrative policies;

4. The type of services to be provided applicable to the license requested; and

5. If appropriate, plans and specifications for construction or renovation; and

(b) Return the application and accompanying licensure fee if:

1. An individual having a significant financial interest in the health facility or health service has had, within the seven (7) year period prior to the application date, a[had] significant financial interest in a facility or service that was licensed or certified by the cabinet, and the license or certificate to operate was denied, suspended, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm; or

2. The cabinet finds that the applicant misrepresented or submitted false information on the application.

(5) If an application is determined complete and no statutory or regulatory deficiencies are identified, the Office of Inspector General shall issue a provisional license to remain in effect until:

(a) Completion of the on-site inspection established in subsection (7) of this section; and

(b) Verification of compliance with each statute and administrative regulation applicable to the license requested.

(6)(a) Upon receipt of a provisional license, the licensee shall begin providing health services as designated on the licensure application.

(b) If a provisional licensee does not begin providing services within ten (10) business days after receipt of the provisional license, the licensee shall provide written notification to the cabinet of the following:

1. The reason the licensee has not yet begun providing services; and

2. The anticipated date the licensee will begin operating.

(c) The licensee shall notify the cabinet within three (3) business days after the licensee begins providing services.

(7)(a) Within three (3) months from the effective date of a provisional license, the Office of Inspector General shall conduct an unannounced, on-site inspection of the health facility or health service to verify compliance with each statute and administrative regulation applicable to the license requested.

(b) If the Office of Inspector General identifies a statutory or regulatory violation or multiple violations during the provisional licensure period, the health facility or health service shall be subject to the correction process established in subsection (13) of this section.

(8) A provisional license shall expire on the date the Office of Inspector General grants approval of or denies a license following the inspection described in subsection (7) of this section.

(9) If a provisional licensee receives notice from the Office of Inspector General that a license is denied, the licensee shall cease providing services immediately.

(10) Written notice denying a license shall explain the reason for the denial, including:

(a) Substantial failure, as described by KRS 216B.105(2), to comply with the provisions of KRS Chapter 216B or any administrative regulation applicable to the regular license;

(b) Substandard care that places patients, residents, or clients at risk of death or serious harm; or

(c) Denial of access to the Office of Inspector General as described in subsection (12) of this section.

(11) The effective date of the license shall be backdated to the issuance date of the provisional license and be subject to annual renewal within one (1) year from the effective date.

(12) Licensure inspections.

(a) Except for a health facility subject to KRS 216.530, a licensure inspection may be unannounced.

(b)1. A representative of the Office of Inspector General shall have access to the health facility pursuant to KRS 216B.042(2).

2. An applicant for licensure or a current licensee shall not deny access to a representative of the Office of Inspector General, after proper identification, to make an inspection for determining compliance with the requirements of each applicable administrative regulation for which the health facility or health service is licensed under 902 KAR Chapter 20 or 906 KAR Chapter 1.

3. a. Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the Office of Inspector General to enter the health facility or health service, or deny access to records relevant to the inspection, unless deemed confidential by 42 U.S.C. 299b-22(a), shall result in disciplinary action, including denial, revocation, modification, or suspension of the facility's license of the health facility or health service.

b. Denial, revocation, modification, or suspension of a health facility's or health service's license shall be subject to appeal pursuant to KRS 216B.105.

(c) An inspection of a health facility or health service licensed under 902 KAR Chapter 20 or 906 KAR Chapter 1 shall comply as follows:

1. The inspection shall be made at any time during the licensee's hours of operation;

2. The inspection shall be limited to ensure compliance with the standards set forth in 902 KAR Chapter 20, 906 KAR Chapter 1, KRS Chapter 216, or KRS Chapter 216B; and

3. The inspection of a health facility or health service based on a complaint or a follow-up visit shall not limit the scope of the inspection to the basis of the complaint or the implementation of a plan of correction.

(13) Violations.

(a) The Office of Inspector General shall notify a health facility or health service in writing of a regulatory violation identified during an inspection.

(b) The health facility or health service shall submit to the Office of Inspector General, within ten (10) days of the notice, a written plan for the correction of the regulatory violation.

1. The plan shall be signed by the health facility's or health service's administrator, the licensee, or a person designated by the licensee and shall specify:

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

a. The date by which the violation shall be corrected;
b. The specific measures to be utilized to correct the violation;
and

c. The specific measures to be utilized to ensure the violation will not recur.

2. The Office of Inspector General shall review the plan and notify the health facility or health service in writing of the decision to:

a. Accept the plan;
b. Not accept the plan; or
c. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2).

3. The notice specified in subparagraph 2.b. of this paragraph shall:

a. State the specific reasons the plan is unacceptable; and
b. Require an amended plan of correction within ten (10) days of receipt of the notice.

4. The Office of Inspector General shall review the amended plan of correction and notify the health facility or health service in writing of the decision to:

a. Accept the plan;
b. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2); or
c. Require the health facility or health service to submit an acceptable plan of correction.

5. A health facility or health service that fails to submit an acceptable amended plan of correction may be notified that the license will be denied, suspended, or revoked in accordance with KRS 216B.105(2).

(14) A license shall:

(a) Expire one (1) year from the effective date, unless otherwise expressly provided in the license certificate; and

(b) Be renewed in the form of a validation letter if the licensee:

1. Submits a completed licensure application;

2. Pays the prescribed fee;

3. Has no pending adverse action; and

4. Unless exempted, has responded to requests from the cabinet for:

a. Annual utilization surveys; and

b. Requests for information regarding health services provided.

(15) Except for a Level I psychiatric residential treatment facility licensed pursuant to the exception established in 902 KAR 20:320, Section 3(2), more than one (1) license shall not be issued or renewed for a particular licensure category at a specific location.

(16) Written notice shall be filed with the Office of Inspector General within thirty (30) calendar days of the effective date of a change of ownership. A change of ownership for a license shall:

(a) Be deemed to occur if more than twenty-five (25) percent of an existing health facility or health service or equity~~[capital stock]~~ or voting rights of a legal entity~~[corporation]~~ is purchased, leased, or otherwise acquired by one (1) or more persons or legal entity from another; and

(b) Not require the issuance of a provisional license.

(17) The licensee shall fully disclose to the cabinet the name, mailing address, email address, and phone number, or a change in the name, mailing address, email address, or phone number of:

(a) Each person or legal entity having an ownership interest in the health facility or health service; and

(b) 1. Each officer or director if organized as a corporation, limited liability company, or other legal entity; or

2. Each partner if organized as a partnership.

(18) An individual, shareholder, partner, member, or legal entity shall not acquire a significant financial interest in any licensed health facility or health service if that individual, shareholder, partner, member, or legal entity previously held a significant financial interest in a licensed facility that had its license or certificate to operate denied, suspended, revoked, or voluntarily relinquished, within the preceding seven (7) years, as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm~~[within the preceding seven (7) years]~~.

(19) An unannounced inspection shall be conducted:

(a) In response to a relevant complaint or allegation; and

(b) According to procedures established in subsection (12) of this section.

(20) A licensee that does not have a pending adverse action, but fails to submit a completed licensure application annually shall cease operating the health facility or health service unless:

(a) The items required under subsection (14)(b) of this section have been tendered; and

(b) The Office of Inspector General has provided the health facility or health service with a notice granting temporary authority to operate pending submission of the application.

(21) Credentialing and Re-credentialing. A licensed health facility or health service that is required by KRS 216B.155(2) to assess the credentials of health care professionals applying for privileges shall use Form KAPER-1, Part B, incorporated by reference in 806 KAR 17:480.

(22) Licensure exemptions.

(a) A facility shall be exempt from licensure if it meets the criteria established by KRS 216B.020(2) or (3).

(b) A federally certified rural health clinic or a federally qualified health center that provides services to patients with behavioral health or psychiatric conditions, including substance use disorders, shall:

1. Be exempt from licensure in accordance with KRS 216B.020(2) and (3); and

2. Not be subject to licensure in a separate category under 902 KAR Chapter 20 or 908 KAR Chapter 1.

Section 3. Fee Schedule. (1)(a) Fees for review of plans and specifications for construction or renovation of health facilities shall be as follows:

License Type	Rate
(a) Hospitals plans and specifications review (initial through final)	\$10 per sq. ft. \$200 minimum
(b) All other health facilities plans and specifications review (initial through final)	\$10 per sq. ft. \$200 minimum

(b) A request for review of plans and specifications shall be submitted on the Program Review Fee – Worksheet Health Facility Identification form, accompanied by payment described in paragraph (a) of this subsection.

(2) Initial and Annual fees. The initial and annual licensure fee for health facilities and services shall be as follows:

License Type	Rate
(a) Freestanding birth center	\$500
(b) Alzheimer's nursing home	For Alzheimer's nursing facilities with 50 beds or less, \$750 + \$25 per bed; For Alzheimer's nursing facilities with 51 or more beds, \$1,000 + \$25 per bed
(c) Ambulatory surgical center	\$750
(d) Chemical dependency treatment service	\$1,000 + \$25 per bed
(e) Community mental health center	\$1,500
(f) Day health care	\$170
(g) Family care home	\$42
(h) Group home for individuals with an intellectual or developmental disability	\$100
[(f)] Health maintenance organization	[\$12 per 100 patients]
[(i)] [(j)] Home health agency	\$500
[(i)] [(k)] Hospice	\$500
[(k)] [(h)] Hospital	

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

1. Deemed hospital	For deemed hospitals with 25 beds or less, \$750 + \$25 per bed; For deemed hospitals with 26 or more beds, \$1,000 + \$25 per bed
2. Non-deemed hospital	For non-deemed hospitals with 25 beds or less, \$750 + \$25 per bed; For non-deemed hospitals with 26 or more beds, \$1,000 + \$25 per bed
(l) (m) Intermediate care facility	For intermediate care facilities with 50 beds or less, \$750 + \$25 per bed; For intermediate care facilities with 51 or more beds, \$1,000 + \$25 per bed
(m) (n) ICF/IID facility	For ICFs/IID with 50 beds or less, \$750 + \$25 per bed; For ICFs/IID with 51 or more beds, \$1,000 + \$25 per bed
(o) Network	[\$500]
(n) (p) Nursing facility	For nursing facilities with 50 beds or less, \$750 + \$25 per bed; For nursing facilities with 51 or more beds, \$1,000 + \$25 per bed
(o) (q) Nursing home	For nursing homes with 50 beds or less, \$750 + \$25 per bed; For nursing homes with 51 or more beds, \$1,000 + \$25 per bed
(p) (r) Ambulatory care clinic	\$500
(q) (s) Personal care home	\$100 + \$5 per bed
(t) Primary care center	[\$500 + \$50 per extension]
(r) (u) Psychiatric hospital	
1. Deemed hospital	For deemed psychiatric hospitals with 25 beds or less, \$750 + \$25 per bed; For deemed psychiatric hospitals with 26 or more beds, \$1,000 + \$25 per bed
2. Non-deemed hospital	For non-deemed psychiatric hospitals with 25 beds or less, \$750 + \$25 per bed; For non-deemed psychiatric hospitals with 26 or more beds, \$1,000 + \$25 per bed
(s) (v) Psychiatric residential treatment facility	\$500
(w) Rehabilitation agency	[\$300]
(t) (x) Renal dialysis facility	\$35 per station + \$350 per facility
(y) Rural health clinic	[\$500]
(u) Hospital-owned pain management (z) Special health clinic	\$500
(aa) Specialized medical technology service	[\$500]
(v) Freestanding or (bb) mobile technology health service	\$500
(w) (cc) Comprehensive physical rehabilitation hospital	
1. Deemed hospital	For deemed hospitals with 25 beds or less, \$750 + \$25 per bed; For deemed hospitals with 26 or more beds, \$1,000 + \$25 per bed

2. Non-deemed	For non-deemed hospitals with 25 beds or less, \$750 + \$25 per bed; For non-deemed hospitals with 26 or more beds, \$1,000 + \$25 per bed
(x) (dd) Critical access hospital	\$750 + \$25 per bed
(y) (ee) Private duty nursing agency	\$500
(z) (ff) Residential hospice facility	\$500
(aa) (gg) Prescribed Pediatric Extended Care Facility	\$500
(bb) (hh) Outpatient health care center	\$500

(3) Change in status of a licensed health facility.

(a) Name change or change of facility administrator. If a health facility changes the name of the facility as set forth on its license or the facility administrator changes, the licensee shall notify the Office of Inspector General of the facility's new name or new administrator within ten (10) calendar days of the effective date of the name change or administrator change.

(b) Change of location.

1. If a health facility or one (1) of its extensions or satellites changes location and certificate of need approval is not required prior to relocation, the licensee shall notify the Office of Inspector General of the new location within ten (10) calendar days of the effective date of the change.

2. The Office of Inspector General shall conduct an on-site inspection for a change of location if the facility is one (1) of the following levels of care:

- Freestanding birth center;
- Alzheimer's nursing home;
- Ambulatory surgical center;
- Chemical dependency treatment service;
- Group home;
- Non-deemed hospital;
- Intermediate care facility;
- Intermediate care facility for individuals with an intellectual or developmental disability (ICF/IID);
- Nursing facility;
- Nursing home;
- Personal care home;
- Psychiatric residential treatment facility;
- Renal dialysis facility;
- Residential hospice facility;
- Outpatient health care clinic; or
- Abortion facility.

(4)(a) Failure to renew a license by the annual renewal date shall result in a late penalty equal to twenty (20) percent of the renewal fee or twenty-five (25) dollars, whichever amount is greater.

(b) Continual failure to submit a completed and accurate renewal application or fee by the date specified by the cabinet may result in an enforcement action.

Section 4. Existing Facilities With Waivers. (1) The Inspector General shall deem an existing health facility to be in compliance with a facility specification requirement, even though the health facility does not meet fully the applicable requirement, if:

- The Inspector General has previously granted, to the health facility, a waiver for the requirement;
- The health facility is licensed by the cabinet;
- The health facility is in good standing; and
- The waived requirement does not adversely affect the health, safety, or welfare of a resident or patient.

(2) If the Inspector General determines that the waived requirement has adversely affected patient or resident health, safety or welfare, then:

- The Inspector General shall notify the health facility of the findings and the need to comply with the applicable administrative

regulations; and

(b) The health facility shall submit a written plan to ensure compliance, pursuant to Section 2(13)(b) of this administrative regulation.

Section 5. Variances. (1) The Inspector General may grant a health facility a variance from a facility specification requirement if the facility establishes that the variance will:

(a) Improve the health, safety, or welfare of a resident or patient; or

(b) Promote the same degree of health, safety, or welfare of a resident or patient as would prevail without the variance.

(2) A health facility shall submit a request for a variance, in writing, to the Office of Inspector General. The request shall include:

(a) All pertinent information about the facility;

(b) The specific provision of the administrative regulation affected;

(c) The specific reason for the request; and

(d) Evidence in support of the request.

(3) The Inspector General shall review and approve or deny the request for variance. The Inspector General may request additional information from the health facility as is necessary to render a decision. A variance may be granted with or without a stipulation or restriction.

(4) The Inspector General shall revoke a variance previously granted if the Inspector General determines the variance has not:

(a) Improved the health, safety, or welfare of a patient or resident; or

(b) Promoted the same degree of health, safety, or welfare of a patient or resident that would prevail without the variance.

1. The Inspector General shall notify the health facility of a decision to revoke a variance and the need to comply with the applicable regulatory requirement.

2. The health facility shall submit a written plan to ensure compliance, pursuant to Section 2(13)(b) of this administrative regulation.

Section 6. Variance Hearings. (1)(a) A health facility dissatisfied with a decision to deny, modify, or revoke a variance or a request for a variance may file a written request for a hearing with the Secretary of the Cabinet for Health and Family Services.

(b) The request shall be received by the secretary within twenty (20) days of the date the health facility receives notice of the decision to deny, modify, or revoke the variance or request for a variance.

(2) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 7. Adverse Action Procedures. (1) A health facility or health service that has received a preliminary order to close or other notice of adverse action:

(a) Shall receive a duplicate license from the Office of Inspector General indicating that the health facility or health service has an adverse action pending;

(b) Shall post the duplicate license in place of the original license;

(c) Shall be subject to periodic inspections by the inspecting agency to investigate complaints and ensure patient safety; and

(d) May continue to operate under duplicate license pending completion of the adverse action process, if patients and residents are not subjected to risk of death or serious harm.

(2) Until all appeals pursuant to KRS 216B.105 of the pending adverse action have been exhausted, the health facility or health service shall not have its:

(a) License renewed; or

(b) Duplicate license replaced.

Section 8. Denial and Revocation. (1) The cabinet shall deny or revoke a license if it finds that:

(a) In accordance with KRS 216B.105(2), there has been a substantial failure by the health facility or health service to comply with the provisions of:

1. KRS Chapter 216B; or

2. The administrative regulations applicable to the health facility's or health service's license;

(b) The health facility or health service fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 2(13) of this administrative regulation;

(c) The health facility or health service fails to comply with the annual renewal process described by Section 2(14) of this administrative regulation; or

(d) The health facility or health service denies access to the Office of Inspector General pursuant to Section 2(12)(b) of this administrative regulation.

(2) The denial or revocation of a health facility's or health service's license shall be issued pursuant to KRS 216B.105(2).

(3) Notice of the denial or revocation shall set forth the particular reasons for the action.

(4) In accordance with KRS 216B.105(2), the denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(5) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

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

(a) Form OIG 001, "Application for License to Operate a Health Facility or Health Service", July 2018~~[February 2017]~~;

(b) Form OIG 002, "Application for License to Operate a Chemical Dependency Treatment Service, Group Home, Psychiatric Residential Treatment Facility, or Residential Hospice Facility", January 2017;

(c) Form OIG 003, "Application for License to Operate a Hospital", January 2017;

(d) Form OIG 004, "Application for License to Operate a Home Health Agency, Non-Residential Hospice, or Private Duty Nursing Agency", January 2017;

(e) Form OIG 005, "Application for License to Operate a Renal Dialysis Facility, Freestanding or Mobile Technology~~[Health Service]~~, or Hospital-owned Pain Management~~[Special Health] Clinic~~, or Specialized Medical Technological Service", July 2018~~[January 2017]~~;

(f) Form OIG 006, "Application for License to Operate a Long Term Care Facility", January 2017;

(g) Form OIG 007, "Application for License to Operate a Family Care Home", January 2017; and

(h) Form OIG PR-1, "Program Review Fee – Worksheet Health Facility Identification Form", June 2014.

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

STEVEN D. DAVIS, Inspector General

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 6, 2018

FILED WITH LRC: July 13, 2018 at 8 a.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email Laura.Begin@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(As Amended at ARRS, September 11, 2018)

902 KAR 20:260. Hospital-owned pain management [Special health] clinics.

RELATES TO: KRS 198B.260, 216B.010-216B.131, 216B.990, 218A.175, 218A.205, 311,~~[343,]~~ 314, 29 C.F.R.

1910.1030(d)(2)(viii), 45 C.F.R. 160, 164, 21 U.S.C. 801 – 971, 42 U.S.C. 1320d-2 - 1320d-8

STATUTORY AUTHORITY: KRS 13A.100, 216B.042 [216B.040], 216B.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 [216B.040] and 216B.105 require the Cabinet for Health and Family Services to promulgate administrative regulations governing health facilities and health services. This administrative regulation establishes the[provides] minimum licensure requirements for the operation of a pain management[special health] clinic[clinics] if the clinic's primary practice component is the treatment of pain using controlled substances, and the clinic is located off the campus of the hospital that has majority ownership interest.

Section 1. Definitions. (1) "Diagnostic services" means services that are performed to ascertain and assess an individual's physical health condition.

(2) ~~"Governing authority" or "licensee" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the clinic is vested.~~ (3) "License" means an authorization issued by the cabinet for the purpose of operating a hospital-owned pain management[special health] clinic.

~~(3) [(4)] "Licensure agency" means the Office of the Inspector General, Cabinet for Health and Family Services.~~

~~(4) [(5)] "Treatment services" means services provided to an individual who, because of a physical health condition, is in need of medical assistance for the attainment of the individual's maximum level of physical function.~~

~~(5) "Unencumbered license" means a prescriber's license that has not been restricted by the state professional licensing board due to an administrative sanction or criminal conviction relating to a controlled substance.~~

Section 2. Scope of Operations and Services. A Kentucky-licensed hospital that is ~~(1) Special health clinics are institutions which provide diagnostic services or a low, limited level of treatment on an outpatient basis.~~

~~(2) A special health clinic shall not include the following:~~

~~(a) Any entity exempt from licensure pursuant to KRS 216B.020(2), including an office or clinic that is exempt from Certificate of Need pursuant to 900 KAR 6:130, Section 3;~~

~~(b) A home-based hospice program that provides treatment for pain using controlled substances or a residential hospice facility licensed pursuant to 902 KAR 20:140;~~

~~(c) The provision of surgical services like those allowed to be performed by ambulatory surgical centers licensed pursuant to 902 KAR 20:106; or~~

~~(d) The provision of procedures that are invasive or result in continued, prolonged follow-up care or treatment.~~

~~(3) Services licensed as a special health clinic may include:~~

~~(a) Family planning clinics;~~

~~(b) Pulmonary care clinics;~~

~~(c) Disability determination clinics;~~

~~(d) Weight loss clinics;~~

~~(e) Speech and hearing clinics;~~

~~(f) Wellness centers;~~

~~(g) Counseling centers;~~

~~(h) Sports medicine clinics;~~

~~(i) Dental clinics; or~~

~~(j) Other medical specialty clinics.~~

~~(4) An entity excluded from the definition of pain management facility pursuant to KRS 218A.175(1)(b) shall obtain separate licensure under this administrative regulation as a special health clinic for any outpatient clinic owned and operated by the hospital[entity] if:~~

~~(1) [(a)] The majority of the patients of the practitioners at the clinic are provided treatment for pain that includes the use of controlled substances; and~~

~~(2) [(b)] The clinic is located off-campus.~~

Section 3. Administration Requirements. (1) Administration

[Licensee].

(a) A hospital that owns and operates a pain management clinic[licensee] shall be legally responsible for the clinic's[service and for] compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the facility, including the Drug Abuse Prevention and Control Act (21 U.S.C. 801 to 971 et. seq.), KRS Chapter 218A, 902 KAR Chapter 20, and 902 KAR Chapter 55[service, limited to the scope of the service's certificate of need].

(b) A licensee shall establish lines of authority and designate an administrator who shall be principally responsible for the daily operation of the clinic.

(2) Policies. A clinic shall establish and follow written administrative policies covering all aspects of operation, including:

(a) A description of organizational structure, staffing, and allocation of responsibility and accountability;

(b) A description of linkages with inpatient facilities and other providers;

(c) Policies and procedures for the guidance and control of personnel performances;

(d) A written program narrative describing in detail the:

1. Services offered;

2. Methods and protocols for service delivery;

3. Qualifications of personnel involved in the delivery of the services; and

4. Goals of the services;

(e) A description of the administrative and patient care records and reports;

(f) Procedures to be followed if an individual seeks or is in need of care and treatment that is beyond the scope of services offered by clinic, which may include:

1. Advising the individual to seek services elsewhere;

2. Making a referral on behalf of the individual; or

3. Contacting emergency medical services; and

(g) Procedures to be followed if the clinic performs any functions related to the storage, handling, and administration of drugs and biologicals.

(3) Patient care policies. The clinic's medical director shall develop ~~patient care policies[shall be developed by the medical director]~~ in collaboration with a group of the clinic's other professionals to address all medical aspects of the clinic's program, including:

~~[a] [1.] A description of the services the clinic provides directly and those provided through agreement;~~

~~[b] [2.] Guidelines for the medical management of health problems, which include the conditions requiring medical consultation or patient referral;~~

~~[c] [3.] Guidelines for the maintenance of medical records in accordance with subsection (6) of this section; and~~

~~[d] [4.] Procedures for review and evaluation of the services provided by the clinic at least annually.~~

~~(4) Personnel.~~

~~(a) Medical[Clinical] director. A clinic's medical director[clinic shall have a clinical director who]:~~

~~1. Shall meet the requirements of Section 6(3) and (4) of this administrative regulation[be]:~~

~~a. A physician having a full and active license to practice in Kentucky and who is responsible for all medical aspects of the clinic except those clinics which provide only speech or audiological services;~~

~~b. Except for a clinic that provides only speech or audiological services, an advanced practice registered nurse practitioner having a full and active license to practice in Kentucky and who is responsible for the clinical activities of the clinic if the clinic provides services that do not exceed the scope of services allowed under KRS Chapter 314; or~~

~~c. A dentist having a full and active license to practice in Kentucky if the clinic provides only dental services;~~

~~2. Shall provide direct services, supervision, and consultation to the clinic's staff;~~

~~3. Shall participate with a group made up of clinic professionals, including at least one (1) nurse,[or one (1) dental hygienist if the clinic provides only dental services,] in the~~

development of:

a. Execution and periodic review of the clinic's written policies and services as described in subsection (3) of this section; and

b. Written program narrative describing in detail:

(i) Each service offered;

(ii) Methods and protocols for service delivery;

(iii) Qualifications of personnel involved in the delivery of the services; and

(iv) Goals of each service[signed by the clinical director which include standing orders, rules of practice, and medical directives that apply to services provided by the clinic and direct the step-by-step collection of subjective and objective data from the patient, direct data analysis, direct medical action depending on the data collected, and include the rationale for each decision made];

4. Shall periodically review the clinic's patient records, provide medical orders, and provide medical care services to patients of the clinic; and

5. ~~[Shall be present for consultation weekly and be available within one (1) hour through direct telecommunication for consultation, assistance with medical emergencies, or patient referral; and~~

6. ~~May serve as both the clinic's administrator and medical[clinical] director.~~

(b) The clinic shall:

1. Employ, directly or by contract, a sufficient number of qualified personnel (e.g., physicians, nurses, therapists, or technicians~~[-, or dental hygienists]~~) to provide effective patient care and all other related services; and

2. Maintain written personnel policies that[which] are made available to all employees.

(c) There shall be a written job description for each position that[which] shall be reviewed and revised as necessary.

(d) Current personnel records shall be maintained for each employee and include the following:

1. Name, address, and Social Security number;

2. Evidence of current registration, certification, or licensure of personnel;

3. Records of training and experience; and

4. Records of performance evaluation.

(5) In-service training. All personnel shall participate in annual in-service training programs relating to their respective job activities, including thorough job orientation for new employees.

(6) Medical records.

(a) The clinic shall maintain accurate, readily accessible, and complete medical records, which contain at least the following:

1. Medical or social history relevant to the services provided, including data obtainable from other providers;

2. Name of the patient, referring practitioner, if any, and practitioner's orders for special diagnostic services;

3. Date and description of each medical visit or contact, to include condition or reason necessitating visit or contact, assessment, diagnosis, services provided, names of personnel who provided the services, medications and treatments prescribed, and disposition made;

4. Reports of all physical examinations and laboratory and other test findings relevant to the services provided; and

5. Documentation of all referrals made, including reason for referral, to whom patient was referred, and any information obtained from referral source.

(b) Medical records shall be the property of the clinic.

(c) The original medical record shall not be removed from the clinic except in compliance with a court order or subpoena.

(d) Copies of a medical record or portions of the record may be used and disclosed, in accordance with this administrative regulation.

(e) Confidentiality/Security; Use and Disclosure.

1. The clinic shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

2. The clinic may use and disclose medical records. Use and

disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

3. This administrative regulation shall not be construed to forbid the clinic from establishing higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(f) Transfer of records. The clinic shall:

1. Establish systematic procedures to assist in continuity of care if the patient moves to another source of care; and

2. Upon proper release, transfer medical records or an abstract if requested.

(g) Retention of records. After the patient's death or discharge, the complete[completed] medical record shall be placed in an inactive file and retained for:

1. Six (6) years; or

2. If a minor, three (3) years after the patient reaches the age of majority under state law, whichever is longer.

(h) The clinic shall:

1. Make provisions for the written designation of a specific location for the storage of medical records if the[~~special health~~] clinic ceases to operate because of disaster or for any other reason; and

2. Safeguard the record and its content against loss, defacement, and tampering.

(7) Kentucky Health Information Exchange (KHIE).

(a) A clinic shall participate in the KHIE pursuant to the requirements of 900 KAR 9:010.

(b) If a clinic has not implemented a certified electronic health record, the clinic may meet the requirement of paragraph (a) of this subsection by participating in the direct secure messaging service provided by KHIE.

(8) Quality assurance program.

(a) Each clinic shall have an ongoing quality assurance program that:

1. Monitors and evaluates the quality and appropriateness of patient care;

2. Evaluates methods to improve patient care;

3. Identifies and corrects deficiencies within the clinic;

4. Alerts the designated physician or prescribing practitioner to identify and resolve recurring problems; and

5. Provides for opportunities to improve the clinic's performance and to enhance and improve the quality of care provided to patients.

(b) The medical director shall ensure that the quality assurance program includes the following components:

1. The identification, investigation, and analysis of the frequency and causes of adverse incidents to patients;

2. The identification of trends or patterns of incidents;

3. The development and implementation of measures to correct, reduce, minimize, or eliminate the risk of adverse incidents to patients; and

4. The documentation of these functions and periodic review no less than quarterly of this information by the designated physician or prescribing practitioner[The clinic shall:

(a) Carry out or arrange for an annual evaluation of its total program;

(b) Consider the findings of the evaluation; and

(c) Take corrective action, if necessary.

(9) The evaluation required by subsection (8) of this section shall include:

(a) The utilization of clinic services, including at least the number of patients served and the volume of services;

(b) A representative sample of both active and closed clinical records; and

(c) The clinic's health care policies].

Section 4. Provision of Services.[A licensed special health clinic shall comply with the requirements listed in Sections 3 and 5 of this administrative regulation, the clinic's program narrative, and the additional requirements of this section which relate to the particular services offered by the licensee.] (1) Equipment used for direct patient care by a [special health] clinic shall comply with the

following:

(a) The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative and properly calibrated;

(b) All personnel engaged in the operation of equipment shall have adequate training and be currently licensed, registered, or certified in accordance with applicable state statutes and administrative regulations; and

(c) There shall be a written training plan for the adequate training of personnel in the safe and proper usage of the equipment.

(2) Diagnostic services shall be performed in accordance with the [special health] clinic's protocol.

(3) Diagnostic services shall be provided under the supervision of a physician[, advanced practice registered nurse if the clinic provides services that do not exceed the scope of services allowed under KRS Chapter 314, or a dentist if the clinic provides only dental services,] who is qualified by advanced training and experience in the use of the specific technique utilized for diagnostic purposes.

(4) Physical examination services shall be nonabusive and provided in a manner that[which] ensures the greatest amount of safety and security for the patient.

(5) Personnel performing a physical examination shall:

(a) Have adequate training and be currently licensed, registered, or certified in accordance with applicable Kentucky statutes and administrative regulations; and

(b) Be limited by the relevant scope of practice of state licensure.

(6) At least one (1) physician and one (1) advanced practice registered nurse, licensed practical nurse, or registered nurse shall be on duty in the clinic during all hours the facility is operational.[A wellness center shall have at least one (1) person on staff, employed full time, who has current advanced cardiac life support certification.

(7) Personnel. Unless exempt pursuant to subsection (8) of this section, a clinic shall have a staff that includes at least:

(a) 1. One (1) physician;

2. One (1) advanced practice registered nurse; or

3. One (1) dentist if the clinic provides only dental services;

(b) One (1) licensed nurse, or one (1) dental hygienist if the clinic provides only dental services; and

(c) Other staff or ancillary personnel that are necessary to provide the services essential to the clinic's operation.

(8) A physician practice that is acquired by a hospital and obtains licensure as a special health clinic shall have at least:

(a) One (1) physician; and

(b) Other staff or ancillary personnel that are necessary to provide services essential to the clinic's operation.

(9) The licensed nurse[, or dental hygienist if applicable, shall:

(a) Participate in the development, execution, and periodic review of the written policies governing and the services the clinic provides;

(b) Participate with the clinical director in periodic review of patient health records;

(c) Provide services in accordance with clinic policies, established protocols, the Nurse Practice Act (KRS Chapter 314), or KRS Chapter 313 if the individual is a dental hygienist, and with administrative regulations promulgated thereunder;

(d) Arrange for, or refer patients to, needed services that cannot be provided at the clinic; and

(e) Assure that adequate patient health records are maintained and transferred if a patient is referred.]

Section 5. Physical environment. (1) Accessibility. The clinic shall meet requirements for making buildings and facilities accessible to and usable by persons with a disability pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Fire safety. An initial license to operate a[special health] clinic or a new license to operate a clinic upon approval of a change of location shall not be issued before the clinic obtains approval from the State Fire Marshal's office.

(3) Housekeeping and maintenance services.

(a) Housekeeping.

1. The clinic shall maintain a clean and safe facility free of unpleasant odors.

2. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other sources.

(b) Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

1. The clinic shall ensure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences, is[are] in good repair;

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures shall be in good repair. Windows and doors that[which] can be opened for ventilation shall be screened;

3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly; and

4. A pest control program shall be in operation in the clinic. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(4) The clinic shall develop written infection control policies that are consistent with Centers for Disease Control guidelines and include the:

(a) Prevention of disease transmission to and from patients, visitors, and employees, including:

1. Universal blood and body fluid precautions;

2. Precautions against airborne transmittal of infections;

3. Work restrictions for employees with infectious diseases; and

4. Cleaning, disinfection, and sterilization methods used for equipment and the environment; and

(b) Provision of in-service education programs annually on the cause, effect, transmission, prevention, and elimination of infections.

(5) Hazardous cleaning solutions, compounds, and substances shall be:

(a) Labeled;

(b) Stored in closed metal containers;

(c) Kept separate from other cleaning materials; and

(d) Kept in a locked storage area apart from the exam room.

(6) The facility shall be kept free from insects and rodents and their nesting places.

(7) Garbage and trash:

(a) Shall be removed from the premises regularly; and

(b) Containers shall be cleaned daily.

(8) A clinic shall establish and maintain a written policy for the handling and disposal of wastes, including any infectious, pathological, or contaminated wastes, which shall include the requirements established in this subsection.

(a) Sharp wastes, including broken glass, scalpel blades, and hypodermic needles, shall be segregated from other wastes and placed in puncture-resistant containers immediately after use.

(b) A needle or other contaminated sharp waste shall not be recapped, purposely bent, broken, or otherwise manipulated by hand as a means of disposal except as permitted by the Centers for Disease Control and the Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

(c) A sharp waste container shall be incinerated on or off-site or rendered nonhazardous.

(d) Any nondisposable sharp waste shall be placed in a hard walled container for transport to a processing area for decontamination.

(9)(a) Disposable waste shall be:

1. Placed in a suitable bag or closed container so as to prevent leakage or spillage; and

2. Handled, stored, and disposed of in a way that minimizes direct exposure of personnel or patients to waste materials.

(b) The clinic shall establish specific written policies regarding handling and disposal of waste material.

(10) A licensee owned or operated incinerator used for the disposal of waste shall be in compliance with all applicable Kentucky statutes and administrative regulations.

Section 6. Standards for prescribing and dispensing controlled substances~~[in a special health clinic]~~. (1) All licensed prescribers of a~~[special health]~~ clinic authorized to prescribe or dispense controlled substances shall comply with the professional standards relating to the prescribing and dispensing of controlled substances established by their professional licensing boards, including 201 KAR 9:260 and 201 KAR 20:057.

(2) A representative from the Office of Inspector General shall review the~~[special health]~~ clinic's records, including the clinic's patient records, to verify facility compliance with administrative regulations promulgated by professional licensing boards pursuant to KRS 218A.205 ~~that~~~~[which]~~ establish standards for licensees authorized to prescribe or dispense controlled substances.

(3) A~~[special health]~~ clinic~~[described by Section 2(3) of this administrative regulation in which the majority of the patients of the practitioners at the clinic are provided treatment for pain that includes the use of controlled substances shall comply with the requirements established in this subsection. (a) The clinic]~~ shall not contract with or employ a physician or prescribing practitioner:

(a)~~[1-]~~ Whose Drug Enforcement Administration number has ever been revoked;

(b)~~[2-]~~ Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction;

(c)~~[3-]~~ Who has had any disciplinary limitation placed on his or her license by:

1.~~[a-]~~ The Kentucky Board of Medical Licensure;

2.~~[b-]~~ The Kentucky Board of Nursing;

3.~~[c-]~~ The Kentucky Board of Dentistry;

4.~~[d-]~~ The Kentucky Board of Optometric Examiners;

5.~~[e-]~~ The State Board of Podiatry;

6.~~[f-]~~ Any other board that licenses or regulates a person who is entitled to prescribe or dispense controlled substances to humans; or

7.~~[g-]~~ A licensing board of another state if the disciplinary action resulted from illegal or improper prescribing or dispensing of controlled substances; or

(d)~~[4-]~~ Who has been convicted of or pleaded guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs, including a controlled substance listed as Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V in this state or the United States.

(4)~~[(b)]~~ The clinic's medical director shall:

(a)~~[1-]~~ Be board certified and have a full, active, and unencumbered license to practice medicine in the commonwealth issued under KRS Chapter 311;

(b)~~[2-]~~ Be physically present practicing medicine in the clinic for at least fifty (50) percent of the time that patients are present in the clinic;

(c)~~[3-]~~ Within ten (10) days after the clinic hires a prescriber of controlled substances or ten (10) days after termination of a prescriber of controlled substances, notify the cabinet in writing and report the name of the prescriber; and

(d)~~[4-]~~ Meet one (1) of the following:

1.~~[a-]~~ Hold a current subspecialty certification in pain management by a member board of the American Board of Medical Specialties, or hold a current certificate of added qualification in pain management by the American Osteopathic Association Bureau of Osteopathic Specialists;

2.~~[b-]~~ Hold a current subspecialty certification in hospice and palliative medicine by a member board of the American Board of Medical Specialties or hold a current certificate of added qualification in hospice and palliative medicine by the American Osteopathic Association Bureau of Osteopathic Specialists;

3.~~[c-]~~ Hold a current board certification by the American Board of Pain Medicine;

4.~~[d-]~~ Hold a current board certification by the American Board of Interventional Pain Physicians; or

5.~~[e-]~~ Have completed a fellowship in pain management or an

accredited residency program that included a rotation of at least five (5) months in pain management.

(5)~~[(e)]~~ The clinic shall, within ten ~~(10)~~ calendar~~[(40)]~~ days after termination of the medical director, notify the cabinet of the identity of the individual designated as medical director, including the identity of any interim medical director until a permanent director is secured for the clinic.

(6)~~[(d)]~~ Each licensed physician who prescribes or dispenses a controlled substance to a patient in the clinic as part of his or her employment agreement with the clinic shall successfully complete a minimum of ten (10) hours of Category I continuing medical education in pain management during each registration period throughout his or her employment agreement with the clinic.

Section 7. Denial and Revocation. (1) The cabinet shall deny a ~~clinic's~~~~[an]~~ application~~[for License to Operate a Renal Dialysis Facility, Mobile Health Service, Special Health Clinic, or Specialized Medical Technology Service]~~, incorporated by reference in 902 KAR 20:008, Section 9~~[(8)]~~(1)(e), if:

(a)~~[Any person with ownership interest in the special health clinic has had previous ownership interest in a health care facility that had its license revoked or voluntarily relinquished its license as the result of an investigation or pending disciplinary action;~~

(b) ~~Any person with ownership interest in]~~ The clinic has been discontinued from participation in the Medicaid Program due to fraud or abuse of the program;

(b)~~[(e)]~~ An administrative sanction or criminal conviction relating to controlled substances has been imposed on the clinic or any ~~owner or~~ individual under contract or employed directly by the clinic for an act or omission done within the scope of the clinic's license or the individual's employment; or

(c)~~[(d)]~~ The applicant fails, after the initial inspection, to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section 2~~[(13)]~~(5).

(2) If, during the initial inspection of the~~[special health]~~ clinic, the cabinet has probable cause to believe that a physician or other prescriber practicing at the facility may be engaged in the improper, inappropriate, or illegal prescribing or dispensing of a controlled substance, the cabinet shall:

(a) Refer the physician or other prescriber practicing at the clinic to the appropriate professional licensing board and appropriate law enforcement agency; and

(b) Withhold issuing a license to the clinic pending resolution of any investigation into the matter by a licensing board or law enforcement agency, and resolution of the appeals process, if applicable.

(3) The cabinet shall revoke a~~[special health]~~ clinic's license if it finds that:

(a) In accordance with KRS 216B.105(2), there has been a substantial failure by the clinic to comply with the provisions of this administrative regulation;

(b) An administrative sanction or criminal conviction relating to controlled substances is imposed on the clinic or any individual employed by the clinic for an act or omission done within the scope of the clinic's license or the individual's employment;

(c) The clinic fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section 2~~[(13)]~~(5); or

(d) The clinic is terminated from participation in the Medicaid program pursuant to 907 KAR 1:671.

(4)(a) The denial or revocation of a~~[special health]~~ clinic's license shall be mailed to the applicant or licensee by certified mail, return receipt requested, or by personal service.

(b) Notice of the denial or revocation shall set forth the particular reasons for the action.

(5) The denial or revocation shall become final and conclusive thirty (30) days after notice is given unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(6) Urgent action to suspend a license.

(a) The cabinet shall take urgent action to suspend a ~~[special health]~~ clinic's license if the cabinet has probable cause to believe

that:

1. The continued operation of the clinic would constitute a danger to the health, welfare, or safety of the facility's patients; or

2. A physician or other prescriber practicing at the clinic may be engaged in the improper or inappropriate prescribing or dispensing of a controlled substance.

(b) 1. The [special health] clinic shall be served with notice of the hearing on the urgent suspension to be held no sooner than twenty (20) days from the delivery of the notice.

2. Notice of the urgent suspension shall set forth the particular reasons for the action.

(c) If the cabinet issues an urgent suspension of the clinic's license pursuant to paragraph (a)2_ of this subsection, the cabinet shall refer the physician or other prescriber practicing at the [special health] clinic to the appropriate professional licensing board and appropriate law enforcement agency.

(7) Notice of a hearing on an urgent suspension shall be served on the clinic by certified mail, return receipt requested, or by personal service.

(8)(a) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the urgent suspension.

(b) The urgent suspension shall be affirmed if there is substantial evidence of an immediate danger to the public health, safety, or welfare.

(9) The decision rendered under subsection (8) of this section shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to circuit court.

(10) If the cabinet issues an urgent suspension, the cabinet shall take action to revoke the [special health] clinic's license pursuant to subsection (3) of this section if:

(a) The clinic fails to attend the expedited hearing;

(b) The decision rendered under subsection (8) of this section affirms that there is substantial evidence of an immediate danger to the public health, safety, or welfare; or

(c) Referral to a professional licensing board and law enforcement agency in accordance with subsection (6)(c) of this section results in an administrative sanction or criminal conviction relating to controlled substances against a physician or prescribing practitioner employed by, or under contract with, the clinic.

(11) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

STEVEN D. DAVIS, Inspector General

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 6, 2018

FILED WITH LRC: July 11, 2018 at 9 a.m.

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

Office of Inspector General

Division of Health Care

(As Amended at ARRS, September 11, 2018)

902 KAR 20:275. Freestanding or mobile technology [health services].

RELATES TO: KRS 211.842 – 211.852, 216B.010-216B.170[216B.134], 216B.990,[311, 313, 314, 319A, 327, 334A.] 29 C.F.R. 1910.1030(d)(2)(vii), 45 C.F.R. 160, 164, 42 U.S.C. 263b(f)(1)(G), 1320d

STATUTORY AUTHORITY: KRS 216B.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes the minimum licensure requirements for the

operation of and services provided by a freestanding or mobile technology unit[provider][health services].

Section 1. Definitions. (1) ["Computed tomography (CT) scanning" means a radiological diagnostic imaging procedure that shows cross sectional images of internal body structures.

(2) "Governing authority" or "licensee" means the individual, agency, partnership, or corporation in which the ultimate responsibility and authority for the conduct of the institution is vested.

(3) "IV therapy" means the administration, by a registered nurse under the supervision of a licensed physician, of various pharmaceutical and nutritional products by intravenous, subcutaneous, or epidural routes.

(4) "IV therapy service" means pharmaceutical and nursing services, including direct hands-on care, limited to and necessary for the:

(a) Preparation, dispensing, and delivery of pharmaceutical and nutritional products and equipment; and

(b) Related clinical consultation, training, and assessment or care incidental to initial start-up of IV therapy.

(5) "License" means an authorization issued by the cabinet for the purpose of operating a freestanding or mobile technology unit[health services].

(2) [(6) "Lithotripter" means a noninvasive treatment technique that utilizes shock waves to shatter kidney stones. (7)] "Magnetic resonance imaging" or "MRI" means a diagnostic imaging modality that [which] utilizes magnetic resonance, an interaction between atoms and electromagnetic fields, to project images of internal body structures.

(3) [(8) "Other diagnostic and treatment services" means those health services which are determined to require licensure pursuant to KRS 216B.042 as a mobile health service. (9)] "Positron emission tomography scanning" or "PET scanning" means a procedure that allows the study of metabolic processes, such as oxygen consumption and utilization of glucose and fatty acids, by capturing images of cellular activity or metabolism by tracking the movement of radioactive tracers throughout the body.[an imaging procedure that uses a radioactive substance to reveal how organs and tissues are working.

(10) "Qualified anesthesiologist" means a person who:

(a) Is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery;

(b) Is board certified or in the process of being certified by the American Board of Anesthesiology or the American Osteopathic Board of Surgery; and

(c) Meets the criteria established by the mobile health service's governing authority.

(11) "Qualified urologist" means a person who:

(a) Is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery;

(b) Is board certified or is in the process of being certified by the American Board of Urology or the American Osteopathic Board of Surgery; and

(c) Meets criteria established by the mobile health service's governing authority.

(12) "Registered nurse" is defined by KRS 314.011(5).

(13) "Therapy practice" means a practice:

(a) That does not meet the licensure exemption criteria of KRS 216B.020(2); and

(b) Employs, directly or by contract, at least one (1) or any combination of the following practitioners:

1. Occupational therapists and occupational therapy assistants licensed pursuant to KRS Chapter 319A;

2. Physical therapists and physical therapy assistants licensed or certified pursuant to KRS Chapter 327; or

3. Speech language pathologists and speech language pathology assistants licensed pursuant to KRS Chapter 334A.]

Section 2. Scope of Operations. In accordance with KRS 216B.020(3)(c) and (f), a freestanding or mobile technology unit that provides diagnostic or therapeutic equipment or procedures, i.e., MRI, PET **scanning**, cardiac catheterization, or megavoltage

radiation therapy services, shall be licensed by the cabinet[Operation and Services. (1) Mobile health services:

(a) Shall provide medical services in various locations, which may include settings such as the office of the licensee, a health facility licensed under KRS Chapter 216B, or a home or community-based setting; and

(b) May utilize a specially equipped vehicle, including a:

1. Van;
2. Trailer; or
3. Mobile home.

(2) A mobile health service shall not include a private office or entity exempt from licensure pursuant to KRS 216B.020(2).

(3) Mobile health services shall include:

- (a) Mobile diagnostic imaging and examination services; or
- (b) Mobile treatment services.

(4) Mobile health services may be:

- (a) Provided through the use of a mobile vehicle; or
- (b) Performed at various locations].

Section 3. Administration. (1) Licensee.

(a) The licensee shall be legally responsible for:

1. All activities of the licensed freestanding or mobile technology unit[health service]; and

2. Compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the freestanding[service] or mobile technology unit[, limited to the scope of the service's certificate of need].

(b) The licensee shall:

1. Establish lines of authority; and

2. Designate an administrator who shall be principally responsible for the daily operation of the freestanding[service] or mobile technology unit.

(2) Policies and procedures.

(a) The licensee shall develop and implement policies and procedures that address:

1. Care, treatment, procedures, services, and qualifications of personnel involved in the delivery of services; and

2. The operation of equipment.

(b) The policies and procedures shall be revised as needed to accurately reflect actual operations.

(c) The licensee shall establish a time period for review of all policies and procedures.

(d) The policies and procedures shall be accessible either by hard copy or electronically.

(3) Personnel.

(a) The licensee shall employ a sufficient number of qualified staff to operate

equipment in a manner that safely and effectively meets the needs and condition of the patients.

(b) Staffing numbers and training shall:

1. Meet the recommendations of the equipment manufacturers;
2. Adhere to current professional organizational standards; and
3. Comply with all local, state, and federal laws.

(c) Additional staff members shall be provided if the licensee or cabinet determines that the staff on duty is inadequate to effectively and safely operate the equipment.

(d) Each[All] staff member operating or maintaining equipment shall be assigned duties and responsibilities in accordance with the individual's capability.

(e) Assigned duties shall be:

1. In writing; and

2. Reviewed on an annual basis by the staff member and supervisor.

(f) [There shall be] A medical director [who]:

1. Shall be a physician who is responsible for the quality of medical equipment services provided to patients; and

2. May serve as the administrator as described by subsection (1)(b) of this section.

(4) Personnel records. The licensee shall maintain current personnel records for each employee that shall contain the following:

(a) Name, address, and Social Security number;

(b) Evidence of current registration, certification, or

professional licensure:

(c) Documentation of training and experience;

(d) Performance evaluations; and

(e) Record of pre-employment and regular health exams related to employment.

(5) In-service training. Staff shall attend training programs relating to their respective job activities. The training programs shall include:

(a) Thorough job orientation for new employees; and

(b) In-service training programs, emphasizing competence and professionalism necessary for effective health care.

(6) Health assessment. All staff members who have contact with patients shall:

(a) Within twelve (12) months prior to initial patient contact, have a health assessment; and

(b) Comply with the tuberculosis (TB) testing requirements established in 902 KAR 20:205.

(7) Medical records.

(a) The licensee shall maintain medical records that contain the following:

1. Medical and social history relevant to each service provided, including data obtained from other providers;

2. Physician's orders if an order is required for a specific diagnostic service;

3. Description of each medical visit or contact, including a description of the:

a. Condition or reason for the visit or contact;

b. Assessment;

c. Diagnosis;

d. Services provided;

e. If applicable, medications and treatments prescribed; and

f. Disposition made;

4. Reports of all physical examinations, laboratory, x-ray, and other test findings related to each service provided; and

5. Documentation of all referrals made, including reason for referral and to whom patient was referred.

(b) Ownership.

1. Medical records shall be the property of the freestanding or mobile technology unit[service].

2. The original medical record shall not be removed except by court order.

3. Copies of a medical record or portions of the record may be used and disclosed, in accordance with the requirements established in this subsection[administrative regulation].

(c) Confidentiality and security: use and disclosure.

1. The freestanding or mobile technology unit[service] shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

2. The freestanding or mobile technology unit[service] may use and disclose medical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

3. This administrative regulation shall not[be construed to] forbid the freestanding or mobile technology unit[service] from establishing higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(d) Transfer of records. The licensee shall:

1. Establish procedures to assist in continuity of care if the patient moves to another source of care; and

2. Upon proper release, transfer medical records or an abstract, if requested.

(e) Retention of records. After the patient's death or discharge, the completed medical record shall be placed in an inactive file and retained for:

1. Six (6) years; or

2. If a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(f) Radiology records shall be retained in accordance with 42 U.S.C. 263b(f)(1)(G).

(g) A specific location shall be designated by the licensee for the maintenance and storage of the unit's/service's medical records.

(h) The licensee shall ensure safe storage of medical records if the unit/service ceases to operate because of disaster or for any other reason.

(i) The licensee shall safeguard the record and its content against loss, defacement, and tampering.

Section 4. Reporting: Incidents and Accidents. (1) A record of each incident or accident occurring in the equipment location area involving patients or staff members shall be retained for a period of two (2) years from the date of the incident or accident.

(2) A serious incident, accident, or medical condition as established in subsection (3) of this section and any illness resulting in death or inpatient hospitalization shall be reported via telephone to the next-of-kin or responsible party immediately and in writing to the Office of Inspector General within ten (10) days of the occurrence.

(3) A serious incident, accident, or medical condition shall include any of the following:

- (a) Major permanent loss of function;
- (b) A procedure on the wrong patient or wrong body part;
- (c) Fractures of major limbs or joints;
- (d) Severe burns, lacerations, or hematomas; and
- (e) Actual or suspected abuse or mistreatment of patients.

(4) Reports made to the Office of Inspector General shall contain:

- (a) Facility name;
- (b) Patient age and sex;
- (c) Date of incident or accident;
- (d) Location;
- (e) Extent or type of injury; and
- (f) Means of treatment, e.g., hospitalization.

(5) A significant medication error or significant adverse medication reaction as established in subsection (6) of this section that requires intervention shall be reported immediately to the:

- (a) Patient, next-of-kin, or responsible party;
- (b) Prescriber;
- (c) Supervising staff member; and
- (d) Administrator.

(6) A significant medication error or significant adverse medication reaction shall include any event that is unintended and undesirable, including an unexpected effect of a prescribed medication or of a medication error that:

- (a) Requires discontinuing a medication or modifying the dose;
- (b) Requires hospitalization;
- (c) Results in disability;
- (d) Requires treatment with a prescription medication;
- (e) Results in cognitive deterioration or impairment;
- (f) Is life-threatening; or
- (g) Results in death.

(7) Changes in the patient's condition, to the extent that a major cardiac event or other serious health concern is evident, shall be reported immediately to the:

- (a) Attending physician;
- (b) Next-of-kin or responsible party; and
- (c) On-site manager.

Section 5. Provision of Services. (1) Care, treatment, procedures, or services shall be provided, given, or performed effectively and safely in accordance with an order from a physician or other licensed/legally authorized health care practitioner acting within his or her scope of practice.

(2) Precautions shall be taken for a patient who:

- (a) Has a special condition, such as pacemaker, pregnancy, or Alzheimer's disease; or
- (b) May be susceptible to deleterious effects as a result of the treatment.

(3) If a patient or potential patient has a communicable disease, a physician or other licensed/legally authorized health

care practitioner acting within his or her scope of practice shall ensure/insure that:

(a) Adequate care is provided to prevent the spread of the disease; and

(b) The staff members are adequately trained and qualified to:

1. Manage the patient; or

2. Transfer the patient to an appropriate facility, if necessary.

(4) If the licensee engages a source to provide services normally provided by the

staff, e.g., staffing, training, equipment maintenance, there shall be a written agreement with the source that describes:

(a) How and when the services are to be provided;

(b) The exact services to be provided; and

(c) A statement that these services are to be provided by qualified individuals.

(5) A current listing of all types of treatment and procedures offered shall be available.

(6) Anesthesia services. [If provided,] After the administration of a general anesthetic, a patient shall be attended by a physician until the patient may be safely placed under post-operative or procedure supervision by the nursing staff who shall then attend the patient until:

(a) The patient has regained full consciousness; or

(b) The effects of the anesthetic have sufficiently subsided for the patient to be able to summon aid if needed.

(7) Laboratory services.

(a) If [Laboratory services] required in connection with the treatment or procedure [to be] performed, laboratory services shall be provided directly or through an arrangement with a licensed laboratory/arrangements made to obtain the services.

(b) Laboratory supplies shall not be expired.

(8) Megavoltage radiation therapy services. A licensee that provides megavoltage radiation therapy services shall comply with the requirements of this subsection.

(a) Sufficient personnel shall be present to supervise and perform the services provided by the facility, including at least one (1):

1. Certified radiation operator; or

2. Physician with specialized training and experience to perform the scope of radiation therapy services provided.

(b) The licensee shall be currently licensed or registered pursuant to KRS 211.842 to 211.852.

(c) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

(d) Reports of interpretations shall be written or dictated and signed by the radiologist or physician.

(e) The use of all x-ray apparatus shall be limited to certified radiation operators or physicians.

(f) Only a certified radiation operator or physician may apply or remove radium element, its disintegration products, and radioactive isotopes.

(g) Proper safety precautions shall be maintained against fire, explosion, electrical, and radiation hazards.

(9) Adverse conditions.

(a) If a patient experiences any adverse condition or complication during or after the performance of the treatment or procedure, the patient shall remain at the equipment location until the condition or complication is eliminated, as determined by the physician, and the patient is stabilized.

(b) A patient who requires care beyond the capability of the equipment or staff shall be transferred to an appropriate facility.

(10) Patient instruction. Written instructions, if applicable, shall be issued to each patient upon discharge, including:

(a) Signs and symptoms of possible complications;

(b) Telephone number of the location of the equipment, the attending physician, or other knowledgeable professional staff member, if any complication occurs or questions arise;

(c) An emergency telephone number if any complication occurs;

(d) Limitations regarding activities or foods; and

(e) Date for follow-up or return visit, if applicable.

Section 6. Rights and Assurances. (1) The licensee shall develop and post in a conspicuous place in a public area a grievance or complaint procedure to be exercised on behalf of the patients, including the address and phone number of the Office of Inspector General.

(2) Care, treatment, procedures, and services provided, and the charges for each shall be delineated in writing.

(3) Patients shall be made aware of all charges and services, as verified by the signature of the patient or responsible party.

(4) ~~Storage~~~~Adequate safeguards~~ shall be provided to protect a patient's~~for protection and storage of patients'~~ personal belongings.

(5) Patient rights shall be guaranteed, prominently displayed, and the patient shall be informed of these rights, including:

(a) The care, treatment, procedures, and services to be provided;

(b) Informed consent for care, treatment, procedures, and services;

(c) Respect for the patient's property;

(d) Freedom from mental and physical abuse and exploitation;

(e) Privacy while being treated and ~~while~~ receiving care;

(f) Respect and dignity in receiving care, treatment, procedures, and services;

(g) The consequences of refusal of the treatment or procedure;

(h) Refusal of experimental treatment and drugs; and

(i) Confidentiality and privacy of records.

(6) Except in an emergency, documentation regarding informed consent shall be properly executed prior to the treatment or procedure.

Section 7. Medication. (1) Medication orders.

(a) Medications, including oxygen, shall be administered to patients only upon the order of a physician or other ~~licensed/legally authorized~~ health care practitioner acting within his or her scope of practice.

(b) All orders, including verbal, shall be:

1. Received only by a ~~licensed/legally authorized~~ health care practitioner acting within his or her scope of practice; and

2. Authenticated and dated by a physician or other ~~licensed/legally authorized~~ health care practitioner acting within his or her scope of practice pursuant to the licensee's policies and procedures, but no later than seventy-two (72) hours after the order is given.

(c) Verbal orders received shall include:

1. The time of receipt of the order;

2. Description of the order; and

3. Identification of the physician or other ~~licensed/legally authorized~~ health care practitioner and the individual receiving the order.

(2) Administering medication.

(a) Each medication dose administered shall be properly recorded in the patient's record as the medication is administered.

(b) The medication administration record shall include the:

1. Name of the medication;

2. Dosage;

3. Mode of administration;

4. Date;

5. Time; and

6. Signature of the individual administering the medication.

(c) Initials may be utilized in lieu of a signature and identification of the individual's initials shall be located within the record.

(3) Medication storage.

(a) Medications shall be stored:

1. Under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, safety, and security; and

2. Safeguarded to prevent access by unauthorized persons.

(b) Expired or discontinued medications shall not be stored with current medications.

(c) Storage areas shall:

1. Be of sufficient size for clean and orderly storage;

2. Be locked if not under direct observation by a licensed health care practitioner; and

3. Not be located near sources of heat, humidity, or other hazards that may negatively impact medication effectiveness or shelf-life.

(d)1. Medications requiring refrigeration shall be stored in a refrigerator at the temperature established by the U.S. Pharmacopeia (36 - 46 degrees F.).

2. Food and drinks and laboratory specimens shall not be stored in the same refrigerator in which medications and biologicals are stored.

3. Blood and blood products may be stored in the same refrigerator with medications and biologicals if stored in a separate compartment from the medications and biologicals.

(e) Medications shall be stored:

1. Separately from poisonous substances, blood, or body fluids;

2. In a manner that provides for separation between oral and topical medications; and

3. Separately from food.

(4) Disposition of medications.

(a) Medications shall not be retained in stock after the expiration date on the label.

(b) Contaminated or deteriorated medications shall not be maintained.

Section 8. Emergency procedures and disaster preparedness.

(1) Emergency services.

(a) Appropriate equipment and services shall be provided to render emergency resuscitative and life-support procedures pending transfer to a hospital, if necessary.

(b) The licensee shall make arrangements for obtaining blood and blood products to meet emergency situations.

(2) Disaster preparedness. The licensee shall establish plans, based on equipment and staff capabilities, to meet its responsibilities for providing emergency care.

(3) Emergency call numbers.

(a) In addition to access to "911," emergency call data shall:

1. Be immediately available; and

2. Include the telephone numbers of:

a. Fire and police departments;

b. Ambulance service; and

c. The Poison Control Center.

(b) Other emergency call information shall be available, including the names, addresses, and telephone numbers of staff members to be notified in case of emergency.

Section 9. Equipment Maintenance. (1) Equipment utilized for providing treatment or procedures, including its component parts, shall be properly maintained to perform the functions for which it is designed.

(2) Equipment.

(a) Equipment used in the provision of care, treatment, procedures, and services shall:

1. Meet appropriate specifications and calibrations; and

2. Be monitored and operated in accordance with the manufacturer's guidelines.

(b) Records shall be maintained to indicate all testing and maintenance.

(c) If equipment for the administration of anesthesia is utilized, it shall be readily available, clean or sterile, and operating properly.

1. Anesthesia apparatus shall be equipped with a device to measure the oxygen component of the gas being inhaled by the patient.

2. The device shall emit audible and visual alarms if the proportion of oxygen falls below a safe level.

3. A record of the inspections made prior to each use of the anesthesia equipment and a record of all service and repair performed on all anesthesia machines, vaporizers, and ventilators shall be maintained and retained:

a. For a minimum of two (2) years from the date of the inspection, service, or repair or

b. Until the next Office of Inspector General survey.

Section 10. Physical Environment. (1) Accessibility. A licensee shall meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities pursuant to federal, state, and local laws.

(2) Fire safety. A fixed-site location shall be approved by the state Fire Marshal's office before licensure is granted by the cabinet.

(3) Environment. The building in which equipment is utilized shall be planned, designed, and equipped to provide and promote the health, safety, and well-being of each patient.

(4) Infection control. The licensee shall develop written infection control policies that are consistent with Centers for Disease Control guidelines, available at www.cdc.gov/ncidod/dhqp/guidelines.html, and shall include:

(a) Prevention of disease transmission to and from patients, visitors, and employees, including:

1. Universal blood and body fluid precautions;
2. Precautions against airborne transmittal of infections; and
3. Work restrictions for employees with infectious diseases;

and
(b) Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(5) Housekeeping and maintenance.

(a) The equipment location shall be neat, uncluttered, clean, and free of vermin and offensive odors.

(b) Hazardous cleaning solutions, compounds, and substances shall be:

1. Labeled;
2. Stored in closed metal containers;
3. Kept separate from other cleaning materials; and
4. Kept in a locked storage area.

(c) Garbage and trash:

1. Shall be removed from the premises regularly; and
2. Containers shall be cleaned regularly as needed.

(d) A licensee shall establish and maintain a written policy for the handling and disposal of wastes, including any infectious, pathological, and contaminated wastes, which shall include the following:

1. Sharp wastes shall be segregated from other wastes and placed in puncture-resistant containers immediately after use;

2. A needle or other contaminated sharp shall not be recapped, purposely bent, broken, or otherwise manipulated by hand as a means of disposal, except as permitted by the Centers for Disease Control and Prevention and the Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii);

3. A sharp waste container shall be incinerated on or off-site or rendered nonhazardous; and

4. Any nondisposable sharps shall be placed in a hard walled container for transport to a processing area for decontamination.

(e) ~~1.~~ Disposable waste shall be:

~~1.~~ **[a.]** Placed in a suitable bag or closed container so as to prevent leakage or spillage; and

~~2.~~ **[b.]** Handled, stored, and disposed of in such a way as to minimize direct exposure of personnel or patients to waste materials. **[2. The licensee shall establish specific written policies regarding handling and disposal of waste material.]**

(f) ~~An [a licensee owned or operated]~~ incinerator used for the disposal of waste shall be in compliance with **401 KAR 59:020 or 401 KAR 61:010 [all applicable Kentucky statutes and administrative regulations].**

Section 11. Quality assurance program. A licensee shall have a written, implemented quality assurance program that:

(1) Includes effective mechanisms for reviewing and evaluating patient care; and

(2) Provides for appropriate responses to findings.

Section 12. Mobile **Technology** Units. (1) All mobile **technology** units, e.g., self-contained vans or tractor trailers, that transport equipment from one (1) host site to another, shall meet the current standards of this administrative regulation and of the

local, state, and federal Departments of Transportation for the permitting and safe operation of the vehicle.

(2) A mobile cardiac catheterization laboratory shall only provide services on the campus of a host hospital that has emergency medical and intensive coronary care services.

(3) A procedure shall not be performed on a patient in a mobile cardiac catheterization laboratory if any of the following are present:

(a) Recent myocardial infarction (within ten (10) days or less);

(b) Uncontrolled arrhythmias;

(c) Severe uncontrolled congestive heart failure;

(d) Current hospitalization with highly unstable angina; or

(e) The patient is under eighteen (18) years of age. [If a mobile health service's governing authority is comprised of more than one (1) licensed hospital, a separate administrator may be designated from each hospital to serve as administrator during the time in which services are provided at the hospital where the designee is employed.]

(3) Policies. A mobile health service shall establish and follow written administrative policies covering all aspects of operation, including:

(a) A description of organizational structure, staffing, and allocation of responsibility and accountability;

(b) Policies and procedures for the guidance and control of personnel performances;

(c) A written program narrative describing in detail each service offered, methods and protocols for service delivery, qualifications of personnel involved in the delivery of the services, and goals of each service;

(d) A description of the administrative and patient care records and reports; and

(e) Procedures to be followed if the licensee performs any functions related to the storage, handling, and administration of drugs and biologicals.

(4) Personnel.

(a) Medical director. Except for a therapy practice or entity that is licensed pursuant to this administrative regulation to provide only therapy services, the mobile health service shall have a medical director who shall be a licensed physician or dentist with specialized training and experience in, and responsibility for, all medical or dental aspects of the service.

(b) A mobile health service shall be exempt from paragraph (a) of this subsection if:

1. The service operates only diagnostic examination equipment;

2. The service is offered only to licensed hospitals; and

3. Personnel make no medical assessment of the diagnostic patient data collected.

(5) A mobile health service shall employ or contract with a sufficient number of qualified personnel to provide effective patient care and all other related services.

(6) The licensee shall provide written personnel policies, which shall:

(a) Be available to each employee;

(b) Be reviewed on an annual basis;

(c) Be revised as necessary; and

(d) Contain a job description for each position subject to review and revision, as necessary.

(7) The licensee shall maintain current personnel records for each employee that shall contain the following:

(a) Name, address, and Social Security number;

(b) Evidence of current registration, certification, or professional licensure;

(c) Documentation of training and experience;

(d) Performance evaluations; and

(e) Record of pre-employment and regular health exams related to employment.

(8) In-service training. Personnel shall attend training programs relating to their respective job activities. The training programs shall include:

(a) Thorough job orientation for new employees; and

(b) In-service training programs, emphasizing competence and professionalism necessary for effective health care.

(9) Medical records.

(a) The licensee shall maintain medical records that contain the following:

1. Medical and social history relevant to each service provided, including data obtained from other providers;
2. Physician's orders if an order is required for a specific diagnostic service;
3. Description of each medical visit or contact, including a description of the:
 - a. Condition or reason for the visit or contact;
 - b. Assessment;
 - c. Diagnosis;
 - d. Services provided;
 - e. If applicable, medications and treatments prescribed; and
 - f. Disposition made;
4. Reports of all physical examinations, laboratory, x-ray, and other test findings related to each service provided; and
5. Documentation of all referrals made, including reason for referral and to whom patient was referred.

(b) Ownership.

1. Medical records shall be the property of the mobile health service.

2. The original medical record shall not be removed except by court order.

3. Copies of a medical record or portions of the record may be used and disclosed, in accordance with the requirements established in this administrative regulation.

(c) Confidentiality and security: use and disclosure.

1. The mobile health service shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

2. The mobile health service may use and disclose medical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

3. This administrative regulation shall not be construed to forbid the mobile health service from establishing higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(d) Transfer of records. The licensee shall:

1. Establish systematic procedures to assist in continuity of care if the patient moves to another source of care; and

2. Upon proper release, transfer medical records or an abstract, if requested.

(e) Retention of records. After the patient's death or discharge, the completed medical record shall be placed in an inactive file and retained for:

1. Six (6) years; or
2. If a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(f) Mammography and other radiology records shall be retained in accordance with 42 U.S.C. 263b(f)(1)(G).

(g) A specific location shall be designated by the mobile health service for the maintenance and storage of the service's medical records.

(h) The licensee shall have provisions for the storage of medical records if the mobile health service ceases to operate because of disaster or for any other reason.

(i) The licensee shall safeguard the record and its content against loss, defacement, and tampering.

(j) If a therapy practice licensed pursuant to this administrative regulation provides physical therapy, occupational therapy, or speech pathology services under a contractual agreement with another facility or service licensed under 902 KAR Chapter 20, the therapy practice shall:

1. Be exempt from the requirements of this subsection; and
2. Demonstrate compliance with Section 5(3)(d)1.d. and Section 5(3)(d)3. of this administrative regulation.

(10) Kentucky Health Information Exchange (KHIE).

(a) A mobile health service shall participate in the KHIE pursuant to the requirements of 900 KAR 9:010.

(b) If a mobile health service has not implemented a certified electronic health record, the service may meet the requirement of paragraph (a) of this subsection by participating in the direct secure messaging service provided by KHIE.

Section 4. Requirements for any Vehicle that a Patient Enters for Diagnostic or Treatment Services. (1) A vehicle used for the delivery of medical or dental services shall be kept in optimum order with clean interiors and equipment.

(2) The following standards shall apply only to a vehicle in which the patient enters:

(a) There shall be adequate heating and air-conditioning capability in both the driver and patient compartments;

(b) There shall be a minimum of two (2) potential power sources for the vehicle;

(c) To insure an immediately available source of power if a power failure occurs, one (1) power source shall be self-contained on the vehicle, and the other source shall be an exterior source of power hookup;

(d) The vehicle shall be accessible to users with disabilities through the use of a wheelchair lift or a ramp; and

(e) The vehicle shall have adequate and safe space for staff and examination procedures.

(3) Equipment. A vehicle used for the delivery of health services shall have the following essential equipment:

(a) One (1) five (5) pound dry chemical fire extinguisher;

(b) One (1) first aid kit;

(c) Suction apparatus; and

(d) Oxygen equipment (portable), including:

1. One (1) "D" size oxygen cylinder;

2. One (1) pressure gauge and flow rate regulator;

3. Adaptor and tubing; and

4. Transparent masks for adults and children. Nasal cannulas may be substituted.

(4) Personnel. Each mobile health service vehicle shall be staffed by at least one (1) person, who may be the driver of the vehicle, and shall have the following qualifications:

(a) Red Cross Advanced and Emergency Care Certification, each with supplemental CPR instruction certified by the American Red Cross or the American Heart Association;

(b) EMT-first responder certification;

(c) EMT-A certification; or

(d) Licensure as a registered nurse, physician, or dentist.

Section 5. Requirements for Provision of Services; Diagnostic Services and Treatment Services. (1) Unless an exemption applies, a licensed mobile health service shall comply with the:

(a) Requirements listed in Sections 3, 4, and 6 of this administrative regulation;

(b) Service's program narrative; and

(c) Additional requirements of this section that relate to the particular service offered by the licensee.

(2) Diagnostic services. Diagnostic services are services which are performed to ascertain and assess an individual's physical health condition.

(a) Diagnostic services, except for mammography services, shall be performed only on the order of a physician or advanced practice registered nurse as authorized in KRS 314.011(8).

(b) The licensee shall prepare a record for each patient that includes the following:

1. Date of the procedure;

2. Name of the patient;

3. Description of the procedures ordered and performed;

4. The referring physician;

5. The name of the person performing the procedure; and

6. The date and the name of the physician to whom the results were sent.

(c) Diagnostic imaging services.

1. Diagnostic imaging services shall be services that produce an image through film or computer-generated video of the internal structures of a patient. These services may include:

a. X-ray;
b. MRI;
c. CT scanning;
d. PET scanning;
e. Ultrasound;
f. Mammography;
g. Fluoroscopy; and
h. Other modalities using directed energy to gain statistical, physiological, or biological diagnostic imaging information.

2. A mobile health service that provides diagnostic imaging services shall comply with the following requirements:

a. Equipment used for direct patient care shall be fully approved by the Federal Food and Drug Administration (FDA) for clinical use;

b. There shall be a written preventive maintenance program, which the licensee follows to ensure that imaging equipment is:

(i) Operative;
(ii) Properly calibrated; and
(iii) Shielded to protect the operator, patient, environment, and the integrity of the images produced;

c. Recalibration of radiation producing and nonradiation producing instrumentation shall occur at least every six (6) months by biomedical service personnel; and

d. Radiation producing instrumentation shall be recalibrated annually by a consulting health physicist.

3. Diagnostic imaging services shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of the specific imaging technique for diagnostic purposes.

4. Imaging services shall have a current license or registration pursuant to KRS Chapter 311B and 902 KAR Chapter 100.

5. Personnel engaged in the operation of imaging equipment shall be currently licensed or certified in accordance with KRS Chapter 311B and 201 KAR Chapter 46.

6. There shall be a written training plan for personnel in the safe and proper usage of the mobile imaging equipment and system.

7. There shall be a physician's signed order that:

a. Specifies the reason the procedure is required;
b. Identifies the area of the body to be examined; and
c. Documents the condition of the patient.

8. There shall be sufficiently trained on-duty personnel with adequate equipment to provide emergency resuscitation services if there is a patient emergency.

(d) Other diagnostic services.

1. Other diagnostic services shall be provided through the use of diagnostic equipment and physical examination. These services may include:

a. Electrocardiogram services;
b. Electroencephalogram services;
c. Holter monitor services;
d. Disability determination services;
e. Pulmonary function services;
f. Apheresis services;
g. Blood gas analysis services;
h. Echocardiography services; and
i. Doppler services.

2. Equipment used for direct patient care shall comply with the following:

a. The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative and properly calibrated;

b. All personnel engaged in the operation of diagnostic equipment shall have training and be currently licensed or certified in accordance with KRS Chapter 311B and 201 KAR Chapter 46; and

c. There shall be a written personnel training plan for instruction in the safe and proper usage of the equipment.

3. Physical examination services shall be nonabusive and provided in a manner that ensures the greatest amount of safety and security for the patient.

a. Protocols for diagnostic examinations shall be developed by the medical director.

b. Personnel performing physical examinations shall:

(i) Have training; and

(ii) Be currently licensed or certified in accordance with KRS Chapter 311 or KRS Chapter 314.

c. Personnel performing physical examinations shall be limited by the relevant scope of practice pursuant to his or her professional license to practice.

(3) Treatment services. Treatment services are services provided to a patient who, because of a physical health condition, is in need of medical assistance for the attainment of his or her maximum level of physical function.

(a) Mobile health clinic.

1. A mobile health clinic shall provide both diagnostic and treatment services through the use of a mobile vehicle that meets the requirements of Section 4 of this administrative regulation.

2. A mobile health clinic may provide a wide range of diagnostic and treatment services on an outpatient basis for a variety of physical health conditions.

3. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes:

a. One (1) or more physicians; and
b. One (1) or more advanced practice registered nurses.

4. At least one (1) member of the group responsible for developing patient care policies shall not be a member of the mobile health clinic staff.

5. The policies shall include:

a. A description of the services the mobile health clinic provides directly and those provided through agreement;
b. Guidelines for the medical management of health problems, which include the conditions requiring medical consultation or patient referral, and the maintenance of health records; and
c. Procedures for review and evaluation of the services provided by the clinic at least annually.

6. Personnel. The mobile health clinic shall have a staff that includes:

a. At least one (1) physician;
b. At least one (1) advanced practice registered nurse; and
c. Other staff or ancillary personnel that are necessary to provide the services essential to the clinic's operation.

7. The physician shall:

a. Be responsible for all medical aspects of the clinic;
b. Provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311;
c. Provide medical direction, supervision, and consultation to the staff;

d. In conjunction with the advanced practice registered nurse, participate in developing, executing, and periodically reviewing the mobile health clinic's written policies and services;

e. Periodically review the mobile health clinic's patient records, provide medical orders, and provide medical care services to patients of the mobile health clinic; and

f. Be present for consultation weekly, and be available within one (1) hour, through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.

8. The advanced practice registered nurse shall:

a. Participate in the development, execution, and periodic review of the written policies governing the services the mobile health clinic provides;

b. Participate with the physician in periodic review of patient health records;

c. Provide services in accordance with mobile health clinic policies, established protocols, the Nurse Practice Act, KRS Chapter 314 and 201 KAR Chapter 20;

d. Arrange for, or refer patients to needed services not provided at the mobile health clinic; and

e. Assure that patient health records are maintained and transferred when patients are referred.

9. The mobile health clinic shall have linkage agreements or arrangements with each of the following:

a. Inpatient hospital care;
b. Physician services in a hospital, patient's home, or long-term care facility;
c. Additional and specialized diagnostic and laboratory

services that are not available at the mobile health clinic;

- d. Home health agency;
- e. Emergency medical services;
- f. Pharmacy services; and
- g. Local health department.

10. The mobile health clinic shall:

a. Carry out or arrange for an annual evaluation of its total program; and

b. Consider the findings of the evaluation and take corrective action, if necessary. The evaluation shall include:

(i) The utilization of clinic services including at least the number of patients served and the volume of services;

(ii) A representative sample of both active and closed clinical records; and

(iii) The mobile health clinic's health care policies.

11. The mobile health clinic shall develop and maintain written protocols that include standing orders, rules of practice, and medical directives that:

a. Apply to services provided by the clinic; and

b. Explicitly direct the step-by-step collection of subjective and objective data from the patient. The protocols shall:

(i) Direct data analysis;

(ii) Direct explicit medical action depending upon the data collected;

(iii) Include rationale for each decision made; and

(iv) Be signed by the staff physician.

12. The mobile health clinic staff shall furnish diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at the entry point into the health care delivery system, including:

- a. Medical history;
- b. Physical examination;
- c. Assessment of health status; and
- d. Treatment for a variety of medical conditions.

13. The mobile health clinic shall provide basic laboratory services essential to the immediate diagnosis and treatment of the patient, including:

- a. Chemical examinations of urine by stick or tablet methods or both, including urine ketones;
- b. Microscopic examinations of urine sediment;
- c. Hemoglobin or hematocrit;
- d. Blood sugar;
- e. Gram stain;
- f. Examination of stool specimens for occult blood;
- g. Pregnancy tests;
- h. Primary culturing for transmittal to a hospital laboratory or licensed laboratory; and
- i. Test for pinworms.

14. The mobile health clinic shall:

a. Provide medical emergency procedures as a first response to common life-threatening injuries and acute illness; and

b. Have available the drugs and biologicals commonly used in lifesaving procedures, including:

- (i) Analgesics;
- (ii) Anesthetics (local);
- (iii) Antibiotics;
- (iv) Anticonvulsants;
- (v) Antidotes;
- (vi) Emetics;
- (vii) Serums; and
- (viii) Toxoids.

15. The mobile health clinic shall post the following in a conspicuous area at the entrance, visible from the outside of the clinic:

a. The hours that emergency medical services will be available in the clinic;

b. The clinic's next scheduled visit; and

c. Where emergency medical services not provided by the clinic can be obtained during and after the clinic's regular scheduled visits and hours of operation.

(b) Mobile dental clinic.

1. A mobile dental clinic shall provide both diagnostic and dental treatment services at different locations through the use of a

mobile vehicle or equipment.

2. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes at least one (1) licensed dentist.

3. The policies shall include:

a. Guidelines that identify dental problems beyond the scope of services provided by the licensee;

b. Provisions for patient referral;

c. Guidelines for the review and evaluation of the services provided by the clinic at least annually;

d. Procedures to be followed if a patient has a medical emergency; and

e. Guidelines for infection control.

4. Personnel. The mobile dental clinic shall have a staff that includes at least:

a. One (1) licensed dentist; and

b. One (1) dental assistant.

5. The dentist shall:

a. Be responsible for all aspects of patient care in accordance with KRS Chapter 313 and 201 KAR Chapter 8;

b. Be present in the clinic at all times that a patient is receiving dental care; and

c. Provide direct supervision to all staff involved in the delivery of services.

6. The dental assistant shall:

a. Provide services in accordance with:

(i) The mobile dental clinic policies and established protocols; and

(ii) KRS Chapter 313 and 201 KAR Chapter 8; and

b. Provide services only under the direct supervision of a licensed dentist.

7. Equipment. The mobile dental clinics shall have the following equipment:

a. X-ray units;

b. Sterilizer;

c. High-speed suction;

d. Dental lights; and

e. Emergency kit with the following drug types:

(i) Antiallergenic;

(ii) Vasodilators;

(iii) Anticonvulsives; and

(iv) Vasopressors.

(c) Mobile lithotripter service.

1. A mobile lithotripter service shall provide a noninvasive technique for removing kidney or ureteral stones through the use of a lithotripter at various hospital locations.

2. Mobile lithotripter services may only be delivered on the grounds of the hospital utilizing the mobile lithotripter service.

3. Lithotripsy services shall be:

a. Performed only on the order of a physician; and

b. Provided under the supervision of a physician who is qualified by advanced training and experience in the use of lithotripsy treatment.

4. The mobile lithotripter service shall prepare a record for each patient that includes the:

a. Date of the procedure;

b. Name of the patient;

c. Description of the procedures ordered and performed;

d. Referring physician; and

e. Name of the person performing the procedure.

5. There shall be a physician's signed order that specifies the:

a. Reason the procedure is required;

b. Area of the body to be exposed; and

c. Anticipated outcome of treatment.

6. Policies. A mobile lithotripter service shall develop patient care policies with the advice of a group of professional personnel that includes at least:

a. One (1) qualified urologist; and

b. One (1) qualified anesthetist.

7. At least one (1) member of the group responsible for developing patient care policies shall not be a member of the mobile lithotripter service staff.

8. The policies shall include:

a. A description of how a patient will be transported between the hospital and the mobile lithotripter service;

b. Procedures to be followed if a patient has a medical emergency;

c. Guidelines for the review and evaluation of the service on an annual basis; and

d. Policies and protocols governing the utilization and responsibilities of hospital staff in the delivery of lithotripter services.

9. Personnel. The mobile lithotripter service shall:

a. Employ at least one (1) lithotripter technician; and

b. Employ or make arrangements with the hospital utilizing the service for at least:

(i) One (1) registered nurse and one (1) qualified urologist to be present in the unit during the delivery of lithotripsy services; and

(ii) One (1) qualified anesthetist to be available for procedures requiring anesthesia.

10. Lithotripsy equipment used for direct patient care shall comply with the following:

a. Lithotripsy equipment shall be fully approved by the Federal Food and Drug Administration (FDA) for clinical use;

b. The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be:

(i) Operative;

(ii) Properly calibrated;

(iii) Properly shielded; and

(iv) Safe for the patient, operator, and environment.

11. All personnel engaged in the operation of diagnostic equipment shall have training and be currently licensed, certified, or registered in accordance with KRS Chapter 311B and 201 KAR Chapter 46.

12. There shall be a written training plan for the training of personnel in the safe and proper usage of the equipment.

13. There shall be trained on-duty personnel with equipment to provide emergency resuscitation if there is a patient emergency.

(d) Therapy practices. A therapy practice licensed pursuant to this administrative regulation shall:

1. Develop patient care policies that:

a. Include a description of services provided directly or through an agreement;

b. Include guidelines for the medical management of health problems that include the conditions requiring medical consultation or patient referral;

c. Address clinical records;

d. Include procedures for review and evaluation of the services provided at least annually; and

e. Ensure that physical therapy, occupational therapy, and speech pathology services shall be provided within the professional scope of practice established in KRS Chapter 327, KRS Chapter 319A, and KRS Chapter 334A, respectively;

2. Employ a sufficient number of qualified personnel pursuant to Section 3(5) of this administrative regulation;

3. Maintain a written plan of care for each patient that:

a. Indicates anticipated goals;

b. Specifies the type, amount, frequency, and duration of:

(i) Physical therapy;

(ii) Occupational therapy; or

(iii) Speech pathology;

c. Is established by the:

(i) Physical therapist who will provide physical therapy services;

(ii) Occupational therapist who will provide occupational therapy; or

(iii) Speech-language pathologist who will provide speech pathology services; and

4. Except for Section 3(4)(a) and, if applicable, Section 3(9) of this administrative regulation, demonstrate compliance with Section 2 and Section 3 of this administrative regulation, in addition to the requirements of this paragraph. Section 4 and Section 6 of this administrative regulation, and subsection (2) through subsection (3)(a), (b), (c), and (e) of this section shall not apply to a therapy practice licensed pursuant to this administrative regulation.

(e) 1. Other treatment services shall:

a. Be performed only on the order of a physician;

b. Demonstrate compliance with the policy, personnel, in-service training, and program evaluation requirements established in subparagraphs 4. through 11. of this paragraph; and

c. May include IV therapy services. If provided, IV therapy shall:

(i) Only be performed by a registered nurse; and

(ii) Be limited to nursing services that are required for the initial start-up of an IV therapy program.

2. If nursing services are required that exceed the initial start-up of IV therapy, the services shall be provided by an agency that is licensed to provide care under a physician's plan of care.

3. All services provided shall be under the supervision of a licensed physician.

4. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes at least:

a. One (1) physician; and

b. One registered nurse.

5. At least one (1) member of the group responsible for developing patient care policies shall not be a member of the service's staff.

6. The policies shall include:

a. A description of the services provided;

b. A requirement to inform patients of other in-home services which can be provided only by other licensed agencies;

c. A requirement for a written common plan for treatment and coordination of treatment with other licensed health care providers delivering services to the patient. Immediate verbal communication between providers regarding revisions to the common plan shall be documented in the plan of treatment;

d. Guidelines for the medical management of health problems, including:

(i) The conditions requiring medical consultation or patient referral; and

(ii) Maintenance of health records;

e. Procedures for review and evaluation of the services provided at least annually; and

f. Guidelines for patient and environment assessment.

7. Personnel. The service shall have a staff that includes at least one (1) registered nurse.

8. The service shall employ other staff or ancillary personnel that are necessary and essential to the service's operation.

9. The registered nurse shall:

a. Participate in the development, execution, and period review of the written policies governing the services provided;

b. Participate with the physician in periodic review of patient health records;

c. Provide services in accordance with established policies, protocols, the Nurse Practice Act, KRS Chapter 314 and 201 KAR Chapter 20;

d. Arrange for or refer patients to needed services that cannot be provided by the service; and

e. Assure that patient health records are maintained and transferred when patients are referred.

10. In-service training programs shall include instruction in:

a. Use of equipment;

b. Side effects and precautions of drugs and biologicals; and

c. Infection control measures.

11. The service shall:

a. Carry out, or arrange for an annual evaluation of its total program;

b. Consider the findings of the evaluation; and

c. Take corrective action, if necessary. The evaluation shall include:

(i) The utilization of the service including the number of patients served and the volume of services;

(ii) A representative sample of both active and closed records; and

(iii) The service's health care policies.

Section 6. Waste Processing. (1) Sharp wastes, including broken glass, scalpel blades, and hypodermic needles, shall be

segregated from other wastes and placed in puncture-resistant containers immediately after use.

(2) A needle or other contaminated sharp waste shall not be recapped, purposefully bent, broken, or otherwise manipulated by hand as a means of disposal except as permitted by the Centers for Disease Control and the Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(viii).

(3) A sharp waste container shall be incinerated on or off-site or rendered nonhazardous.

(4) Any nondisposable sharp waste shall be placed in a hard walled container for transport to a processing area for decontamination.

(5)(a) Disposable waste shall be:

1. Placed in a suitable bag or closed container so as to prevent leakage or spillage; and

2. Handled, stored, and disposed of in a way that minimizes direct exposure of personnel or patients to waste materials.

(b) The licensee shall establish specific written policies regarding handling and disposal of waste material.

(6) All unpreserved tissue specimens shall be incinerated off site.]

STEVEN D. DAVIS, Inspector General

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 29, 2018

FILED WITH LRC: July 11, 2018 at 9 a.m.

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 Public Health

Division of Public Health Protection and Safety

(As Amended at ARRS, September 11, 2018)

902 KAR 45:160. Kentucky food processing, packaging, storage, and distribution operations.

RELATES TO: KRS 13B, [194A.050, 211.090, 211.180,] 217.005 - 217.205, 217.290 - 217.390, 217.990 - 217.992, 318.130, 21 C.F.R. Part 1, 7, 70, 73, 74, 81, 82, 100 - 102, 104 - 107, 108 Subpart B, [25, 108.35], 109, [140,] 113, 114, 117, 120, 123, 129, 130, 133, 135 - 137, 139, 145, 146, 150, 152, 155, 156, 158, 160, 161, 163 - 166, 168, 169, 170, 172 - 178, 180 - 189, [Pub. L. 101 - 535, Pub. L. 108 - 282,] 21 U.S.C. 321, 343-345, 373, 374, 374a

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.180(1), 217.125(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) and 217.125(1) authorize the Cabinet for Health and Family Services to promulgate administrative regulations to regulate food processing, packaging, storage, and distribution operations. This administrative regulation establishes procedures and requirements for food processing, packaging, storage, and distribution operations for the purpose of protecting public health.

Section 1. Definitions. (1) "Adulterated" is defined by KRS 217.025.

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Food processing establishment" is defined by KRS 217.015(20).

(4) "Food storage warehouse" is defined by KRS 217.015(22).

(5) "Imminent health hazard" is defined by KRS 217.015(24).

(6) "Misbranded" is defined by KRS 217.035.

(7) "No Action Indicated" or "NAI" means a plant inspection classification that[which] indicates the firm has no violating condition or that only a minor violation was noted at the time of inspection.

(8) "Official Action Indicated" or "OAI" means a plant inspection classification that[which] indicates a condition noted during the inspection was significant enough to pose an imminent health

hazard~~[,]~~ or was an uncorrected VAI condition on a previous inspection.

(9) "Plant" means a food processing establishment or a food storage warehouse.

(10) "State Plumbing Code" means the code established by KRS Chapter 318 and 815 KAR Chapter 20.

(11) "Voluntary Action Indicated" or "VAI" means a plant inspection classification that[which] indicates [that] a condition was noted during the inspection that is in violation of this administrative regulation but was not significant enough to pose an imminent health hazard.

Section 2. Applicability. (1) Except as provided in subsection (2) of this section, a plant shall comply with the following federal requirements:

(a) 21 U.S.C. 373, Records;

(b) 21 C.F.R. 1.20 - 1.24, General labeling requirements;

(c) 21 C.F.R. 7.1 - 7.13, General enforcement policy provisions;

(d) 21 C.F.R. 7.40 - 7.59, Food recalls provisions;

(e) 21 C.F.R. 70.20 - 70.25, Packaging and labeling requirements;

(f) 21 C.F.R. 73.1 - 73.615, Listing of food color additives exempt from certification;

(g) 21 C.F.R. 74.101 - 74.706, Listing of food color additives subject to certification;

(h) 21 C.F.R. Part 81, General specifications and general restrictions for provisional color additives for use in foods, drugs, and cosmetics;

(i) 21 C.F.R. 82.3 - 82.706, Listing of certified provisionally listed food colors and specifications;

(j) 21 C.F.R. 100.155, Salt and iodized salt;

(k) 21 C.F.R. Part 101, Food Labeling;

(l) 21 C.F.R. Part 102, Common or usual name for non-standardized foods;

(m) 21 C.F.R. Part 104, Nutritional quality guidelines for foods;

(n) 21 C.F.R. Part 105, Foods for special dietary use;

(o) 21 C.F.R. Part 106, Infant formula quality control procedures;

(p) 21 C.F.R. Part 107, Infant formula;

(q) 21 C.F.R. 108 Subpart B, [25], Specific requirements and conditions for exemption from or compliance with an emergency permit;

(r) [21 C.F.R. 108.35, Thermal processing of low-acid foods packaged in hermetically sealed containers;

(s) 21 C.F.R. Part 109, Unavoidable contaminants in food for human consumption and food packaging materials; [(t) 21 C.F.R. Part 110, Current good manufacturing practice in manufacturing, packaging and holding human food, whether sold interstate or intrastate commerce;]

(s) [(u)] 21 C.F.R. Part 113, Low acid foods;

(t) [(v)] 21 C.F.R. Part 114, Acidified foods;

(u) 21 C.F.R. Part 117, Hazard analysis and critical control point (HACCP) systems;

(v) [(w)] 21 C.F.R. Part 120, Hazard analysis and critical control point (HACCP) systems;

(w) [(x)] 21 C.F.R. Part 123, Fish and fishery products;

(x) [(y)] 21 C.F.R. Part 129, Processing and bottling of bottled drinking water;

(y) [(z)] 21 C.F.R. Part 130, Food standards general;

(z) [(aa)] 21 C.F.R. 133.10, 133.124, 133.125, 133.167 - 133.169, 133.171, 133.173 - 133.176, 133.179 - 133.180, Cheeses and related cheese products;

(aa) [(bb)] 21 C.F.R. Part 135, Frozen desserts;

(bb) [(cc)] 21 C.F.R. Part 136, Bakery products;

(cc) [(dd)] 21 C.F.R. Part 137, Cereal flours and related products;

(dd) [(ee)] 21 C.F.R. Part 139, Macaroni and noodle products;

(ee) [(ff)] 21 C.F.R. Part 145, Canned fruits;

(ff) [(gg)] 21 C.F.R. Part 146, Canned fruit juices;

(gg) [(hh)] 21 C.F.R. Part 150, Fruit butters, jellies, preserves, and related products;

(hh) [(ii)] 21 C.F.R. Part 152, Fruit pies;

(iii)(jjj) 21 C.F.R. Part 155, Canned vegetables;
(ii)(kk) 21 C.F.R. Part 156, Vegetable juices;
(kk)(ll) 21 C.F.R. Part 158, Frozen vegetables;
(ll)(mm) 21 C.F.R. Part 160, Eggs and egg product;
(mm)(nn) 21 C.F.R. Part 161, Fish and shellfish;
(nn)(oo) 21 C.F.R. Part 163, Cacao products;
(oo)(pp) 21 C.F.R. Part 164, Tree nut and peanut products;
(pp)(qq) 21 C.F.R. Part 165, Beverages;
(qq)(rr) 21 C.F.R. Part 166, Margarine;
(rr)(ss) 21 C.F.R. Part 168, Sweeteners and table syrups;
(ss)(tt) 21 C.F.R. Part 169, Food dressings and flavorings;
(tt)(uu) 21 C.F.R. Part 170, Food additives;
(uu)(vv) 21 C.F.R. Part 172, Food additives permitted for direct addition to food for human consumption;
(vv)(ww) 21 C.F.R. Part 173, Secondary direct food additives permitted in food for human consumption;
(ww)(xx) 21 C.F.R. Part 174, Indirect food additives: general;
(xx)(yy) 21 C.F.R. Part 175, Indirect food additives: adhesives and components of coatings;
(yy)(zz) 21 C.F.R. Part 176, Indirect food additives: paper and paperboard components;
(zz)(aaa) 21 C.F.R. Part 177, Indirect food additives: polymers;
(aaa)(bbb) 21 C.F.R. Part 178, Indirect food additives: adjuvants, production aids, and sanitizers;
(bbb)(ccc) 21 C.F.R. Part 180, Food additives permitted in food or in contact with food on an interim basis pending additional study;
(ccc)(ddd) 21 C.F.R. Part 181, Prior sanctioned food ingredients;
(ddd)(eee) 21 C.F.R. Part 182, Substances generally recognized as safe;
(eee)(fff) 21 C.F.R. Part 184, Direct food substances affirmed as generally recognized as safe;
(fff)(ggg) 21 C.F.R. Part 186, Indirect food substances affirmed as generally recognized as safe;
(ggg)(hhh) 21 C.F.R. Part 189, Substances prohibited from use in human food; and
(hhh) 21 U.S.C. 321, 343 to 345, 374, 374a[(iii) Pub. L. 101—535], Nutritional and food allergen labeling requirements[and educational act; and
(jjj) Pub. L. 108—282, Food allergen labeling and consumer protection act].
(2) The following federal regulations shall not apply:
(a) 21 C.F.R. 101.69;
(b) 21 C.F.R. 101.108;
(c) 21 C.F.R. 102.19;
(d) 21 C.F.R. 106.120;
(e) 21 C.F.R. 107.200 - 107.280;
(f) 21 C.F.R. 120.14;
(g) 21 C.F.R. 123.12;
(h) 21 C.F.R. 130.5 - 130.6;
(i) 21 C.F.R. 130.17;
(j) 21 C.F.R. 170.6;
(k) 21 C.F.R. 170.15; and
(l) 21 C.F.R. 170.17.

Section 3. Permits. (1) Before operating, a food manufacturing or processing plant, food packaging plant, food storage warehouse, or food distribution warehouse shall obtain a permit from the cabinet in accordance with KRS 217.125.

(2) Application for a permit shall be made on Form DFS-260, Application for Permit to Operate a Food Plant, and shall be submitted to the cabinet with the annual fee established by 902 KAR 45:110.

(3) A permit for food manufacturing, food packaging, food storage, or food distribution shall only be issued:

- (a) In the name of the applicant;
- (b) For the location identified in the application; and
- (c) For a firm that is in compliance with this administrative regulation and KRS 217.005 - 217.215.

(4) A permit shall:

- (a) Be posted in a conspicuous place in the firm;

(b) Expire on December 31 of each year; and

(c) Be renewed in accordance with KRS 217.125(12) and by submitting the form and fee required by subsection (2) of this section.

(5) Failure to apply for or renew a permit to operate a food processing, packaging, storage, or distribution plant shall result in the cabinet issuing a Food Plant Enforcement Notice (DFS-263) to cease operation[Notice to Cease Operation].

Section 4. Plan Review. (1) Approval shall be obtained from the cabinet or its local health department agent prior to beginning work, if:

- (a) A plant is constructed, remodeled, or altered;
- (b) A plant's plumbing is relocated;
- (c) Additional plumbing is added to a plant; or
- (d) An existing structure is converted for use as a plant.

(2) To obtain approval, an applicant shall submit plans and specifications for the construction, remodeling, or alteration to the local health department in the county in which the construction, remodeling, or alteration will take place.

(3) Plans shall be prepared to show:

- (a) Equipment layout;
- (b) Size;
- (c) Location and type of facilities; and
- (d) Plumbing riser diagram.

Section 5. Construction and Maintenance. (1) The floor of the food preparation, food storage, and utensil washing area, walk-in refrigerator, dressing room, locker room, toilet room, and vestibule shall be:

- (a) Smooth;
 - (b) Durable;
 - (c) Non-absorbent; and
 - (d) Easily cleaned.
- (2) Floors shall be cleaned and maintained.
- (3) A juncture of a wall with a floor shall be covered and sealed.
- (4) The juncture between the wall and floor shall be tight-fitting.

(5)(a) A floor drain shall be provided in a floor that is water flushed for cleaning or that receives discharge of water or other fluid waste from equipment.

(b) Floors shall be graded to drain all parts of the floor.

(6) Drip or condensate from fixtures, ducts, and pipes shall not contaminate food, food-contact surfaces, or food-packaging materials.

(7) Mats shall be:

- (a) Non-absorbent;
- (b) Slip resistant; and
- (c) Easily cleaned.

(8) Mats shall not be used as storage racks.

(9) Exposed utility service lines and pipes shall be installed to prevent tripping hazards and cleaning obstructions.

(10) Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

(11) Walls and ceilings of all food preparation and ware washing areas shall be:

- (a) Smooth;
- (b) Non-absorbent; and
- (c) Easily cleaned.

(12) Studs, joists, and rafters shall not be exposed in:

- (a) Walk-in-refrigerators;
- (b) Food preparation areas; and
- (c) Ware washing areas.

(13) Doors shall be:

- (a) Solid;
- (b) Tight-fitting; and
- (c) Closed, except during cleaning or maintenance.

(14) Light fixtures, vent covers, wall-mounted fans, and similar equipment attached to walls or[and] ceilings shall be kept clean and maintained in good repair.

(15) Aisles and working spaces shall be:

- (a) Unobstructed; and
- (b) Of a width to permit employees to perform their duties and

protect against contaminating food or food-contact surfaces with clothing or by personal contact.

(16) Lighting shall be provided in:

- (a) Hand-washing areas;
- (b) Dressing and locker rooms;
- (c) Toilet rooms;
- (d) Areas where food is examined, processed, or stored; and
- (e) Areas where equipment or utensils are cleaned.

(17) Lighting, glass fixtures, and skylights suspended over exposed food or food packaging materials shall be made of safety glass or otherwise shielded to protect against food contamination in case of breakage.

(18) Ventilation or exhaust control equipment shall be provided to minimize odors

or vapors in areas where odors or vapors may contaminate food.

(19) Fans and other air-blowing equipment shall be located and operated in a manner that minimizes the potential for contaminating food, food-packaging materials, and food-contact surfaces.

(20) Protection against pests shall be provided.

Section 6. Water Supply. (1) The water supply shall be:

- (a) Potable;
- (b) Of sufficient quantity to meet plant needs; and
- (c) From an approved public water system, if available.

(2) If a public water system is not available, the supply for the plant shall be approved pursuant to 401 KAR Chapters 8 and 11.

(3) If a community public water system later becomes available and has the capacity to serve the facility, connections may be made to it. The non-community water supply shall then be discontinued and inactivated.

(4) Hot and cold running water under pressure shall be provided in all areas where it is needed for:

- (a) Processing food;
- (b) Cleaning equipment, utensils, and food-packaging materials; and
- (c) Employee sanitary facilities.

(5) Bottled water plants shall have their water supply system designed, approved, and operated in accordance with 401 KAR 8:700.

Section 7. Plumbing. (1) All plumbing shall comply with the minimum fixture requirements, and be sized, installed, and maintained in accordance with the State Plumbing Code.

(2) All utensils used in food processing that are not a part of a clean-in-place operation shall be washed, rinsed, and sanitized in:

- (a) A permanently plumbed three (3) compartment sink; or
- (b) A commercial dishwasher installed and operated in compliance with the State Plumbing Code and the manufacturer's instructions.

(3) If a three (3) compartment sink is utilized, the sink compartments shall be large enough to permit the accommodation of the equipment and utensils and each compartment of the sink shall be supplied with hot and cold potable running water under pressure.

(4) Clean-in-place equipment shall be cleaned or sanitized according to manufacturer instructions and industry best practices for the commodity being processed.

(5) Written sanitation procedures shall be maintained for each type of clean-in-place equipment.

(6) A service sink or curbed cleaning facility with a drain that allows for disposal of mop and cleaning solution water shall be provided.

(7) A person, firm, or corporation shall not construct, install, or alter any plumbing without having procured a plumbing construction permit from the Department of Housing, Buildings and Construction, under KRS Chapter 318.

Section 8. Sewage Disposal. (1) All sewage shall be disposed of into a public sewerage system, if available.

(2) If a public sewerage system is not available, disposal shall be made into a private system designed, constructed, and operated pursuant to the requirements of 401 KAR Chapter 5 or

902 KAR 10:085.

(3) If a public sewerage system becomes available, connection shall be made and the private sewerage system shall be discontinued.

Section 9. Toilet Facilities. Toilet facilities shall meet the fixture and construction requirements of KRS Chapter 318 and the State Plumbing Code.

Section 10. Hand Washing Facilities. (1) Hand-washing facilities shall be installed in accordance with KRS Chapter 318 and the State Plumbing Code where:

- (a) Food is prepared;
- (b) Utensils are washed; and
- (c) Sanitary practices require employees to wash and sanitize their hands.

(2) All hand washing facilities shall be provided with:

- (a) Soap;
- (b) Disposable hand drying towels or mechanical hand drying devices; and
- (c) Non-absorbent waste receptacles.

(3) Hand sanitizer shall not be used instead[*in lieu*] of hand washing.

(4) Lavatories used for hand washing shall not be used for food preparation or for washing equipment or utensils.

(5) Lavatories, soap dispensers, and hand drying devices shall be kept clean and maintained.

Section 11. Food Transportation. (1) Vehicles used for the transportation of food shall be maintained and loaded in a manner to prevent cross-contamination of food.

(2) Vehicles that transport refrigerated food shall be capable of maintaining:

(a) Frozen food in a frozen state; and
(b) Refrigerated foods at forty-five (45) degrees Fahrenheit or below.
~~**(a) Frozen food in a frozen state; and**~~
~~**(b) Refrigerated foods at forty-five (45) degrees Fahrenheit or below.**~~

Section 12. Inspection Frequencies. (1) The cabinet shall assign an inspection frequency to each food manufacturing plant based upon the degree of risk associated with the commodity processed, packaged, stored, or distributed by the plant.

(2) The cabinet shall assign the inspection frequencies as follows:

- (a) High risk plants shall be inspected no less than once every 1,080[360] days;
- (b) Medium risk plants shall be inspected no less than once every 1,260[720] days; and
- (c) Low risk plants shall be inspected no less than once every 1,440[1,080] days.

(3) The cabinet shall conduct additional inspections as necessary for enforcement pursuant to this administrative regulation.

Section 13. Violations. (1) If a plant has committed a violation of this administrative regulation, an opportunity to correct the violation shall be provided in accordance with the following classifications:

(a) NAI - No changes in the inspection frequency are warranted under this classification;

(b) VAI - A follow-up inspection is warranted within a period of time not to exceed ninety (90) days to determine if the violation causing this classification has been corrected; or

(c) OAI - A follow-up inspection shall be conducted within a period of time not to exceed forty-five (45) days to determine if the violation causing the classification has been corrected. A plant may also be classified as OAI if it continually fails to correct a violation previously classified under a VAI designation or if an imminent health hazard is noted during an inspection.

(2) Upon completion of the inspection, a recommended classification of NAI, VAI, or OAI and the timeframe for correction of the violation shall be specified on DFS-220, Food Plant Inspection Report.

(3) If, during a follow-up inspection, the violation noted on the previous inspection has not been corrected within the timeframe specified by the cabinet, the cabinet shall:

- (a) Extend the timeframe for corrective action if the cabinet determines that progress towards compliance has been made; or
- (b) Initiate enforcement provisions pursuant to Section 17 of this administrative regulation.

Section 14. Food Plant Environmental Sampling. The cabinet shall collect an environmental sample in an area of the plant as necessary for the enforcement of this administrative regulation.

Section 15. Examination and Detention of Foods. (1) The cabinet shall examine and collect samples of food as often as necessary for the enforcement of this administrative regulation.

(2) ~~If food is considered~~~~[When food is deemed]~~ to be adulterated or misbranded, DFS-265, Food Plant Quarantine/Final Disposition Report, shall be issued to the permit holder or person in charge pursuant to KRS 217.115.

Section 16. Imminent Health Hazard and Notification Requirements. (1) The permit holder shall take immediate steps to correct conditions ~~that~~~~[which]~~ have caused an imminent health hazard.

(2)(a) The permit holder shall notify the cabinet within twenty-four (24) hours of the knowledge of an imminent health hazard that cannot be controlled by immediate corrective action or if food, food contact equipment, or food packaging has become contaminated because of an imminent health hazard.

(b) Written notification to the cabinet shall be made by:

1. Email to CHFSDPHENV@KY.gov; or
2. Fax to 502-696-1882.

(3) If the cabinet has evidence that a plant has failed to act to correct an imminent health hazard, enforcement provisions shall be initiated pursuant to Section 17 of this administrative regulation.

Section 17. Enforcement Provisions. (1) If the cabinet has substantial reason to believe that a permit holder has failed to act to correct an imminent health hazard or if the permit holder or an authorized agent has interfered with the cabinet in the performance of its duties after its agents have duly and officially identified themselves, the cabinet shall immediately notify the permit holder using the DFS-263, Food Plant Enforcement Notice and~~upon notice to the permit holder using the DFS-263, Food Plant Enforcement Notice~~.

- (a) Suspend the permit without a conference; or
- (b) Suspend that portion of the plant operation affected by the imminent health hazard without a conference.

(2) ~~If~~~~[In the instance of]~~ a permit suspension is due to an imminent health hazard, the permit holder may request a conference on a DFS-267, Request for Conference. A conference shall be granted as soon as practical, not to exceed seven (7) days from the receipt of the Request for Conference.

(3) In all other instances of violation of this administrative regulation, the cabinet shall serve the permit holder with a written notice specifying the violation and afford the holder an opportunity to correct.

(4) If a permit holder or operator has failed to comply with an OAI inspection notice within the timeframe granted, the cabinet shall issue a Notice of Intent to Suspend Permit on a DFS-263, Food Plant Enforcement Notice.

(5) When a Notice of Intent to Suspend Permit is issued, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of the notice, unless a written request for a conference is filed with the cabinet by the permit holder within the ten (10) day period.

(6) Any person whose permit has been suspended may make application on Form DFS-269, Application for Reinstatement, for a re-inspection for the purpose of reinstatement of the permit. Within seven (7) days following receipt of a written request, including a statement signed by the applicant that in his opinion the condition causing suspension of the permit has been corrected, the cabinet shall make an inspection, and if the inspection reveals that the

condition causing suspension of the permit has been corrected, the permit shall be reinstated.

(7) For a plant that has had a suspended permit two (2) or more times within a five (5) year period, the cabinet shall initiate permit revocation proceedings. Prior to this action, the cabinet shall notify the permit holder in writing on a DFS-263, Food Plant Enforcement Notice, stating the reasons for which the permit revocation is being sought and advising that the permit shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an administrative hearing is filed with the cabinet pursuant to KRS Chapter 13B by the permit holder within the ten (10) day period.

(8) Notice provided for under this administrative regulation shall be deemed to have been properly served if:

- (a) A copy of the inspection report or other notice has been delivered personally to the permit holder; or
- (b) The notice has been sent by registered or certified mail, return receipt.

Section 18. Administrative Conferences. An administrative conference shall be conducted pursuant to 902 KAR 1:400.

Section 19. Administrative Hearings. An administrative hearing shall be conducted pursuant to KRS Chapter 13B.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "DFS-220, Food Plant Inspection Report", 05/18[09/2014];
 - (b) "DFS-260, Application for Permit to Operate a Food Plant", 05/18[09/2014];
 - (c) "DFS-263, Food Plant Enforcement Notice", 05/18[09/2014];
 - (d) "DFS-265, Food Plant Quarantine/Final Disposition Report", 05/18[09/2014];
 - (e) "DFS-267, Request for Conference", 05/18[09/2014]; and
 - (f) "DFS-269, Application for Reinstatement", 05/18[09/2014].
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Cabinet for Health and Family Services, Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch, 275 East Main Street, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

JEFFREY D. HOWARD, JR., M.D., Commissioner
ADAM MEIER, Secretary

APPROVED BY AGENCY: July 6, 2018

FILED WITH LRC: July 11, 2018 at 9 a.m.

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

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amended After Comments)

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

RELATES TO: KRS 218A.172, 218A.205(3)(a), (b), 314.011(7), 314.011(8), 314.042, 314.193(2), 314.195, 314.196, National Transportation Safety Board Safety Recommendation 1-14-1.

STATUTORY AUTHORITY: KRS 218A.205(3)(a), (b), 314.131(1), 314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(a) and (b) require the Board of Nursing, in consultation with the Kentucky Office of Drug Control Policy, to establish by administrative regulation mandatory prescribing and dispensing standards for licensees authorized to prescribe or dispense controlled substances, and in accordance with the Centers for Disease Control and Prevention (CDC) guidelines, to establish a prohibition on a practitioner issuing a prescription for a Schedule II controlled substance for more than a three (3) day supply if intended to treat pain as an acute medical condition, unless an exception applies. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the advanced practice registered nurse and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances" or "CAPA-CS" means the written document pursuant to KRS 314.042(10).

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs" or "CAPA-NS" means the written document pursuant to KRS 314.042(8).

(4) "KASPER" means the Kentucky All Schedule Prescription Electronic Reporting system established in KRS 218A.202.

Section 2. (1) The practice of the advanced practice registered nurse shall be in accordance with the standards and functions defined in scope and standards of practice statements adopted by the board in subsection (2) of this section.

(2) The following scope and standards of practice statements shall be adopted:

(a) AACN Scope and Standards for Acute Care Nurse Practitioner Practice;

(b) AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice;

(c) Neonatal Nursing: Scope and Standards of Practice;

(d) Nursing: Scope and Standards of Practice;

(e) Pediatric Nursing: Scope and Standards of Practice;

(f) Psychiatric-Mental Health Nursing [2nd Edition]: Scope and Standards of Practice;

(g) Scope of Practice for Nurse Practitioners;

(h) Standards of Practice for Nurse Practitioners;

(i) Scope of Nurse Anesthesia Practice;

(j) Standards for Nurse Anesthesia Practice;

(k) Standards for Office Based Anesthesia Practice;

(l) Standards for the Practice of Midwifery;
(m) Statement on the Scope and Standards of Oncology Nursing Practice: Generalist and Advanced Practice; [and]

(n) The Women's Health Nurse Practitioner: Guidelines for Practice and Education; and

(o) Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives.

Section 3. In the performance of advanced practice registered nursing, the advanced practice registered nurse shall seek consultation or referral in those situations outside the advanced practice registered nurse's scope of practice.

Section 4. Advanced practice registered nursing shall include prescribing medications and ordering treatments, devices, and diagnostic tests, and performing certain procedures which are consistent with the scope and standards of practice of the advanced practice registered nurse.

Section 5. Advanced practice registered nursing shall not preclude the practice by the advanced practice registered nurse of registered nursing practice as defined in KRS 314.011(6).

Section 6. (1)(a) A CAPA-NS and a CAPA-CS shall include the name, practice address, phone number, and license number of both the advanced practice registered nurse and each physician who is a party to the agreement. It shall also include the population focus and [specialty] area of practice of the advanced practice registered nurse.

(b) Pursuant to KRS 314.196(2), an advanced practice registered nurse shall use the Common CAPA-NS Form.

(2)(a) To notify the board of the existence of a CAPA-NS pursuant to KRS 314.042(8)(b), the APRN shall file with the board the APRN Prescriptive Authority Notification Form~~[Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs (CAPA-NS)]~~.

(b) To notify the board that the requirements of KRS 314.042(9) have been met and that the APRN will be prescribing nonscheduled legend drugs without a CAPA-NS, the APRN shall file the APRN Prescriptive Authority Notification Form~~[Notification to Discontinue the CAPA-NS After Four (4) Years]~~.

(c) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(10)(b), the APRN shall file with the board the APRN Prescriptive Authority Notification Form~~[Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)]~~.

(3) For purposes of the CAPA-NS and the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall be guided by the facts of each particular situation and the scope of the APRN's and the physician's actual practice.

(4)(a) An APRN with a CAPA-CS shall report all of his or her United States Drug Enforcement Agency (DEA) Controlled Substance Registration Certificate numbers to the board when issued to the APRN by mailing a copy of each registration certificate to the board within thirty (30) days of issuance.

(b) Any change in the status of a DEA Controlled Substance Registration Certificate, including a DEA-X Controlled Substance Registration Certificate, shall be reported in writing to the board within thirty (30) days.

(5) An APRN shall report any changes to a CAPA-CS in writing to the board within thirty (30) days.

(6) If the collaborating physician's license is suspended, the APRN shall follow the procedures set out in KRS 314.196 for a CAPA-NS. The APRN with a CAPA-CS shall cease prescribing controlled substances until the suspension is lifted or a new collaborating physician signs a new CAPA-CS.

(7) An APRN with a CAPA-NS or a CAPA-CS shall report a

practice address to the board. A change to the practice address shall be reported to the board within thirty (30) days.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS shall constitute a violation of KRS 314.091(1), except when a CAPA-NS has been discontinued pursuant to KRS 314.042(9) or the provisions of KRS 314.196(4)(b) apply.

Section 8. The board may make an unannounced~~monitoring~~ visit to an advanced practice registered nurse to determine if the advanced practice registered nurse's practice is consistent with the requirements established by KRS Chapter 314 and 201 KAR Chapter 20, and patient and prescribing records shall be made available for immediate inspection.

Section 9. Prescribing Standards for Controlled Substances. (1)(a) This section shall apply to an APRN with a CAPA-CS if prescribing a controlled substance. It also applies to the utilization of KASPER.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN's role and population focus. This section does not alter the prescribing limits set out in KRS 314.011(8).

(2) Prior to the initial prescribing of a controlled substance to a patient, the APRN shall:

(a) Obtain the patient's medical history, including history of substance use, and conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for the twelve (12) month period immediately preceding the request for[all] available data on the patient and maintain all KASPER report identification numbers and the date of issuance of each KASPER report in the patient's record;

(c) ~~Develop~~Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate:

1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;
2. That the controlled substance shall be discontinued when the condition requiring its use has resolved; and
3. Document that the discussion occurred and obtain written consent for the treatment.

(3) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.

(4) For subsequent or continuing long-term prescriptions of a controlled substance for the same medical complaint, the APRN shall:

(a) Update the patient's medical history and document the information in the patient's medical record;

(b) Modify and document changes to the treatment plan as clinically appropriate; and

(c) Discuss the risks and benefits of any new controlled substances prescribed with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence.

(5) During the course of treatment, the APRN shall query KASPER no less than once every three (3) months for the twelve (12) month period immediately preceding the request for[all] available data on the patient before issuing a new prescription or a refill for a controlled substance. The APRN shall maintain all KASPER report identification numbers and the date of issuance of each KASPER report in the patient's record.

(6) These requirements may be satisfied by other licensed practitioners in a single group practice if:

(a) Each licensed practitioner involved has lawful access to the

patient's medical record;

(b) Each licensed practitioner performing an action to meet these requirements is acting within the scope of practice of his or her profession; and

(c) There is adequate documentation in the patient's medical record reflecting the actions of each practitioner.

(7) If prescribing a controlled substance for the treatment of chronic, noncancer pain, the APRN, in addition to the requirements of this section, shall obtain a baseline drug screen and[or] further random drug screens if the APRN:

(a) Finds a drug screen to be clinically appropriate; or

(b) Believes that it is appropriate to determine whether or not the controlled substance is being taken by the patient.

(8) If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section and KRS 314.011(8)(a) and (b)[the applicable statutory prescribing limitations].

(9) Prior to prescribing a controlled substance for a patient in the emergency department of a hospital that is not an emergency situation, the APRN shall:

(a) Obtain the patient's medical history, conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for the twelve (12) month period immediately preceding the request for[all] available data on the patient and document the data in the patient's record;

(c) ~~Develop~~Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence, and document that the discussion occurred and that the patient consented to the treatment.

(10) For each patient for whom an APRN prescribes a controlled substance, the APRN shall keep accurate, readily accessible, and complete medical records, which include:

- (a) Medical history and physical or mental health examination;
- (b) Diagnostic, therapeutic, and laboratory results;
- (c) Evaluations and consultations;
- (d) Treatment objectives;
- (e) Discussion of risk, benefits, and limitations of treatments;
- (f) Treatments;
- (g) Medications, including date, type, dosage, and quantity prescribed;

- (h) Instructions and agreements;
- (i) Periodic reviews of the patient's file; and

(j) All KASPER report identification numbers and the date of issuance of each KASPER report.

(11) The requirement to query KASPER shall not apply to:

(a) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure or the delivery and the medication usage does not extend beyond the fourteen (14) days;

(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or

(c) An APRN prescribing a controlled substance:

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;
3. For the treatment of pain associated with cancer or with the treatment of cancer;
4. To assist a patient when submitting to a diagnostic test or procedure;
5. Within seven (7) days of an initial prescription pursuant to subsection (1) of this section if the ~~prescriber~~~~[prescribing]~~:
 - a. ~~Substitutes a controlled substance~~~~[is done as a substitute]~~ for the initial prescribing;
 - b. Cancels any refills for the initial prescription; and
 - c. Requires the patient to dispose of any remaining unconsumed medication;
6. Within ninety (90) days of an initial prescription pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same condition;
7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;
8. During the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;
9. As part of the administering or ordering of controlled substances to prisoners in a state, county, or municipal correctional facility;
10. That is a Schedule IV controlled substance for no longer than three (3) days for an established patient to assist the patient in responding to the anxiety of a nonrecurring event; or
11. That is classified as a Schedule V controlled substance.
- (12) Federal regulation 21 C.F.R. 1306.12(b) concerning the issuance of multiple prescriptions for Schedule II controlled substances shall not ~~apply to~~~~[be utilized by]~~ APRNs in this state.
- (13) No less than once every six (6) months, an APRN who has prescribed controlled substances shall review~~[may order]~~ a reverse KASPER report for the preceding six (6) months to ~~determine whether~~~~[review the APRN's prescribing practices and to verify]~~ the information contained in KASPER is correct. If the information is incorrect, the APRN shall comply with 902 KAR 55:110 and take the necessary steps to seek correction of the information:
 - (a) By first contacting the reporting pharmacy;
 - (b) [In the case of suspected fraudulent activity,] By contacting law enforcement if suspected fraudulent activity; or
 - (c) By contacting the Drug Enforcement Professional Practices Branch, Office of the Inspector General, Cabinet for Health and Family Services.
- (14) An APRN shall not issue a prescription for hydrocodone combination products for more than a three (3) day supply if the prescription is intended to treat pain as an acute medical condition, with the following exceptions:
 - (a) The APRN, in his or her professional judgment, believes that more than a three (3) day supply of hydrocodone combination products is medically necessary to treat the patient's pain as an acute medical condition and the APRN adequately documents the acute medical condition and lack of alternative treatment options which justifies deviation from the three (3) day supply limit on the patient's medical records;
 - (b) The prescription for hydrocodone combination products is prescribed to treat chronic pain;
 - (c) The prescription for hydrocodone combination products is prescribed to treat pain associated with a valid cancer diagnosis;
 - (d) The prescription for hydrocodone combination products is prescribed to treat pain while the patient is receiving hospice or end-of-life treatment;
 - (e) The prescription for hydrocodone combination products is prescribed as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;
 - (f) The prescription for hydrocodone combination products is prescribed to treat pain following a major surgery, which is any operative or invasive procedure or a delivery, or the treatment of

significant trauma; or

(g) Hydrocodone combination products are administered directly to an ultimate user in an inpatient setting.

(15) Prescriptions written for hydrocodone combination products pursuant to subsection (14)(a) through (g) of this section shall not exceed thirty (30) days without any refill.

(16) An APRN may prescribe electronically pursuant to KRS 218A.171.

(17) For any prescription for a controlled substance, the prescribing APRN shall discuss with the patient the effect the patient's medical condition and medication may have on the patient's ability to safely operate a vehicle in any mode of transportation.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "AACN Scope and Standards for Acute Care Nurse Practitioner Practice", 2017~~[2012]~~ Edition, American Association of Critical-Care Nurses;

(b) "AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice", 2014 Edition, American Association of Critical-Care Nurses;

(c) "Neonatal Nursing: Scope and Standards of Practice", 2013 Edition, American Nurses Association/National Association of Neonatal Nurses;

(d) "Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association;

(e) "Pediatric Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association/Society of Pediatric Nursing/National Association of Pediatric Nurse Practitioners;

(f) "Psychiatric-Mental Health Nursing~~[2nd Edition]~~: Scope and Standards of Practice", 2014, American Nurses Association/American Psychiatric Nursing Association;

(g) "Scope of Practice for Nurse Practitioners", 2015~~[2013]~~ Edition, American Association of Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2013 Edition, American Association of Nurse Practitioners;

(i) "Scope of Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(j) "Standards for Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(k) "Standards for Office Based Anesthesia Practice", 2018~~[2015]~~ Edition, American Association of Nurse Anesthetists;

(l) "Standards for the Practice of Midwifery", 2011 Edition, American College of Nurse-Midwives;

(m) "Statement on the Scope and Standards of Oncology Nursing Practice: Generalist and Advanced Practice", 2013 Edition, Oncology Nursing Society;

(n) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2014 Edition, Association of Women's Health, Obstetric and Neonatal Nurses/Nurse Practitioners in Women's Health;

(o) "Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives", 2011 Edition, American College of Nurse-Midwives;

(p) "APRN Prescriptive Authority Notification Form", 6/2018, Kentucky Board of Nursing;["Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)", 12/2014, Kentucky Board of Nursing;

(p) "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs (CAPA-NS)", 12/2014, Kentucky Board of Nursing;

(q) "Notification to Discontinue the CAPA-NS After Four (4) Years", 8/2015, Kentucky Board of Nursing;] and

(q)[(r)] "Common CAPA-NS Form", 6/2015.

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

KELLY JENKINS, Acting President

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

APPROVED BY AGENCY: September 13, 2018.

FILED WITH LRC: September 13, 2018 at 4 p.m.

CONTACT PERSON: Nathan Goldman, General Counsel,
Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300,
Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-
1248, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the scope and standards of practice for Advanced Practice Registered Nurses (APRN).

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.011 and KRS 314.042.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting the scope and standards of practice for APRNs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting the scope and standards of practice for APRNs.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates several national certifying organizations' standards of practice publications. It also cleans up some prescribing language to make it clearer. It also incorporates federal safety standards from the National Transportation Safety Board.

(b) The necessity of the amendment to this administrative regulation: The amendments were necessary to comply with federal law and to clean up some language.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By updating the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRNs, approximately 6000.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to follow the prescribing procedures set out in the administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It

does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (Amended After Comments)

503 KAR 1:110. Department of Criminal Justice Training basic training: graduation requirements; records.

RELATES TO: KRS 15.330(1)(c), (f), 15.386(1), 15.404(1), 15.440(1)(d)

STATUTORY AUTHORITY: KRS 15.330(1)(c), (f), (h), 15.334(4), 15.440(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) authorize the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training and to promulgate administrative regulations to implement that requirement. This administrative regulation establishes requirements for graduation from the Department of Criminal Justice Training basic training course required for peace officer certification and participation in the Kentucky Law Enforcement Foundation Program Fund and for maintenance of basic training records.

Section 1. Basic Training Graduation Requirements. To graduate from the department's basic training course, a recruit shall:

(1) Successfully complete a minimum of 800[888] hours of training, based upon the curriculum approved by the Kentucky Law Enforcement Council (KLEC) in accordance with KRS 15.330 and 503 KAR 1:090;

(2) Attain a minimum passing score on all assessments as outlined in the current KLEC-approved curriculum; and

(3) Successfully complete all other assignments, exercises, and projects included in the course. After-hours assignments may be required, and shall be successfully completed in order to pass the training segment for which they were assigned.

Section 2. Physical Training Requirements. A recruit who is required to complete basic training in order to fulfill the peace officer certification provisions established in KRS 15.380 to 15.404 shall meet the physical training entry and graduation requirements established in this section. (1) Physical training entry requirements.

(a) Within five (5) days from the first date of the basic training course, the recruit shall be tested in the following events, in the order listed, as instructed and evaluated by qualified department instructors:

1. Bench press;
2. Sit-ups;
3. 300 meter run;
4. Push-ups; and
5. One and five-tenths (1.5) mile run.

(b) A recruit shall pass the physical training entry requirements if he or she achieves a score of fifty (50) points or more, based upon the following scoring of the physical training events listed in paragraph (a) of this subsection:

1. Bench Press, based upon a percentage of the recruit's body weight:

- a. 9 points - Recruit shall bench press at least fifty-five and three-tenths (55.3) percent of body weight;
- b. 9.5 points - Recruit shall bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;
- c. 10 points - Recruit shall bench press at least sixty-four (64) percent of body weight;
- d. 10.5 points - Recruit shall bench press at least sixty-eight and five-tenths (68.5) percent of body weight; and
- e. 11 points - Recruit shall bench press at least seventy-three (73) percent or more of body weight;

2. Sit-ups:

- a. 9 points - Recruit shall complete at least thirteen (13) repetitions in one (1) minute;
- b. 9.5 points - Recruit shall complete at least sixteen (16) repetitions in one (1) minute;
- c. 10 points - Recruit shall complete at least eighteen (18) repetitions in one (1) minute; and
- d. 11 points - Recruit shall complete nineteen (19) repetitions or more in one (1) minute;

3. 300 meter run:

- a. 9 points - Recruit shall complete in sixty-eight (68) seconds or less;
- b. 9.5 points - Recruit shall complete in sixty-seven (67) seconds or less;
- c. 10 points - Recruit shall complete in sixty-five (65) seconds; and
- d. 11 points - Recruit shall complete in less than sixty-five (65) seconds;

4. Push-ups:

- a. 9 points - Recruit shall complete at least fourteen (14) repetitions in two (2) minutes;
- b. 9.5 points - Recruit shall complete at least seventeen (17) repetitions in two (2) minutes;
- c. 10 points - Recruit shall complete at least twenty (20) repetitions in two (2) minutes;
- d. 10.5 points - Recruit shall complete at least twenty-three (23) repetitions in two (2) minutes; and
- e. 11 points - Recruit shall complete twenty-five (25) repetitions or more in two (2) minutes; and

5. One and five-tenths (1.5) mile run:

- a. 9 points - Recruit shall complete in 1,076 seconds (17:56) or less;
- b. 9.5 points - Recruit shall complete in 1,054 seconds (17:34) or less;
- c. 10 points - Recruit shall complete in 1,032 seconds (17:12) or less;
- d. 10.5 points - Recruit shall complete in 1,004 seconds (16:44) or less; and
- e. 11 points - Recruit shall complete in 975 seconds (16:15) or less.

(c) A recruit shall:

1. Not be awarded more than eleven (11) points or less than nine (9) points in any one (1) of the five (5) physical ability events;

and

2. Be deemed to have failed the physical ability test if he or she fails to achieve at least:

- a. A total score of fifty (50) points; or
- b. Nine (9) points on any one (1) physical training event.

(d) Retest.

1. A recruit that fails to meet the lowest performance level in a test event, thus earning a zero point value for that event, shall be granted a retest opportunity in that event without having to retest in the other events for which a point value was obtained, except that a retest shall not be granted unless the maximum value of eleven (11) points would allow the applicant to meet the required overall fifty (50) point minimum.

2. A recruit that obtains a point value for each event, but does not obtain an overall score of fifty (50), shall be retested on the physical training entry test again, in its entirety.

3. A retest shall not occur any sooner than forty-eight (48) hours or any later than seventy-two (72) hours from the date of the initial test attempt.

4. All failed events shall be retested on the same date.

5. If the recruit passes all previously failed events on the date of the retest, the recruit shall have met the physical training entry requirements.

6. If the recruit does not pass all previously failed events on the date of the retest, the recruit shall be unqualified to participate in the department's basic training course for which he is currently enrolled, and may reapply to participate in a future department basic training course. The recruit shall receive no credit for the part of the basic training course which he has completed.

(2) Physical training graduation requirements.

(a) In order to graduate, the recruit shall successfully complete each of the following physical ability requirements within five (5) days of graduation from law enforcement basic training, which, except for the entry test score requirements in subsection (1)(b) of this administrative regulation, shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols, incorporated by reference in 503 KAR 1:140:

1. Bench press. One (1) repetition of maximum (RM) bench press equal to seventy-three (73) percent of the recruit's body weight;

2. Sit-ups. Eighteen (18) sit-ups in one (1) minute;

3. 300 meter run in sixty-five (65) seconds;

4. Push-ups. Twenty-five (25) push-ups; and

5. One and five-tenths (1.5) mile run in sixteen (16) minutes, fifteen (15) seconds.

(b) If a recruit passes all events when participating in the physical training graduation test, the recruit shall have met the physical training graduation requirements.

(c) Retest. If a recruit fails to pass all events when participating in the physical training graduation test:

1. The recruit shall retest in the failed events no earlier than forty-eight (48) hours after the date of the graduation test, but not later than the last scheduled date of the basic training course;

2. All failed events shall be retested on the same date;

3. If the recruit passes all previously failed events on the date of the retest, the recruit shall have met the physical training graduation requirements; and

4. If the recruit does not pass all previously failed events on the date of the retest, the recruit shall fail basic training.

(3) A physical training midpoint test shall be administered to the recruits at the midpoint of the basic training course for purposes of reporting their progress to their respective law enforcement agencies.

Section 3. Removal and Repetition of Basic Training. (1) Failure of Training.

(a) A recruit that is removed from basic training due to a training segment failure pursuant to Section 5 of this administrative regulation shall:

1. Be removed from the basic training class;

2. Reenter basic training in a subsequent class that has the first available vacancy;

3. Start the training at the beginning of the training segment

that the recruit did not successfully complete; and

4. Pay all applicable fees for the repeated basic training course in accordance with 503 KAR 3:030.

(b) Upon the recruit's return, the recruit shall attend and participate at the beginning of the segment failed.

1. In accordance with 503 KAR 3:030, Section 6(2), the recruit's hiring agency shall prepay to the department the full tuition, room, and board costs of repeating the training segment which was failed. The hiring agency may recover these costs of repeating the training segment from its recruit; and

2. If the training segment is successfully completed, the recruit shall continue with the remainder of the basic training course.

(c) A recruit who is permitted to return to basic training in accordance with this section and is removed due to failure a second time shall:

1. Be required to repeat basic training in its entirety; and

2. Pay all costs of repeating the entire basic training course in accordance with 503 KAR 3:030.

(2) Failure of the physical training graduation requirements. A recruit who fails the physical training graduation requirement in Section 2(2) of this administrative regulation:

(a) Shall not graduate with the recruit's basic training class;

(b) Shall be permitted to retest with the very next basic training class; and

(c) Upon successful completion, may graduate with that class.

(3) A recruit who is permitted to return to basic training in accordance with this section and is removed due to failure a second time shall:

(a) Be required to repeat basic training in its entirety; and

(b) Pay all costs of repeating the entire basic training course in accordance with 503 KAR 3:030.

Section 4. Basic Training Curriculum. (1) The basic training curriculum shall consist of training segments and topics listed in the current KLEC-approved curriculum. Each training segment shall at a minimum include one (1) or more of the topics listed in subsection (2) of this section. All topics listed in subsection (2) of this section shall be covered to qualify for graduation.

(2) Basic Training Topics.

(a) Legal subjects;

(b) Physical training;

(c) Defensive tactics;

(d) Patrol;

(e) Vehicle operations;

(f) Firearms;

(g) Criminal investigation;

(h) D.U.I./Field sobriety testing;

(i) Breath testing; or

(j) Practical evaluation/testing.

Section 5. Assessments. (1) Scheduled assessments shall be administered to recruits at the completion of each segment of basic training identified in the law enforcement basic training curriculum that is currently approved by the Kentucky Law Enforcement Council. Each segment shall include at a minimum one (1) or more of the topics listed in Section 4 of this administrative regulation.

(2) A recruit shall be permitted one (1) reassessment per assessment failed during basic training, but shall not exceed a total of ~~two (2)~~**five (5)** reassessments during basic training.

(3) A recruit who fails an assessment shall not be reassessed:

(a) Earlier than forty-eight (48) hours from the original examination; or

(b) Later than:

1. Five (5) days after the original examination. A recruit may submit a written request to the training director or his designee for an additional five (5) days in which to take the reassessment; and

2. The last scheduled day of the basic training course.

(4) A recruit shall fail basic training if the recruit **fails**:

(a) **An assessment and fails to take a reassessment as authorized by this section;**

(b) A reassessment; or

(c) An assessment after taking two (2) reassessments in accordance with subsection (2) of this section[~~Fails a~~

~~reassessment in accordance with subsection (2) of this section; or~~

~~(b) Fails any six (6) assessments during basic training.~~

(5) A recruit is deemed to have failed a segment if a recruit fails any reassessment that is contained within a designated segment].

Section 6. Absence. (1) A recruit may have excused absences from the course with approval of the director of the certified school or his designee.

(2) An excused absence from the course which causes a recruit to miss any of the required hours of basic training shall be made up through an additional training assignment.

Section 7. Circumstances Preventing Completion of Basic Training. (1) If a recruit is prevented from completing the basic training course due to extenuating circumstances beyond the control of the recruit, including injury, illness, personal tragedy, or agency emergency, he shall be permitted to complete the unfinished areas of the course within 180 days immediately following the termination of the extenuating circumstance, if the:

(a) Extenuating circumstance preventing completion of basic training does not last for a period longer than one (1) year; and

(b) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.

(2) If a recruit is prevented from completing the basic training course due to being called for active duty in the Kentucky National Guard or other branches of the United States Armed Forces, the recruit shall be permitted to complete the unfinished of the course within 180 days immediately following his or her return from active duty service.

Section 8. Termination of Employment while Enrolled. If, while enrolled in the basic training course, a recruit's employment as a police officer is terminated by dismissal, and the recruit is unable to complete the course, the recruit shall complete the remaining training within one (1) year of reemployment as an officer. The recruit shall repeat basic training in its entirety if:

(1) The break in employment exceeds one (1) year; or

(2) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the recruit while enrolled in the basic training course.

Section 9. Maintenance of Records. (1) At the conclusion of each basic training course, the department shall forward a final roster indicating the pass or fail status of each recruit to the council.

(2) All training records required for fund purposes shall be retained by the department, but a copy of pertinent facts shall be sent to the fund administrator upon written request.

(3) All training records shall be:

(a) Available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes; and

(b) Maintained in accordance with applicable provisions of KRS Chapter 171.

KEITH CAIN, Chair

APPROVED BY AGENCY: September 6, 2018

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

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.ReqsContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides graduation requirements for law enforcement officers attending basic training at the Department of Criminal Justice Training (DOCJT), and provides the Department of Criminal Justice Training's record keeping requirements for basic training

classes.

(b) The necessity of this administrative regulation: KRS 15.404 requires that all peace officers employed or appointed after December 1, 1998, complete a basic training course, as established by KRS 15.440, at a school certified or recognized by the Kentucky Law Enforcement Council, within one year of appointment or employment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.334 authorizes the Kentucky Law Enforcement Council (KLEC) to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and prescribe qualifications for attendance and conditions for expulsion from law enforcement training schools. KRS 15.440(1)(d) allows the KLEC to set the number of hours for basic training by regulation. The amendment changes the number of hours required for basic academy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment will modify the minimum number of training hours, as provided in KRS 440 (1)(d), to allow for an eight-hundred (800) hour basic training academy. This will allow the Department of Criminal Justice Training to meet the increasing demand for basic training courses, which must be completed within one year of an officer's hiring or appointment.

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

(a) How the amendment will change this existing administrative regulation: The amendment modifies the minimum number of hours for basic training courses via the mechanism for that modification which is set forth in KRS 15.440(1)(d)(2).

(b) The necessity of the amendment to this administrative regulation: The amendment will modify the minimum number of training hours, as provided in KRS 440 (1)(d), to allow for an eight-hundred (800) hour basic training academy. This will allow the Department of Criminal Justice Training to meet the increasing demand for basic training courses, which must be completed within one year of an officer's hiring or appointment.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require completion of basic training within the one year window, and provide the method by which the number or hours for basic training may be set.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will modify the minimum number of training hours, as provided in KRS 440 (1)(d), to allow for an eight-hundred (800) hour basic training academy. This will allow the Department of Criminal Justice Training to meet the increasing demand for basic training courses, which must be completed within one year of an officer's hiring or appointment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies that employ certified peace officers in the Commonwealth will have the benefit of quicker completion of basic training for new hires or appointments. In addition, the individual department's down time and per diem costs for officers attending basic training will be decreased.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: DOCJT has to have approval of the 800 hour curricula.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs to the Department of Criminal Justice Training will be similar to current costs for basic training courses, as the number of hours will minimally affect administrative costs. Costs for law enforcement agencies will be lower, as they will have decreased down time for officers in training, which should result in a lessened need for overtime pay, and lower per diem pay for officers attending training.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department of Criminal Justice Training will be able to meet the demand for basic training classes in a timely manner, without sacrificing the quality of training. There is currently a large backlog of applicants for basic training. Costs for law enforcement agencies will be lower, as they will have decreased down time for officers in training, which should result in a lessened need for overtime pay, and lower per diem pay for officers attending training.

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

(a) Initially: Costs to the Department of Criminal Justice Training will be similar to current costs for providing basic training courses, as the number of hours will minimally affect administrative and staff costs. A cost decrease to the Department of Criminal Justice Training is possible, but is not currently known.

(b) On a continuing basis: Costs to the Department of Criminal Justice Training will be similar to current costs for providing basic training courses, as the number of hours will minimally affect administrative and staff costs. A cost decrease to the Department of Criminal Justice Training is possible, but is not currently known.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The current source of funds from the Kentucky Law Enforcement Foundation Program Fund will be the ongoing source of funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as training funds are statutorily provided through KLEFPF. The law enforcement officers eligible for the training by statute and budget bill receive the same benefits of this training.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Law enforcement agencies and the Department of Criminal Justice Training (DOCJT) will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330, 15.404, 15.440.

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

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

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

(c) How much will it cost to administer this program for the first year? Costs for DOCJT are anticipated to be similar to current costs for providing basic training courses, as the number of hours will minimally affect administrative and staff costs. A cost decrease to DOCJT is possible, but is not currently known. Costs for law enforcement agencies will be lower, as they will have decreased down time for officers in training, which should result in a lessened need for overtime pay, and lower per diem pay for officers attending training.

(d) How much will it cost to administer this program for subsequent years? Costs for DOCJT are anticipated to continue to

be similar to current costs for providing basic training courses, as the number of hours will minimally affect administrative and staff costs. A cost decrease to DOCJT is possible, but is not currently known. Costs for law enforcement agencies will be lower, as they will have decreased down time for officers in training, which should result in a lessened need for overtime pay, and lower per diem pay for officers attending training.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

DEPARTMENT OF STATE
Kentucky Registry of Election Finance
(Amendment)

32 KAR 1:030. Election finance statement forms; campaign contributions or expenditures in excess of \$3,000.

RELATES TO: KRS 121.180[~~(1)~~]

STATUTORY AUTHORITY: KRS 121.120(1)(g), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants[authorizes] the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. This administrative regulation specifies the forms to be used by candidates, slates of candidates, contributing organizations, and committees and incorporates those forms by reference. KRS 121.120(4) requires the Registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. ~~[This administrative regulation specifies the forms to be used by candidates, slates of candidates, and committees, and incorporates those forms by reference.]~~

Section 1. The following candidates, slates of candidates, contributing organizations, and committees shall file the reports required by KRS 121.180 on the forms incorporated by reference in this administrative regulation:

(1) Candidate campaign funds, gubernatorial slate campaign funds, political issues committees, and candidate-authorized campaign committees who register an intent to raise or spend more than \$3,000 or actually receive[receiving] contributions or make[making] expenditures in excess of \$3,000; and

(2) All permanent committees,~~[political issues committees,]~~ caucus campaign committees, inaugural committees, contributing organizations, unauthorized campaign committees, and political party executive committees regardless of the amount of contributions or expenditures.

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

(a) "Candidate/ Slate of Candidates[Election Finance Statement]", reference KREF 006, revised 08/2018[10/2010];

(b) "Executive Committee/ Caucus Campaign Committee[County Executive and District Committee] Election Finance Statement", reference KREF 006/EC[KREF 006/E-C & D], revised 08/2018[10/2010];

(c) "Unauthorized Campaign Committee/ Political Issues Committee Election Finance Statement", reference KREF 006/UCC-IC, revised 08/2018;[State Executive Committee Election Finance Statement], reference KREF 006/E-S, revised 10/2010;]

(d) "Inaugural Committee Election Finance Statement", reference KREF 006/I, revised 08/2018[10/2010]; and

(e) "Permanent Committee (PAC)/ Contributing Organization Election Finance Statement", reference KREF 006/PAC-CO, revised 08/2018[10/2010]; and

(f) "Caucus Campaign Committee Election Finance Statement", reference KREF 006/C, revised 10/2010.]

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

CRAIG C. DILGER, Chairman

APPROVED BY AGENCY: August 22, 2018

FILED WITH LRC: September 31, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2018, at 10:00 a.m. Eastern Time at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend

the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Emily Dennis, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email Emily.Dennis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Dennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends existing forms for the filing of election finance statements by candidates, slates of candidates, contributing organizations, and committees, which includes the following specific committee types: campaign committees (both candidate- authorized and unauthorized), executive committees (county, district, and state), permanent committees, caucus campaign committees, political issues committees, and inaugural committees.

(b) The necessity of this administrative regulation: KRS 121.120(1)(g) and KRS 121.120(4) require the Registry to promulgate this administrative regulation. Changes to existing forms for the filing of Election Finance Statements were necessitated by the passage of 2017 Senate Bill 75. Specifically, 2017 Senate Bill 75 amended KRS 121.180 to provide for semi-annual campaign finance reports to be filed by executive committees and caucus campaign committees (which were previously required thirty days after each primary and regular election). 2017 Senate Bill 75 changed the 32 day pre-election campaign finance filing requirement to a 30 day pre-election filing requirement, and added an additional 60 day pre-election finance statement filing requirement for the regular election for candidates, slates of candidates, campaign committees (both candidate-authorized and unauthorized, and political issues committees. Contributing organizations are required by law to report campaign finances on a quarterly basis in the same manner as permanent committees (PACs); therefore, contributing organizations have been added to the PAC reporting form. Unauthorized campaign committees and political issues committees have been grouped on a single reporting form and will no longer report on the election finance statement reserved for candidates and slates of candidates, as these particular types of committees, unlike candidates and slates, may receive corporate contributions. The Registry used this opportunity to update all Election Finance Statement reporting forms, combine forms where possible, and standardize the format for the campaign finance reporting forms.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g), as it promulgates an administrative regulation to carry out the provisions of Chapter 121, and KRS 121.120(4), as it prescribes a form for the making of campaign finance reports.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of the reporting requirements under KRS 121.180, as it brings the Registry's reporting forms into compliance with the provisions of 2017 Senate Bill 75.

(2) If 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 latest version of official reporting forms for the filing of election finance statements by regulated individuals and entities in compliance with 2017 Senate Bill 75.

(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the Registry to adopt official forms and, more specifically, to develop prescribed forms for the making of required reports. Amendment to the administrative regulation is necessary to bring the Registry's forms into compliance with 2017 Senate Bill 75, specifically with reference to new reporting deadlines and additional reporting requirements for candidates in the regular election cycle.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and KRS 121.120(4) by prescribing forms for the making of reports.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the Election Finance Statement reporting forms to be filed by regulated entities and individuals into compliance with changes in KRS 121.180 due to the passage of 2017 Senate Bill 75 and will further assist in the effective administration of the reporting requirements specified in KRS 121.180 by standardizing the reporting forms for regulated individuals and entities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All candidates, slates of candidates, contributing organizations, and committees required to file reports with the Registry will be affected by this administrative regulation. To the extent the public, media, and other interest groups depend on the Registry's disclosure function, they will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will be required of the regulated entities. The Registry will provide the new forms, both in hard copy format and electronically, to the regulated entities. All training materials will be updated to reflect the new forms.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is anticipated to be incurred by regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The change to the reporting forms will eliminate confusion in the regulated community due to different reporting deadlines and new deadlines imposed as a result of 2017 Senate Bill 75.

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

(a) Initially: Initial costs to implement the administrative regulation are estimated to be no more than \$10,000.

(b) On a continuing basis: Ordinary printing costs are anticipated in the Registry's budget.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all

candidates, slates of candidates, contributing organizations, and committees required to file reports with the Registry.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Commonwealth of Kentucky - General Government – Registry of Election Finance

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.120(1)(g) and (4), KRS 121.180 (1)-(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? No revenue will be generated as a result of 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? No revenue will be generated in subsequent years as a result of this administrative regulation.

(c) How much will it cost to administer this program for the first year? Changes to the Registry's "Election Finance Statement" forms necessitated by 2017 Senate Bill 75 will result in an additional cost of \$10,000 to the Registry of Election Finance in year one, for the printing of revised forms and the necessary programming updates to the agency's electronic filing system, to display campaign finance data electronically in the same format as the revised reporting forms.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated in subsequent years, as these costs constitute ongoing administrative costs consistent with the agency's function.

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

Revenues (+/-): None.

Expenditures (+/-): + \$10,000 in year one/ no additional costs in subsequent years.

Other Explanation: N/A

AUDITOR OF PUBLIC ACCOUNTS (Amendment)

45 KAR 1:050. Audits of fiscal courts.

RELATES TO: KRS 43.070, 43.075, 64.810, 68.210, 31 U.S.C. 7501-7507[-68.210]

STATUTORY AUTHORITY: KRS 43.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 43.075 requires the Auditor of Public Accounts to promulgate administrative regulations developing uniform standards and procedures for conducting, and uniform formats for reporting, audits of the funds contained in county budgets (fiscal courts). This administrative regulation establishes the auditing standards, procedures, and formats for fiscal court audits.

Section 1. Definition. "Generally accepted government auditing standards" means the "Government Auditing Standards" issued by the Comptroller General of the United States.

Section 2. Auditing Standards, Procedures and Formats. The financial and compliance audit of the funds contained in each county's budget shall be conducted in accordance with:

(1) Auditing standards generally accepted in the United States of America, referenced in 201 KAR 1:300, Section 5(1)(a);

(2) Generally accepted government auditing standards,

referenced in 201 KAR 1:300, Section 5(1)(b); and

(3) "Fiscal Court Audit Guide[Audit Program for Fiscal Courts]," issued by the Auditor of Public Accounts, September 14, 2018[July 1, 2017].

Section 3. Auditor's Independent Judgement. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of a fiscal court shall be an audit report that provides an opinion on whether the financial statements of a fiscal court are presented fairly, in all material respects, in accordance with a basis of accounting prescribed or permitted by the Department for Local Government, which is the regulatory basis of accounting or Generally Accepted Accounting Principles (GAAP).

(2) Any audit report of a fiscal court that is required to comply with the requirements of the Single Audit Act Amendments of 1996 and 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), shall include a statement concerning whether:

(a) The Schedule of Expenditure of Federal Awards is fairly stated, in all material respects, in relation to the financial statements taken as a whole; and

(b) The fiscal court has complied, in all material respects, with the requirements applicable to each of its major federal programs.

(3) An auditor shall make tests sufficient to determine whether:

(a) The fiscal court has complied with the requirements of the uniform system of accounts adopted under KRS 68.210;

(b) Receipts have been accurately recorded by source;

(c) Expenditures have been accurately recorded by payee; and

(d) The county has complied with all other legal requirements relating to the management of public funds.

Section 5. Allowance of Audit Fees; Acceptance of Report. (1) Fees for county fiscal court audits shall be allowable as reasonable and necessary expenses of a county if the independent accountant's examination has been performed and reported in compliance with the standards, procedures, and formats promulgated by this administrative regulation.

(2) A county shall obtain written approval of an audit report from the Auditor of Public Accounts prior to the:

(a) Release of an audit report; and

(b) Payment of fees for a fiscal court audit.

(3) Failure by an independent certified public accountant to comply with the "Fiscal Court Audit Guide[Audit Program for Fiscal Courts]" and this administrative regulation shall disqualify him from conducting fiscal court audits.

Section 6. Incorporation by Reference. (1) The "Fiscal Court Audit Guide[Audit Program for Fiscal Courts]," Auditor of Public Accounts, September 14, 2018[July 1, 2017], is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Auditor of Public Accounts, 209 Saint Clair Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m.

L. CHRISTOPHER HUNT, Executive Director

For MIKE HARMON, Auditor of Public Accounts

APPROVED BY AGENCY: September 12, 2018

FILED WITH LRC: September 12, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2018 at 9:00 a.m. at the office of the Auditor of Public Accounts, 209 St. Clair Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: L. Christopher Hunt, General Counsel, Auditor of Public Accounts, 209 St. Clair Street, Frankfort, Kentucky 40601, phone 502-209-2863, fax 502-564-2912, email LChris.Hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND IMPACT STATEMENT

Contact Person: L. Christopher Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates uniform standards and procedures for conducting, and uniform formats for reporting, all audits of fiscal courts performed under KRS 43.070 or 64.810.

(b) The necessity of this administrative regulation: KRS 43.075 requires the Auditor of Public Accounts to promulgate this administrative regulation.

(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 promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of fiscal courts performed under KRS 43.070 or 64.810.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists or will assist in the effective administration of the statute by promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of fiscal courts performed under KRS 43.070 or 64.810.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by replacing the "Audit Program for Fiscal Courts," issued by the Auditor of Public Accounts, July 1, 2017, with the "Fiscal Court Audit Guide," issued by the Auditor of Public Accounts, September 14, 2018, which is incorporated by reference, to make auditing procedures and report formats conform to the regulatory basis of accounting and applicable auditing standards.

(b) The necessity of the amendment to this administrative regulation: Amending this administrative regulation by incorporating the "Fiscal Court Audit Guide" is necessary to conform this administrative regulation to current fiscal court practices and procedures.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute, KRS 43.075, by updating current standards and procedures for conducting, and formats for reporting, fiscal court audits performed under KRS 43.070 or 64.810.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute, KRS 43.075, by updating current standards and procedures for conducting, and uniform formats for reporting, all fiscal court audits performed under KRS 43.070 or 64.810.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky counties, certified public accountants licensed in Kentucky who perform audits of fiscal courts, and the Auditor of Public Accounts, are affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will not be impacted by the change to this administrative regulation that this amendment effectuates; the groups identified will continue to audit and be audited using uniform standards and procedures for conducting, and uniform formats for reporting, fiscal court audits.

(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 the entities identified in question (3) in complying with the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will all benefit by having a "Fiscal Court Audit Guide" to follow in completing all audits of fiscal courts conducted pursuant to KRS 43.070 or KRS 64.810, consistent with the regulatory basis of accounting or Generally Accepted Accounting Principles (GAAP).

(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 funding to be used for implementation and enforcement of this administrative regulation: Agency receipts of payments by the fiscal courts for the expense of the audits per KRS 43.070.

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

(9) TIERING: Is tiering applied? No, tiering was not applied. Tiering is not applicable to this amendment to this administrative regulation. Neither the amendment nor the administrative regulation disproportionately impact certain classes of regulated entities, as all fiscal courts are audited using the same uniform standards and procedures for conducting, and uniform formats for reporting, audits.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All 120 Kentucky counties, certified public accountants licensed in Kentucky that perform fiscal court audits, and the Auditor of Public Accounts, are affected by this administrative regulation.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. The state statute that requires or authorizes the action taken by the administrative regulation is KRS 43.075.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 effect of this amended administrative regulation on the expenditures and revenues of fiscal courts is neutral, resulting in no increase or decrease in expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first

year? There will be no cost to administer this program for the first year, other than the expenses provided for under KRS 43.070.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years, other than the expenses provided for under KRS 43.070.

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

Revenues (+/-): The fiscal impact of this amendment to this administrative regulation on the revenues of fiscal courts is neutral, resulting in no increase or decrease in revenues.

Expenditures (+/-): The fiscal impact of this amendment to this administrative regulation on the expenditures of fiscal courts is neutral, resulting in no increase or decrease in expenditures.

Other explanation: None.

PERSONNEL CABINET Office of the Secretary (Amendment)

101 KAR 2:210. 2019[2018] Plan Year Handbook for the Public Employee Health Insurance Program.

RELATES TO: KRS 18A.030, 18A.225, 18A.2254

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2019[2018] Plan Year as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2019[2018] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

Section 2. Incorporation by Reference. (1) "2019[2018] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2019[2018] edition, 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, 8:00 a.m. to 4:30 p.m.

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: September 7, 2018

FILED WITH LRC: September 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2018 at 10:00 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (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 until 11:59 p.m. on October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Sharron Burton, Deputy Executive Director, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email Sharron.Burton@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sharron Burton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2019 plan year handbook containing information about the self-insured health insurance plans offered through the Public Employee Health Insurance Program. The handbook, commonly referred to as the Benefits Selection Guide, is distributed to all plan holders participating in the self-insured program. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees through the self-insured program in 2019.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates by reference the 2019 plan year handbook that will be distributed to the public employees covered by the Public Employee Health Insurance Program. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 18A.2254(1), the statute that establishes the self-insured plan and mandates the promulgation of the administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2019 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

(2) If 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 an amendment. The existing administrative regulation incorporates by reference the 2018 plan year handbook which constitutes a compilation of the premium rates and contributions, benefit options, eligibility rules, and enrollment information for participants of the Public Employee Health Insurance Program for plan year 2018. The amendment adds and incorporates by reference the 2019 plan year handbook which contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees for plan year 2019.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give notice regarding the premiums, employee contributions, employer contributions, benefits, co-pays, coinsurance, and deductibles for each plan available to public employees under the Public Employee Health Insurance Program for plan year 2019. This amendment is also necessary to comply with the statutory mandate in KRS 18A.2254 to annually update the regulation incorporating the plan year handbook.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254

mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2019 plan year handbook by reference in accordance with KRS 18A.2254.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the requirements of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2019 plan year handbook by reference in accordance with KRS 18A.2254.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employees of state and select county and local government entities, including employees of the local school boards and districts. This administrative regulation also affects certain retirees as specified by KRS 18A.225. More specifically, and as defined by KRS 18A.225(1)(a), this administrative regulation affects approximately 182,783 employees and retirees eligible to participate in the Public Employee Health Insurance Program. In total, this administrative regulation affects 303,207 members in the self-insured plan including employees and retirees, qualifying beneficiaries, and dependents.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Affected entities will not be required to take any additional action to comply with this administrative regulation that incorporates the 2019 plan year handbook. The 2019 Benefits Selection Guide will provide information to the public employees covered under the Public Employee Health Insurance Program about the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for the 2019 plan year.

(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 provides employer and employee premium contribution information for health plans available under the Public Employee Health Insurance Program for plan year 2019. There is no direct cost impact to employers participating in the Public Employee Health Insurance Program as a result of incorporating the 2019 plan year handbook into the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For plan year 2019, participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program will have access to comprehensive health insurance benefits under all plans offered through the self-insured program. For plan year 2019, health coverage will be available to employees with low to no premium increases when compared to the 2018 plan year. Only the employee contributions for the LivingWell CDHP couple and family tiers will increase \$8.00 and \$10.00, respectively. All other premiums remain the same as the 2018 plan year, with no employer contribution increases.

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

(a) Initially: Costs of implementing this administrative regulation initially are believed to be minimal.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust Fund.

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

(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 or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all employees of state and select county and local government entities, including employees of the local school boards and districts that participate in the Public Employee Health Insurance Program. As employers, this administrative regulation will affect state and select county and local government entities as well as local school boards and districts. This administrative regulation also affects certain retirees eligible to participate in the Program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287; 26 U.S.C. 21, 105, 106, 125, 129, 152, and 213 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1 through 7; the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010); and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, school boards 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, school boards or school districts) for the first year? The administrative regulation will not generate any 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? The administrative regulation will not generate any revenues.

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this program on a continuing basis are believed to be consistent with previous plan years. By law, an amended administrative regulation will be promulgated in 2018 and each subsequent plan year.

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

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

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 15:050. Filing dates and extensions.

RELATES TO: KRS 131.081(11), 131.170, 136.100, 141.042, 141.160, 141.170, 141.300

STATUTORY AUTHORITY: KRS 131.130[(4)], 141.042[(6)], 141.050[(4)], 141.300[(6)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.081(11)[141.081(10)], 131.170, 141.042(7)[141.042(6)], and 141.170 authorize the Department of Revenue to grant a taxpayer an extension of time to file a tax return or to pay an installment of estimated income [or limited liability entity] tax. This administrative regulation establishes the procedures to be used by an individual, a corporation, or a noncorporate entity to obtain an extension of time to file an income or limited liability entity tax return or to pay an installment of estimated income tax for a taxable year.

Section 1. Definitions. (1) "Corporation" means a corporation as defined in KRS 141.010(4)[141.010(24)], an S corporation as defined in KRS 141.010(25)[141.010(27)], a limited liability company taxed as a corporation, or other entity taxed as a corporation for Kentucky income tax purposes;

(2) "Date prescribed by KRS 136.100 or 141.160" means the 15th day of the fourth month following the close of the taxable year; and[-]

(3) "Noncorporate entity" means a partnership, a limited liability company treated as a partnership, a trust, a fiduciary, or other entity not taxed as a corporation for Kentucky income tax purposes.

Section 2. An Extension of Time for Filing an Income or ~~Corporation~~[~~Limited Liability Entity~~] Tax Return. (1) Pursuant to KRS 131.081(11) and 141.170, a taxpayer may obtain an extension of time for filing a Kentucky income tax return by means of either a federal extension or a Kentucky extension.

(2) Federal extension.

(a) A taxpayer granted an extension of time for filing a federal income tax return shall be granted the same extension of time for filing a Kentucky income tax return for the same taxable year if a copy of the federal extension approval or request for an automatic extension is attached to the Kentucky income tax return when it is filed.

(b) An extension of time for filing a Kentucky income tax return granted pursuant to this subsection shall be valid for the extension period granted by the Internal Revenue Service.

(c) A copy of the federal extension shall not be mailed to the department on or before the date prescribed by KRS 141.160, except as provided in Section 3 of this administrative regulation.

(3) Kentucky extension. A taxpayer may file an application for extension with the department, on or before the date prescribed by KRS 141.160 for filing the return.

(a) An individual or a noncorporate entity shall file Form 740EXT[an] "Application for Extension of Time to File[Individual, General Partnership and Fiduciary Income Tax Returns for Kentucky]", Revenue Form 40A102.

1. An individual or a noncorporate entity shall state the reason for the request on the application for extension. Inability to pay the tax liability shall not be a valid reason.

2. An individual or a noncorporate entity shall be notified by mail if the application for extension is denied. A copy of an approved application for extension shall not be returned to the individual or noncorporate entity.

3. [~~In accordance with KRS 141.170,~~]An individual or a noncorporate entity shall be granted an extension of time to file for six (6) months unless the application for extension is denied.

4. [~~In accordance with KRS 141.170,~~]An individual outside the United States shall be granted an extension of time to file for twelve (12) months unless the application for extension is denied.

5. A copy of the signed and dated application for extension shall be attached to the income tax return when it is filed.

(b) A corporation shall file Form 720EXT[an] "Extension of Time to File Kentucky Corporation/LLET Return", Revenue Form 41A720SL.

1. A corporation shall be granted an extension of time to file for six (6) months.

2. A copy of an approved application for extension shall not be returned to the corporation.

3. The extension shall become valid when mailed to the

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

department on or before the date prescribed by KRS 141.160 for filing the return.

4. The corporation shall attach a copy of the signed and dated application for extension to its "Kentucky Corporation Income Tax And LLET Return", Revenue Form 71A720, when it is filed.

(4) An extension of time for filing a ~~[mandatory-nexus]~~ consolidated Kentucky corporation income tax return shall constitute an extension of time for filing for each member of the affiliated group.

(5) An extension of time for filing a corporation income tax return shall constitute an extension of time for filing a limited liability entity tax return for the same taxable year.

Section 3. Payment of Tax. (1) An extension of time to file an income or limited liability entity tax return shall not constitute an extension of time to pay the tax.

(2) A taxpayer shall determine if an amount of tax remains unpaid on or before the date prescribed by KRS 136.100 or 141.160 for filing the return.

(3) If tax remains unpaid, a check for the amount of the unpaid tax shall be submitted to the department on or before the date prescribed by KRS 136.100 or 141.160 for filing the return along with the Kentucky extension or a copy of the federal extension.

(4) A corporation shall write its Kentucky Account Number in the upper right hand corner of the federal extension submitted.

(5) An affiliated group filing a mandatory nexus consolidated income tax return and making a payment of tax with the application for extension shall file a Kentucky extension to ensure the proper processing of payments.

Section 4. Interest and Penalties. (1) Statutory interest shall be paid from the date prescribed by KRS 136.100 or 141.160 for filing the return until the tax is paid.

(2) If the envelope bearing the return is postmarked on or before the filing date, ~~a[the]~~ late filing penalty ~~[prescribed by KRS 134-180]~~ shall not apply.

Section 5. Extension of Time to Pay Estimated Income Tax. (1) A request for an extension of time to pay an installment of estimated tax prescribed by KRS 141.042 and 141.300 shall be submitted to the Department of Revenue, 501 High Street, Frankfort, Kentucky 40601~~[40620]~~.

(2) The request shall state a basis for the extension.

(3) An extension of time to pay an installment of estimated tax shall be granted for thirty (30) days under exceptional circumstances.

(4) Interest shall be paid from the due date of the installment of estimated tax until the tax is paid.

Section 6. The forms and materials listed herein may be obtained or inspected, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, on the department Web site at <http://revenue.ky.gov>, or at a Kentucky Department of Revenue Taxpayer Service Center during hours of operation.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 14, 2018

FILED WITH LRC: September 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 24, 2018, at 1:00 p.m. in Room 8A, State Office Building, 501 High Street, 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 will be accepted

through October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Revenue Tax Policy/Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3874, 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 KRS 15:050 to update statutory references and remove outdated language no longer applicable.

(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 revisions are incorporated into affected regulations and passed down to those affected by the change.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Correcting outdated or incorrect statutory references and language in regulations helps to decrease call volume to the department and confusion regarding the deficient information.

(2) If 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 replaces incorrect references to the Kentucky Revenue "cabinet" with "department" under the authority of KRS 131.020 that reorganized the Kentucky Revenue Cabinet into the Department of Revenue in 2005; and removed references to forms "incorporated by reference" that are no longer incorporated in a forms regulation and are now only prescribed on the department website. These amendments also update statutory references and make minor corrections to form references.

(b) The necessity of the amendment to this administrative regulation: The current regulation as written is outdated and deficient. This amendment will bring the regulation in line with the most up-to-date authorizing statutory language.

(c) How the amendment conforms to the content of the authorizing statutes: It replaces outdated language or references that have been replaced by statutory revisions.

(d) How the amendment will assist in the effective administration of the statutes: By decreasing call volume to the department and confusion resulting from deficient information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Anyone wishing to know the department's policy for granting an extension of time to file a tax return or pay an installment of tax due.

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

(a) List 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.

(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 to comply with this change.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be less taxpayer and staff confusion by outlining the correct process to obtain an extension of time to file or pay an installment of tax due.

(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 taxpayers wishing to file a claim for refund with the department will all be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The 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 131.081, 131.130, 131.170, 141.042, 141.050 and 141.300.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 revisions 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 (+/-): \$0

Expenditures (+/-): \$0

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 15:060. Estimated tax; amended declarations; short years.

RELATES TO: KRS 141.042, 141.044, 141.300, 141.305, 141.990

STATUTORY AUTHORITY: KRS 131.130[Chapter 43A]

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is specifically required by KRS 141.042(6), 141.300(6), and 141.305(6) to provide for amended and short-year declarations of estimated tax.

Section 1. General. A declaration of estimate tax return for a short taxable year shall be filed by any individual whose income exceeds \$5,000[\$2,000] from which Kentucky tax is not withheld, and by any corporation whose Kentucky income tax liability for the short taxable year can reasonably be expected to exceed \$5,000.

However, no declaration is required of an individual if the estimated tax is less than \$500[~~forty (40) dollars~~]. A short taxable year contains more than five (5) months and less than twelve (12) months. A declaration is not required of any taxpayer for a period of less than five (5) months.

Section 2. Time for Filing. (1) Individuals. A declaration for a short taxable year shall be filed at the time required by KRS 141.300(3).

(2) Corporations. A declaration for a short taxable year shall be filed at the time required by KRS 141.042(3).

Section 3. Payment. (1) Individuals. Estimated Kentucky income tax for the short taxable year shall be paid at the times prescribed by KRS 141.305(1) except that any installments unpaid at the close of the short taxable year shall be paid when the income tax return is filed.

(2) Corporations. Estimated Kentucky income tax for the short taxable year shall be paid at the times prescribed by KRS 141.044(1) except that any installments unpaid at the close of the short taxable year shall be paid when the income tax return is filed.

Section 4. Fiscal Years. Fiscal year taxpayers shall substitute corresponding dates for dates prescribed for calendar year taxpayers.

Section 5. Penalties. Individuals and corporations which fail to file and pay declarations of estimated tax for the short taxable years are subject to penalties contained in KRS 141.990.

Section 6. Amended Declarations. Individuals and corporations may file amended declarations of estimated income tax during any interval between installment dates. If an amended declaration is filed, any remaining installment(s) shall be adjusted to reflect the amendment. An amended declaration made after the third installment shall be paid in full when the amendment is filed.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: September 14, 2018

FILED WITH LRC: September 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2018 at 10:00 a.m. in Room 8A, State Office Building, 501 High Street, 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 October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Revenue 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 and clarifies statutory references and corrects the income threshold for the declaration of income tax from \$2,000 to \$5,000 per KRS 141.300(1).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update 103 KAR 15:060 to conform to statutory language and to update information related

to thresholds for short-year returns to match KRS 131.300(1).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment updates 103 KAR 15:060 to provide taxpayers with the most current and up-to-date guidance as required in the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative 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: Any individual who previously had to declare estimated income tax in Kentucky of \$499 or less will benefit from the reduction in reporting requirements.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None. This amendment only updates statutory references and income thresholds to conform to KRS 141.300(1).

(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): Potentially less reporting to the department as a result of the higher threshold limit may be a benefit to filers.

(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. All persons, businesses, etc. impacted by this regulation will be treated exactly the same when filing an estimated payment declaration.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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, 141.042, 141.300, and 141.305.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? There are no additional cost required to promulgate this regulation other than budgetary funding already allocated for the administration of the department.

(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 (+/-): \$0

Expenditures (+/-): \$0

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue Office of Income Taxation (Amendment)

103 KAR 15:180. Kentucky new markets development program tax credit.

RELATES TO: KRS 131.131, 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, 141.020, 141.040, 141.0401, 141.050, 141.432, 141.433, 141.434, 304.3-270, 26 U.S.C. 45D

STATUTORY AUTHORITY: KRS 141.433(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.434 establishes a nonrefundable tax credit for a person or entity making a qualified equity investment in a qualified community development entity as provided by KRS 141.432(6). KRS 141.433(7) requires the department to promulgate administrative regulations to implement the provisions of KRS 141.432 to KRS 141.434, and to administer the allocation of tax credits issued for qualified equity investments. This administrative regulation establishes guidelines and the filing requirements of a qualified community development entity (CDE) in order for the department to certify qualified equity investments and to allocate tax credits to a person or entity making a qualified equity investment in a qualified community development entity.

Section 1. Definitions. (1) "Applicant" means a CDE that files an application with the department to have an equity investment or long-term debt security certified as a qualified equity investment eligible for the tax credit authorized by KRS 141.434.

(2) "Application" means Form 8874(K), Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit (Revenue Form 41A720-S80), that is published by the department and filed by a CDE with the department for certification as a qualified equity investment.

(3) "Applications[Application] fee" means a \$1,000 nonrefundable cashier's check that shall be attached to the application at the time of filing with the department.

(4) "CDE" means a qualified community development entity as defined by KRS 141.432(6).

(5) "CDFI Fund" means the U.S. Department of Treasury, Community Development Financial Institutions Fund.

(6) "Certification form" means Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification, that is published by the department and filed by a CDE certifying to the department receipt of a cash investment.

(7) "Certified purchase price" means the purchase price of a qualified equity investment contained in the application approved by the department.

- (8) "Department" means the Kentucky Department of Revenue.
- (9) "Department's approval" means certified by the department as provided by KRS 141.433(3).
- (10) "Identification number" means the:
 - (a) Social Security Number for an individual;
 - (b) Federal Employer Identification Number for a general partnership, estate, or trust; or
 - (c) Kentucky Corporation/LLET Account Number for a corporation or limited liability pass-through entity.
- (11) "Long-term debt security" is defined by KRS 141.432(3).
- (12) "Notice of recapture" means Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture, that is published by the department and sent to the CDE and each taxpayer from whom a credit is to be recaptured as a final order of recapture.
- (13) "Performance fee" is defined by KRS 141.433(8).
- (14) "Qualified active low-income community business" is defined by KRS 141.432(5).
- (15) "Qualified community development entity" is defined by KRS 141.432(6).
- (16) "Qualified equity investment" is defined by KRS 141.432(7).
- (17) "Qualified low-income community investment" is defined by KRS 141.432(8).
- (18) "Tax credit" is defined by KRS 141.432(9).
- (19) "Taxpayer" is defined by KRS 141.432(10).

Section 2. Application for Certification of Qualified Equity Investments. (1) A CDE that seeks to have an equity investment or long-term debt security certified by the department as a qualified equity investment eligible for the tax credit permitted by KRS 141.434 shall file an application with the department.

(2) The department shall notify the CDE within thirty (30) days after receipt of the application whether the application is approved or denied.

(a) If the department intends to deny the application, the CDE shall be notified in writing by the department of the reason for the denial, and the CDE may correct the application as provided by KRS 141.433(2).

(b) If the department finds that the application is in compliance with KRS 141.432 to 141.434, a copy of the application shall be returned to the CDE with written notice of the department's approval.

(c) 1. The department shall:

a. Accept an application on or after July 15, 2019,~~[2016]~~ if the application is received via hand-delivery, mail, express mail, or courier; and

b. Not accept an application received via facsimile, CD-Rom, CD, or electronic means.

2. The date that the application is stamped received by the Office of Income Taxation, Division of Corporate~~[Corporation]~~ Tax, Tax Credits Section, shall be the date that the application is recorded as received pursuant to the provisions of KRS 141.133.

3. An application received prior to July 15, 2019,~~[2016]~~ shall be recorded as received on July 15, 2019,~~[2016]~~.

Section 3. Information Required on or Attached to the Application. The following information shall be required on or attached to the application:

(1) The CDE's name, mailing address, identification number, telephone number, and fax number;

(2) The name and identification number of the parent company, if the CDE is included in a consolidated corporation income tax return filed with the Commonwealth of Kentucky;

(3) The type of entity of the CDE for Kentucky income tax purposes included in the application;

(4) The signature of the person completing the application and the date signed;

(5) The total number of taxpayers making qualified equity investments;

(6) The total amount of qualified equity investments for all taxpayers;

(7) A statement that the entity has been certified as a CDE, as

required by 26 U.S.C. 45D(c);

(8) A statement that the entity has received a new markets tax credit allocation from the CDFI Fund which~~[that]~~ includes the Commonwealth of Kentucky within the service area as set forth in the allocation, and the date of the allocation agreement. A copy of the new markets tax credit allocation agreement shall be attached to the application;

(9) Proof of current certification with the CDFI Fund that includes the original application to CDFI and all subsequent updates;

(10) A statement of whether the entity's service area is a county, state, multi-state, or national. A map of the service area, articles of organization that describe the service area, bylaws that describe the service area, or other documentation that describes the service area shall be attached to the application;

(11) Information regarding the proposed use of the proceeds from the qualified equity investments, including a description of the qualified active low-income community business as provided by KRS 141.432(5);

(12) The name, identification number, type of investment (whether debt or equity), and purchase price of the qualified equity investment for each taxpayer making a qualified equity investment;

(13) A signed certification indicating that the application has been executed by the executive officer of the CDE, declaring under the penalty of perjury:

(a) That the applicant's allocation agreement remains in effect and has not been revoked or canceled by the CDFI Fund; and

(b) That the application, including all accompanying documents and statements, is true, correct and complete;

(14) The application fee; and

(15) The refundable performance fee.

Section 4. Proof of Qualified Equity Investments. (1) Within ninety (90) days after the approved application is received by the CDE, the CDE shall issue qualified equity investments in exchange for cash in the amount of the certified purchase prices contained in the application.

(2) The CDE shall provide the department with evidence of the receipt of the cash for each qualified equity investment by filing with the department a certification form.

(3) If the department is satisfied that the cash amount of the qualified equity investment was received by the CDE, a copy of the certification form shall be returned to the CDE and taxpayer with the department's written approval, including a statement of the tax credits available to the taxpayer for each of the next seven (7) years.

(4) If the department is not satisfied that the cash amount of the qualified equity investment was received by the CDE, the department shall notify the CDE in writing of the reason. If the CDE does not agree with the department's written determination, the CDE may file a protest as provided by KRS 131.110.

Section 5. New Markets Development Program Tax Credit Recapture. (1) If there is an event as provided by KRS 141.433(6) which~~[that]~~ would result in the recapture of any portion of the tax credit previously approved:

(a) The CDE shall notify the department upon discovery of the event; or

(b) The department, upon discovery of the event or after receiving notice from the CDE of the event, shall provide written notice of the proposed recapture to the CDE as provided by KRS 141.433(6)(b).

(2) If the entity fails or is unable to cure the deficiency within ninety (90) days after receiving the department's notice of proposed recapture as provided by KRS 141.433(6)(b), the department shall notify the CDE and each taxpayer of the amount of recapture or the balance of the tax credit on a notice of recapture.

(3) If the taxpayer is a pass-through entity, a notice of recapture shall also be sent to each partner, member, or shareholder showing the amount of recapture or the balance of the tax credit.

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

DANIEL BORK, Commissioner

APPROVED BY AGENCY: September 14, 2018

FILED WITH LRC: September 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 24, 2018 at 10:00 a.m. in Room 8A, State Office Building, 501 High Street, 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 will be accepted through October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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 regulation provides guidance to taxpayer and department to accurately and efficiently comply with the requirements of the new market development program ("NMDP") tax credit.

(b) The necessity of this administrative regulation: KRS 141.433(7) requires the department to promulgate regulations to administer the NMDP tax credit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation complies with the requirements of KRS 141.433(7) and provides guidance required by statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides clear instructions for taxpayers wanting to claim the NMDP tax credit and assists department personnel with understanding the detailed compliance 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 only updates the application acceptance date from 2016 to 2019. The NMDP tax credit is administered in allotments of \$10 million per KRS 141.434(4).

(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: A limited number of sophisticated financial organization taxpayers participate in the NMDP tax credit application process.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Taxpayers will need to comply with the application time periods in Section 2 of this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): No additional costs are incurred by complying with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The NMDP tax credit lowers development costs for taxpayers in certain qualified low-income communities and provides opportunities for small business investment and development.

(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 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 eligible taxpayers 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.

(b) How 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 (+/-): \$0

Expenditures (+/-): \$0

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 15:195. Endow Kentucky Tax Credit.

RELATES TO: KRS 141.438, 147A.310

STATUTORY AUTHORITY: KRS 131.130[(1)], 141.438[(8)(a)4]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.438 establishes a nonrefundable tax credit for a taxpayer making an

endowment gift to a permanent endowment fund of a qualified community foundation, or county-specific component fund, or affiliate community foundation, which has been certified under KRS 147A.325. 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 the department's allocation of the \$1,000,000~~[\$500,000]~~ tax credit that may be awarded each fiscal year under the provisions of KRS 141.438(6) and establishes the filing requirements for a taxpayer to obtain preliminary authorization and final approval of the tax credit from the department.

Section 1. Definitions. (1) "Affiliate community foundation" is defined by KRS 147A.310(1).

(2) "Applicant" means a taxpayer that files an application with the department to obtain preliminary authorization for the Endow Kentucky tax credit as required by KRS 141.438(7).

(3) "Application" means ENDOW Application~~[Revenue Form 41A720-S85]~~, Application for Preliminary Authorization of the Endow Kentucky Tax Credit, Revenue Form 41A720-S85.

(4) "County-specific component fund" is defined by KRS 147A.310(3).

(5) "Department" means the Kentucky Department of Revenue.

(6) "Endowment gift" is defined by KRS 147A.310(4).

(7) "Final approval" means the applicant has received written notice from the department that proof of the endowment gift has been verified, as required by KRS 141.438(8)(c).

(8) "Identification number" means:

(a) A Social Security number for individuals;

(b) A Federal Employer Identification Number for general partnerships, estates, or trusts; or

(c) A Kentucky Corporation/LLET Account Number for corporations or limited liability pass-through entities.

(9) "Preliminary authorization" means the applicant has received written notice from the department that the application is in compliance with KRS 141.438.

(10) "Qualified community foundation" is defined by KRS 147A.310(6).

(11) "Received" means the application has been delivered in accordance with Section 2(2) of this administrative regulation and time stamped as received by the Office of Income Taxation, Division of Corporation Tax, Tax Credits~~[Credit]~~ Section.

(12) "Tax credit" means the credit established by KRS 141.438(3).

(13) "Tax credit cap" means the amount provided by KRS 141.438(6).

Section 2. Application for Preliminary Authorization of the Endow Kentucky Tax Credit. (1) An applicant that seeks to obtain preliminary authorization of a tax credit shall file an application with the department.

(2) The application shall be delivered to the department by one (1) of the following methods:

(a) By fax to (502) 564-0058;

(b) By electronic mail sent to the department's mailbox at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov; or

(c) Hand-delivered to the Department of Revenue, 1st floor security desk at 501 High Street, Frankfort, Kentucky 40601. Security personnel shall notify the Office of Income Taxation, Division of Corporation Tax, Tax Credits~~[Credit]~~ Section, who shall stamp the application at the security desk as received.

(3)~~[The department shall review the applications received via the methods required by subsection (2) of this section as prescribed by this subsection.~~

~~(a)1. Applications for the fiscal year ending June 30, 2011 delivered to the department beginning at midnight Eastern Time on April 11, 2011 through 11:59 p.m. Eastern Time on April 15, 2011 shall be considered for approval and shall be treated as having been filed at the same time.~~

~~2. If the tax credit cap is exceeded for applications received within the time prescribed by subparagraph 1. of this paragraph, the tax credit amounts receiving preliminary authorization shall be~~

~~prorated by the fraction prescribed by paragraph (b) of this subsection.~~

~~(b) Tax credit amounts receiving preliminary authorization that are required to be prorated under paragraph (a)2. of this subsection shall be multiplied by a fraction, the numerator of which shall be the tax credit cap and the denominator of which shall be the total tax credit amounts receiving preliminary authorization for applications received during the time frame prescribed in paragraph (a)1. of this subsection.~~

~~(c) A fiscal year 2011 application filed prior to April 11, 2011, shall be considered as received at midnight Eastern Time on April 11, 2011.~~

~~(d)1. If the remaining tax credit cap is not fully allocated for the fiscal year ending June 30, 2011 for applications received during the period described in paragraph (a)1. of this subsection, a second period for accepting applications shall commence on April 18, 2011 and end on April 22, 2011.~~

~~2. All applications received during the time frame prescribed by subparagraph 1. of this paragraph shall be treated as having been received at the same time.~~

~~3. If the tax credit cap is exceeded for applications received by the department within the time period prescribed by subparagraph 1. of this paragraph, the tax credit amounts receiving preliminary authorization shall be prorated by the fraction prescribed by subparagraph 4. of this paragraph.~~

~~4. Tax credit amounts receiving preliminary authorization that are required to be prorated under the provisions of subparagraph 3. of this paragraph shall be multiplied by a fraction, the numerator of which shall be the portion of the tax credit cap not allocated under paragraph (a) of this subsection and the denominator of which shall be the total tax credit amounts receiving preliminary authorization for applications delivered during the time prescribed in subparagraph 1. of this paragraph.~~

~~5. Any tax credit cap for the fiscal year ending June 30, 2011 that is not fully allocated by the close of the period prescribed in subparagraph 1. of this paragraph shall be allocated on a first-come, first-serve basis beginning with applications received on or after April 25, 2011.~~

~~(4)(a) For fiscal years beginning on or after July 1, 2011, applications received by the department beginning at midnight Eastern Time on July 1 through 11:59 p.m. Eastern Time on July 7 shall be treated as having been filed at the same time.~~

~~(b) If the tax credit cap is exceeded for applications received by the department within the time prescribed by paragraph (a) of this subsection, the tax credit amounts receiving preliminary authorization shall be prorated by the fraction prescribed by paragraph (c) of this subsection.~~

~~(c) Tax credit amounts receiving preliminary authorization that are required to be prorated under the provisions of paragraph (b) of this subsection shall be multiplied by a fraction, the numerator of which shall be the tax credit cap and the denominator of which shall be the total tax credit amounts receiving preliminary authorization for applications delivered during the time period prescribed in paragraph (a) of this subsection.~~

~~(d) If the tax credit cap is not fully allocated for a fiscal year that begins on or after July 1, 2011 for applications received during the period described in paragraph (a) of this subsection, a second period for accepting applications shall commence on July 8 of the fiscal year and end on July 14 of the fiscal year.~~

~~(e) All applications received during the time frame prescribed by paragraph (d) of this subsection shall be treated as having been filed at the same time.~~

~~(f) If the remaining tax credit cap is exceeded for applications received by the department within the time prescribed by paragraph (d) of this subsection, the tax credit amounts receiving preliminary authorization shall be prorated by the fraction prescribed by paragraph (g) of this subsection.~~

~~(g) Tax credit amounts receiving preliminary authorization that are required to be prorated under the provisions of paragraph (f) of this subsection shall be multiplied by a fraction, the numerator of which shall be the portion of the tax credit cap not allocated during the first time period under paragraph (a) of this subsection and the denominator of which shall be the total tax credit amounts~~

receiving preliminary authorization for applications delivered during the time prescribed in paragraph (d) of this subsection.

(h) For fiscal years beginning on or after July 1, 2011, any tax credit cap not allocated under paragraphs (a) to (g) of this subsection shall be allocated on a first-come, first-serve basis beginning with applications received on or after July 15 of the fiscal year. If the tax credit cap is met under the provisions of this paragraph, subsequent applications shall be denied.

~~(4) [(5)]~~ An application shall not be submitted prior to July 1st for each fiscal year beginning on or after July 1, 2011.

~~(5) [(6)]~~ The department shall notify the applicant within thirty (30) calendar days after receipt of the application whether preliminary authorization of the tax credit is denied or approved.

(a) If the department denies preliminary authorization of the tax credit, the applicant shall be notified in writing by the department of the reason for the denial.

(b) If the department approves the tax credit application, a copy of the application shall be returned to the applicant with written notice of the department's preliminary authorization.

~~(6) [(7)]~~ Any restored tax credit cap described in KRS 141.438(8)(d) shall be re-allocated to the pool of applications received during the same time period in which the application was received from the applicant that had the preliminary approval voided. Any restored tax credit cap shall be re-allocated based on the applicable requirements prescribed by subsection (3) [subsections (3) or (4)] of this section. The other applicants from the same pool shall receive amended preliminary approvals reflecting the re-allocation. ~~[(8)(a) The percentage of proration for the pool of applicants described in subsection (3)(d)1. of this section shall not exceed the percentage of proration for the pool of applicants described in subsection (3)(a)1. of this section.]~~

~~(b) The maximum tax credit amount for the pool of applicants described in subsection (3)(d)5. of this section shall not exceed the maximum tax credit amount received by the pool of applicants described in subsections (3)(a)1. and (3)(d)1. of this section.]~~

~~(7)(a) [(9)(a)]~~ The percentage of proration for the pool of applicants described in subsection ~~(3)(d) [(4)(d)]~~ of this section shall not exceed the percentage of proration for the pool of applicants described in subsection ~~(3)(a) [(4)(a)]~~ of this section.

(b) The maximum tax credit amount for the pool of applicants described in subsection ~~(3)(h) [(4)(h)]~~ of this section shall not exceed the maximum tax credit amount received by the pool of applicants described in subsections ~~(3)(a) [(4)(a)]~~ and ~~(3)(d) [(4)(d)]~~ of this section.

Section 3. Information Required on or Attached to the Application. The following information shall be required on or attached to the application:

(1) The applicant's name, mailing address, identification number, telephone number, and fax number;

(2) The entity type of the applicant for Kentucky income tax purposes;

(3) The submission date of the application;

(4) The amount of the endowment gift;

(5) The amount of tax credit;

(6)(a) The qualified community foundation's or affiliate community foundation's name, mailing address, identification number, telephone number, and fax number; or

(b) If a county-specific component fund, its name; and

(7) A statement that the application was executed by the applicant or authorized representative, declaring under the penalty of perjury that the application, including all accompanying documents and statements, is true, correct and complete.

Section 4. Proof of Endowment Gift. (1) Within thirty (30) calendar days after receiving the notice of preliminary authorization of the tax credit from the department, the taxpayer shall make the endowment gift to the permanent endowment fund held by the approved qualified community foundation, county-specific component fund, or affiliate community foundation.

(2) The applicant shall provide the department with proof of the endowment gift within ten (10) calendar days of making the gift by filing with the department Schedule ENDOW [Revenue Form

41A720-S86], Notice of Endow Kentucky Tax Credit and Certification, Revenue Form 41A720-S86 [(Schedule ENDOW)].

(3) If the department has verified that the endowment gift specified on the application was made to the approved qualified community foundation, county-specific component fund, or affiliate community foundation, Schedule ENDOW shall be returned to the applicant with the department's final approval of the tax credit.

(4) If the applicant fails to make an endowment gift or provide proof of the endowment gift to the department within the time frames established in KRS 141.438(7), the department shall revoke the preliminary authorization of the tax credit by written notification to the applicant. The department shall restore the denied amount to the tax credit cap and re-allocate the restored amount under the requirements established in Section 2(6) [2(7)] of this administrative regulation.

Section 5. Preliminarily Authorized Amounts Not Affected by Proration. (1) If an applicant approved for preliminary authorization makes an endowment gift that is less than the amount indicated on the application and all the other applicable requirements of KRS 141.438 and this administrative regulation are met by the applicant, the department shall:

(a) Issue final approval based on the amount proven; and

(b) Restore to the tax credit cap the difference between the amount of tax credit that received preliminary authorization and the amount receiving final approval.

(2) The amount restored to the tax credit cap shall be re-allocated as provided in Section 2(6) [2(7)] of this administrative regulation.

Section 6. Preliminarily Authorized Amounts Affected by Proration. If an applicant receives preliminary authorization for an amount but due to the proration provisions in Section 2 of this administrative regulation will receive a tax credit for less than the amount for which the applicant is preliminarily approved, the applicant may donate the lesser prorated amount without penalty and receive the corresponding tax credit of the lesser prorated amount.

Section 7. Information Required on or Attached to the Schedule ENDOW. The following information shall be required on or attached to the Schedule ENDOW:

(1) The applicant's name, mailing address, identification number, telephone number, and fax number;

(2) The entity type of the applicant for Kentucky income tax purposes;

(3) The date the endowment gift was made to the approved qualified community foundation, county-specific component fund, or affiliate community foundation;

(4) The amount of the endowment gift;

(5) The date of the department's preliminary authorization of the tax credit;

(6)(a) The qualified community foundation's or affiliate community foundation's name, mailing address, identification number, telephone number, and fax number; or

(b) If a county-specific component fund, its name; and

(7) A statement that the Schedule ENDOW was executed by a foundation officer or designee, declaring under the penalty of perjury that the:

(a)1. Foundation is a qualified community foundation as provided by KRS 147A.310(6);

2. Foundation is a qualified affiliate community foundation as provided by KRS 147A.310(1); or

3. Fund is a county-specific component fund as provided by KRS 147A.310(3);

(b) Endowment gift is held in a permanent endowment fund as provided by KRS 147A.310(4); and

(c) Schedule ENDOW, including all accompanying documents and statements, is true, correct and complete.

Section 8. Return Filing Requirement. (1) An applicant claiming the tax credit shall attach each tax year a copy of the approved Schedule ENDOW to the tax return on which the credit is claimed.

(2) An applicant claiming the tax credit shall not claim more than \$10,000 in credit on a single return.

(3) A partner, member, or shareholder of an applicant claiming the tax credit shall attach each taxable year a copy of Schedule K-1, Form 720S (Revenue Form 41A720S(K-1)); Schedule K-1, Form 765 (Revenue Form 41A765(K-1)); or Schedule K-1, Form 765-GP (Revenue Form 42A765-GP(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.

(4) A beneficiary of an applicant that is an estate or trust shall attach each taxable year a copy of Schedule K-1, Form 741 (Revenue Form 42A741(K-1)), [incorporated by reference in 103-KAR 3:040.] to the beneficiary's tax return on which the credit is claimed.

Section 9. The forms and materials listed herein may be inspected, copied, or obtained, subject to applicable copyright law, from 8:00 a.m. until 4:30 p.m. at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, at any Kentucky Department of Revenue Taxpayer Service Center during operating hours, and on the department's website at <http://revenue.ky.gov>. [Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Revenue Form 41A720-S85, "Application for Preliminary Authorization of the Endow Kentucky Tax Credit", February 2011; and

(b) Revenue Form 41A720-S86, "Notice of Endow Kentucky Tax Credit and Certification (Schedule ENDOW)", February 2011.

(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 or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8:00 a.m. to 4:30 p.m.]

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 14, 2018

FILED WITH LRC: September 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 24, 2018 at 10:00 a.m. in Room 8A, State Office Building, 501 High Street, 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 will be accepted through October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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 regulatory language to conform to recent statutory language revisions, removes outdated guidance, and corrects form references.

(b) The necessity of this administrative regulation: This regulation is required to inform taxpayers about the proper procedures to claim an Endow Kentucky tax credit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes require the allocation of the total Endow Kentucky tax credit if applications

exceed the amount authorized in the statute. This regulation sets forth the application process for taxpayers and the credit allocation process the department will objectively follow.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clarifies the procedures used by taxpayers and the department to allocate the Endow Kentucky tax credit authorized by statute. The statute does not provide detailed application or allocation instructions.

(2) If 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 updates regulatory language to conform to recent statutory language revisions, removes outdated guidance, and corrects form references.

(b) The necessity of the amendment to this administrative regulation: Some guidance and references in the regulation are obsolete or inaccurate and need to be updated.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require an allocation of the Endow Kentucky tax credit if taxpayer applications exceed the amount of the credit authorized by statute. The amendment corrects and clarifies guidance.

(d) How the amendment will assist in the effective administration of the statutes: This regulation amendment corrects obsolete and inaccurate guidance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Taxpayers wishing to claim the Endow Kentucky tax credit will benefit from receiving clear, accurate, and objective guidance for submitting applications.

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

(a) List 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 requirements are imposed by these amendments. The changes remove obsolete and inaccurate guidance to make it easier for taxpayers to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost to any entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Less confusing, clear, and objective guidance will be available to taxpayers.

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

(a) Initially: Current budget funding and staff will implement this amendment.

(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 staff and 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 taxpayers applying for an Endow Kentucky tax credit will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The 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), 141.438(8)(a)1

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

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

(c) How much will it cost to administer this program for the first year? No 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 (+/-): \$0

Expenditures (+/-): \$0

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)**

103 KAR 17:010. Residence.

RELATES TO: KRS 141.010, 141.020

STATUTORY AUTHORITY: KRS 131.130[Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Kentucky Department of Revenue to promulgate regulations to prescribe tax return filing requirements for residents, part-year residents, and nonresidents. This administrative regulation provides guidelines for determining whether a person qualifies as a resident or nonresident for Kentucky income tax purposes~~[and provides special instruction to cover some of the more common problem areas].~~

Section 1. Definitions. (1) "Nonresident" is defined by KRS 141.010(18).

(2) "Part-year resident" is defined by KRS 141.010(20).

(3) ~~"Resident" is defined by KRS 141.010(24). [means any individual domiciled within Kentucky on the last day of the taxable year and includes any individual who spends more than 183 days in Kentucky and maintains a place of abode in Kentucky during this period. All other individuals are nonresidents.]~~

Section 2. Nonresident Requirements.~~[To qualify as a nonresident, the taxpayer shall submit proof of his bona fide intention to reside permanently elsewhere before the last day of the taxable year, and that he has spent less than 183 days in Kentucky.]~~ If any person who has moved out of Kentucky returns to Kentucky within six (6) months from the time he had moved, it shall be construed that the removal from Kentucky was not intended to be permanent and such person shall be considered a resident, or part-year resident during the time in which his abode may have been elsewhere. Any person changing his domicile during a taxable year may also be required to furnish evidence of compliance with requirements of the other state with respect to taxation and qualifications as a resident citizen.~~[Persons residing in Kentucky and living part of the year in other states will be considered residents of Kentucky unless it can be shown that abode in another state is of permanent nature, and that less than 183 days were spent in Kentucky.]~~

Section 3. Domicile. Generally, a domicile is the place where an individual has established permanent residency~~[resident]~~. A domicile once obtained continues until a new one is acquired. Domicile is not changed by removal for a definite period or for incidental purposes. To constitute a change, there must be intent to change, actual removal, and a new abode.

Section 4. Nonresident Citizens. An individual residing in a foreign country who is permitted to file federal income tax returns as a nonresident citizen, and who immediately prior to residing in a foreign country was domiciled in Kentucky, is presumed to be a full time Kentucky resident and is required to file a resident Kentucky income tax return as such. An~~[Such]~~ individual may, however, overcome this presumption by presenting sufficient evidence that the Kentucky domicile has been abandoned.

Section 5. Federal Employees. Federal employees working outside of Kentucky but having a domicile in Kentucky are taxable as residents. Such persons, once domiciled in Kentucky, are considered Kentucky residents if a domicile has not been established in another district, state, or U.S. territory~~[elsewhere]~~. If the individual's domicile is claimed to be outside Kentucky, the requirements of Section 3 of this administrative regulation must be met.

Section 6. Military Personnel. Under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 as amended, a member of the Armed Forces retains the domicile which he had when he entered military service. Persons domiciled in Kentucky at the time of induction will continue to be liable for the payment of Kentucky income taxes on all income regardless of where their military services are performed. However, military personnel (usually career personnel) may change their domicile from Kentucky to another state as any other individual. Conclusive evidence must be submitted showing that their Kentucky domicile has been abandoned and a new domicile established in another district, state, or U.S. territory~~[state]~~.

Section 7. Reciprocity States. (1) Kentucky has reciprocal tax agreements with the states of Indiana, Illinois, Michigan, Ohio, Virginia, West Virginia, and Wisconsin. These agreements provide that salaries and wages earned in Kentucky by residents of those states are exempt from Kentucky income tax. Kentucky residents are exempt from income tax, imposed by such states, on salaries and wages earned there. The Virginia Agreement, however, applies only to taxpayers who commute daily to their employment in the nonresident state.

(2) A Kentucky resident, working in one (1) of the states listed above, must file the required certificate of nonresidence with his employer if they wish for tax to not be withheld by that employer. That certificate is the employer's authority to exempt the employee's income from withholding. A resident of a state listed above must file Revenue Form K-4~~[41A809]~~, Kentucky's Withholding Certificate ~~[of Nonresidence]~~, Revenue Form 41A804, with his Kentucky employer to exempt his income from Kentucky withholding. All Kentucky residents are subject to Kentucky income tax requirements as set forth in KRS 141.020.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 14, 2018

FILED WITH LRC: September 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 24, 2018 at 10:00 a.m. in Room 8A, State Office Building, 501 High Street, 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 will be accepted through October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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 KRS 17:010 to update residency requirements as newly defined in HB 487 of the 2018 General Assembly.

(b) The necessity of this administrative regulation: The current regulation as written is outdated and deficient. This amendment will bring the regulation in line with the current authorizing statutory language and provide the most accurate and recent information for Kentucky taxpayers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By ensuring that statutory revisions are incorporated into affected regulations and passed down to those affected by the change.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Correcting outdated or incorrect language in regulations to conform to statutory authority decreases confusion for taxpayers and eases compliance efforts for 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: 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: Individual taxpayers required to know the departments guidelines for what constitutes a "resident" of Kentucky for income tax purposes.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Taxpayers who followed prior residency guidance may now fall under a new definition and may need to file a Kentucky income tax return differently.

(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 to comply with this change.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be less confusion for taxpayers attempting to determine residency in Kentucky.

(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 are expected.

(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 Kentucky taxpayers will be treated the same, and the same residency rules apply to all.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 141.010, 141.020

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

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

(c) How much will it cost to administer this program for the first year? No additional 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 (+/-): \$0

Expenditures (+/-): \$0

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 17:020. Combined individual returns.

RELATES TO: KRS 131.130, 141.010, 141.050, 141.180

STATUTORY AUTHORITY: KRS 131.130[Chapter 13A]

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 provides a basis for the combined individual income tax return which permits married taxpayers to gain the benefits of separate filing on one return.~~[The administrative regulation also covers other points related to individual income tax forms, including requirement for Social Security number.]~~

~~Section 1.[Forms. (1) Resident. A resident return shall be filed on Revenue Form 740 (long form) or 740-S (short form) except that a new resident may file on Revenue Form 740-NP (nonresidents and part-year residents).~~

~~(2) Nonresidents. A nonresident return shall be filed on Revenue Form 740-NP.~~

Section 2.] Filing Elections. (1) Separate return. Any individual, whether married or single, may elect to file a separate return. If both spouses have income, separate returns are required for married taxpayers that do not have the same residency status as

defined in KRS 141.010.

(2) Joint return. A taxpayer[husband] and spouse[wife] may elect, for any year, to file a joint return if they are married at the close of the taxable year; or a surviving spouse may elect to file a joint return if the deceased spouse[husband or wife] died during the taxable year even though one (1) spouse had no gross income. If a joint return is filed, the gross income and adjusted gross income of the taxpayer[husband] and spouse[wife] are computed in an aggregate amount and the deductions and the net income are also computed on an aggregate basis. If separate returns have been filed by both spouses for the taxable year, the taxpayers[husband and wife] may elect to file an amended joint return if the Department of Revenue[Cabinet] is notified in writing that the separate return election is rescinded. Likewise, if two married taxpayers[husband and wife] have filed a joint return for the taxable year, they may elect to file an amended combined or amended separate returns.[A return marked "amended" will satisfy this requirement. Persons] Taxpayers filing joint returns are jointly and severally liable for all taxes, penalties, and interest accruing under the return.

(3) Combined return. Taxpayers[A husband and wife] may elect, for any year, to file a combined return if they are married at the close of the taxable year and have the same residency status as defined in Section 1. If a combined return is filed, the gross income, adjusted gross income, deductions, net income, tax credits, and tax liabilities of the taxpayer[husband] and spouse[wife] are computed separately but the tax shall be assessed on an aggregate basis. If married taxpayers[a husband and wife] elect to file a combined return, refunds shall be made payable to the taxpayers[husband and wife] jointly and the taxpayers[husband and wife] shall be jointly and severally liable for all taxes, penalties, and interest. Married couples electing to file a combined return shall not be permitted to rescind such election and file separate returns for that taxable year. [Section 3. General Provisions. (1) Forms may be obtained from the Revenue Cabinet, Frankfort, Kentucky 40601. Each taxpayer must carefully prepare his return so as to set forth fully and clearly the information required and attach copies of all withholding statements designated to be filed with the Kentucky income tax returns. Returns which are not so prepared will not be accepted as meeting the requirements of the law. In the absence of a prescribed form, a statement made by a taxpayer disclosing his gross income and the deductions therefrom may be accepted as a tentative return. If filed within the prescribed time, such statement will relieve the taxpayer from penalties for failure to file or late filing if the tentative return is promptly supplemented by a return made on the proper form.

(2) The Social Security number and complete home address of the taxpayer together with the official post office and zip code shall be given in the space provided at the top of the return for the name and address of the taxpayer. A taxpayer having a permanent business address may give that address as the principal or mailing address if the complete home address is also given within the space provided.

(3) The return may be made by an agent if the taxpayer is unable to do so. Whenever a return is made by an agent, it must be accompanied by a power of attorney, unless, by reason of absence, illness or other good cause, the taxpayer is unable to execute a power of attorney.]

DANIEL BORK, Commissioner

APPROVED BY AGENCY: September 14, 2018

FILED WITH LRC: September 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 24, 2018 at 10:00 a.m. in Room 8A, State Office Building, 501 High Street, 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 will be accepted through October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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 17:020 to remove information already contained in various tax form instructions and updates statute references and definitions.

(b) The necessity of this administrative regulation: This regulation is necessary to provide taxpayers with the current guidance regarding separate, joint, and combined filing elections for married taxpayers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes allow the department to provide guidance and clarify procedures taxpayers use to comply with legal requirements regarding separate, joint, and combined filing elections.

(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 updates the regulation to comply with current statutory requirements.

(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: Married individuals deciding on the best filing method are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No new action is required, but guidance is clarified to assist with filing method compliances, 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): Married taxpayers will be able to select the best filing method for their particular circumstances and comply with statutory requirements.

(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 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 married individuals can take advantage of the various filing options available.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 additional revenue is anticipated from this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? 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 (+/-): \$0

Expenditures (+/-): \$0

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 17:060. Income subject to taxation; portions.

RELATES TO: KRS 141.010, 141.017, 141.019, 141.020

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. KRS 141.020 establishes the income tax requirements for residents, part-year residents, and nonresidents. This administrative regulation prescribes methods of determining the Kentucky portion of certain income tax deductions of nonresidents and part-year residents.

Section 1. Definitions. (1) "Nonresident" is defined by KRS 141.010(18).

(2) "Part-year resident" is defined by KRS 141.010(20).

(3) "Resident" is defined by KRS 141.010(24).~~[Residents. The entire net income of a full-year resident individual shall be subject to Kentucky income tax regardless of its source. Income from out-of-state sources shall not be exempt. The adjustments to gross income and itemized deductions allowed under KRS 141.010(10) and (11) of a full-year resident shall not be limited to those paid in Kentucky.]~~

~~Section 2. Taxation of Residents. The entire net income of a resident individual shall be subject to Kentucky income tax regardless of its source. Income from out of state sources shall not be exempt. The adjustments to gross income and itemized deductions allowed under KRS 141.019 of a resident shall not be limited to those paid in Kentucky.~~~~[Persons-Becoming-Residents During the Year. (1) Persons who become Kentucky residents during the year shall be subject to Kentucky individual income tax upon their entire net incomes from any source after becoming Kentucky residents and upon their incomes from Kentucky sources prior to becoming Kentucky residents.~~

~~(2) Except as provided in Section 6 of this administrative regulation for net operating loss deductions, persons who become residents during the year shall be limited to either:~~

~~(a) Adjustments to gross income and itemized deductions allowed pursuant to KRS 141.010(10) and (11) paid after becoming Kentucky residents; or~~

~~(b) That portion of total adjustments to gross income and itemized deductions that Kentucky income bears to total income.]~~

~~Section 3. Taxation of Part-Year Residents~~~~[Persons-Becoming Nonresidents During the Year]. (1)[Persons who are Kentucky residents, but become nonresidents during the year.] Part-year residents shall be subject to Kentucky individual income tax upon their entire net incomes from all sources while they are Kentucky residents, and upon their incomes from Kentucky sources during the period of non-residency[after becoming nonresidents].~~

~~(2) Except as provided in Section 6 of this administrative regulation for net operating loss deductions, part-year residents[persons who become nonresidents during the year] shall be limited to either:]~~

~~(a) Adjustments to gross income and itemized deductions allowed pursuant to KRS 141.019[141.010(10) and (11)] paid while a Kentucky resident; or~~

~~(b) That portion of total adjustments to gross income and total itemized deductions allowed pursuant to KRS 141.019[141.010(10) and (11)] that Kentucky income bears to total income.~~

Section 4. Taxation of Nonresidents. (1) Any net income of a nonresident shall be subject to Kentucky income tax if it is derived from services performed in Kentucky,~~[or]~~ from property located in Kentucky, or from income received from a pass-through entity doing business in Kentucky. Income from sources outside Kentucky shall not be subject to Kentucky income tax. Losses incurred outside Kentucky shall not be deductible in computing Kentucky~~[shall not be]~~ adjusted gross income.

(2) Except as provided in Section 6 of this administrative regulation for net operating loss deductions, the adjustments to gross income and itemized deductions allowed pursuant to KRS 141.019[141.010(10) and (11)] shall be limited to that portion of adjustments to gross income and total itemized deductions that Kentucky income bears to total income.

Section 5. Allocation Based Upon Kentucky Income. If a deduction or an adjustment to gross income is allowable based upon the receipt of certain types of income and is limited to a maximum amount deductible for federal income tax purposes, the Kentucky income used to make the allocation shall be the same type of income used to allow the deduction on the federal return per KRS 141.017.

Section 6. Net Operating Loss Deduction. An individual resident, an individual~~[a]~~ part-year~~[individual]~~ resident, or an individual nonresident shall compute the net operating loss deduction using Kentucky income and expenses allowed or allowable on the Kentucky return.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: September 14, 2018

FILED WITH LRC: September 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 24, 2018 at 10:00 a.m. in Room 8A, State Office Building,

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

501 High Street, 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 will be accepted through October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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 regulation provides guidance about what income is taxed in Kentucky for residents, part-year residents, and nonresidents.

(b) The necessity of this administrative regulation: This regulation clarifies what income is taxable during periods of residency, part-year residency, and nonresidency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes tax all income of individuals while resident in Kentucky and all Kentucky-sourced income during nonresidency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides guidance and clarity regarding the taxability of income for residents, part-year residents, and nonresidents.

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

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

(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: Individual residents, part-year residents, and nonresidents who need to determine what income is taxed in Kentucky based upon residency.

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

(a) List 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 is no substantive change to this regulation. It is now clearer since the General Assembly updated the statute to define resident, part-year resident, or nonresident.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clarity in statutory definitions and regulatory guidance will benefit all individuals whose residency changes during the tax year and for nonresidents who receive Kentucky-sourced income.

(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: 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 this regulation is applied to all taxpayers equitably.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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? 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 (+/-): \$0

Expenditures (+/-): \$0

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 18:050. Withholding statements.

RELATES TO: KRS 131.250, 141.330, 141.335

STATUTORY AUTHORITY: KRS 131.130, 131.250, 141.335

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Kentucky Department of Revenue[Cabinet] to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. KRS 141.335(2) authorizes the department[requires the cabinet] to establish the form and required contents of the withholding statement to be filed pursuant to KRS 141.335(1). KRS 131.250 authorizes the department to establish requirements for electronic filing. This administrative regulation establishes those requirements.

Section 1. Acceptable Forms. Employers shall provide to their employees[The cabinet shall accept] the following forms as withholding statements to report Kentucky withholding, provided that the forms contain the required information listed in subsection (5) of this section:

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

- (1) ~~Revenue Form K-2, "Withholding Statement"; or~~
- (2) ~~Federal Form W-2, "Wage and Tax Statement";~~
- (2) ~~Federal Form W-2G, Certain Gambling Winnings;~~
- (3) ~~Federal Form 1099 series; or~~
- (4) ~~Facsimiles of the forms listed in subsections (1), (2), or (3) that are acceptable to the Internal Revenue Service.~~
- (5) ~~Employee statements listed in subsections (1) through (4) shall contain:~~
 - (a) ~~The state name;~~
 - (b) ~~The employer's Kentucky withholding account number;~~
 - (c) ~~The Kentucky taxable wages; and~~
 - (d) ~~The Kentucky tax withheld.~~

Section 2. General. Employers shall furnish to each employee, by January 31 following the close of the calendar year, the designated copies of the withholding statement if:

- (1) Tax has been withheld from wages; or
 - (2) Tax would have been withheld if the employee had ~~claimed no more than one (1) withholding exemption or had~~ not claimed exemption from withholding. [Section 3. Contents. (1) The withholding statement shall contain the following information:
 - (a) ~~Employer's and employee's name and address;~~
 - (b) ~~Employer's Kentucky withholding account number;~~
 - (c) ~~Employee's Social Security number;~~
 - (d) ~~Total wages paid to employee;~~
 - (e) ~~Federal income tax withheld;~~
 - (f) ~~Kentucky income tax withheld; and~~
 - (g) ~~Federal employer's identification number (FEIN).~~
- (2)(a) ~~Withholding statements prepared incorrectly, illegibly, or on unacceptable forms shall be returned to the employer for reissuance.~~

- (b) ~~Commercially-printed forms shall:~~
 - 1. ~~Contain a designated space for state name, employer's Kentucky withholding account number, state wages, and state tax withheld; and~~
 - 2. ~~Conform substantially in content and size with the acceptable forms.~~

Section 3[4]. Interrupted and Terminated Employment. (1)(a) If employment ends before the close of the calendar year, the employer may furnish copies to the employee at any time after employment ends, but no later than January 31 of the following year.

(b) If an employee ~~requests[asks for]~~ the withholding statement, copies shall be provided to the employee within thirty (30) days of the request or within thirty (30) days of the final wage payment, whichever is later.

(2)(a) If the employer terminates its business, the withholding statement shall be provided to its employees for the calendar year of termination within thirty (30) days of termination.

(b) The employer shall submit its final return and withholding statements to the ~~department[cabinet]~~ within the same thirty (30) day period.

Section 4[5]. Incorrect and Duplicate Withholding Statements.

(1) If it is necessary to correct a withholding statement after it has been issued to an employee, the ~~federal Form W-2C or a new withholding statement shall be clearly marked "Corrected[by Employer]", and a copy submitted to the department[cabinet] within thirty (30) days of issuance.~~

(2) If the withholding statement is lost or destroyed, ~~the employer shall prepare and issue a duplicate copy to the employee that is clearly marked "Duplicate" within thirty (30) days of the request by the employee; the employer shall prepare and issue duplicate copies to the employee that are clearly marked "Duplicate".~~

Section 5[6]. ~~Department[Cabinet] Copy.~~ (1) ~~Employers shall provide withholding statement information to the department in an acceptable format by January 31 following the close of the calendar year[Designated copies of withholding statements issued shall be submitted to the cabinet by each employer with Revenue Form 42A806, Transmitter Report for Filing Kentucky Wage~~

~~Statement].~~

(2) An employer who issues ~~twenty-six (26)[100]~~ or more withholding statements annually shall utilize an acceptable form of ~~electronic filing[magnetic media filing].~~

(3) An employer who issues less than ~~twenty-six (26)[100]~~ withholding statements annually shall file either Form K-5, "Kentucky Employer's Report of Withholding Tax Statements," Revenue Form 42A805 with the department or utilize another acceptable form of electronic filing~~[may utilize magnetic media filing].~~

(4)(a) The ~~department[cabinet]~~ shall provide to employers by October 31 of each year information about the types of ~~electronic filing methods[magnetic media that shall be]~~ acceptable to the ~~department[cabinet].~~

(b) ~~Acceptable electronic filing methods[magnetic media]~~ shall include all of the acceptable methods utilized by the Social Security Administration and the Internal Revenue Service that can be supported by the ~~department's processes[cabinet's equipment].~~

(c) ~~Withholding statement information submitted[transmitted] electronically to the department via a physical media device (e.g., CD, USB, external hard drive, etc.) shall be accompanied by Form 42A806 "Transmitter Report" upon submission.~~

(5) If an employer is required to utilize ~~an electronic method of[magnetic media] filing~~, it shall file the withholding statements in ~~an acceptable electronic format[on magnetic media]~~ unless the ~~department[cabinet]~~ grants a written waiver of the requirement.

Section 6[7]. Penalties. (1) Failure to comply with the provisions of this administrative regulation may result in the issuance of penalties in accordance with KRS 131.180 unless reasonable cause is provided.

(2) Examples. One (1) or more of the penalties may apply if the employer:

- (a) ~~Fails to file timely;~~
- (b) ~~Fails to include all information required to be shown on the withholding statement;~~
- (c) ~~Includes incorrect or illegible information on the withholding statement and fails to file corrections;~~
- (d) ~~Files on paper if required to file electronically[on magnetic media]; or~~
- (e) ~~Fails to provide timely or correct payee statement to employees.~~

Section 7[8]. ~~The forms and materials prescribed herein may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, at any Kentucky Department of Revenue Taxpayer Service Center during operating hours, and on the department's website at <http://revenue.ky.gov>. [Extension. Upon written application to the cabinet, the cabinet may grant employers an extension of time to furnish employees with the designated copy of the withholding statements. The cabinet shall not grant an extension that exceeds thirty (30) days.]~~

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

- (a) ~~Revenue Form K-2, "Withholding Statement", 2002; and~~
- (b) ~~Revenue Form 42A806, "Transmitter Report for Filing Kentucky Wage Statements", September, 2002.~~

(2) ~~This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, or at any Kentucky Revenue Cabinet Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 10, 2018

FILED WITH LRC: September 10, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 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 October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3874, 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 18:050 to remove outdated references to the former Revenue "Cabinet"; to remove "magnetic media" as an outdated description for filing forms and statements; and provides new guidance regarding the number of withholding statements that an employer must file electronically per HB 487/2018GA.

(b) The necessity of this administrative regulation: This amendment is necessary to conform to revisions made to authorizing statutes and update outdated guidance so taxpayers have the most up to date information to understand the requirements of the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It explains new rules and requirements outlined in recent statutory changes and removes outdated references and terms that have been removed since this regulation was last promulgated in 2003.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the requirements for filing withholding statements by employers in Kentucky. These changes will replace references to the former Revenue Cabinet with "department"; remove outdated references to "magnetic media"; and change the limit for electronically filing withholding statements for employers with twenty-six (26) or more employees to comply with HB 487/2018GA 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: See 1(d).

(b) The necessity of the amendment to this administrative regulation: To conform to statutory revisions and update outdated language.

(c) How the amendment conforms to the content of the authorizing statutes: By removing outdated references to the former Revenue Cabinet; and updating language to conform to recent statutory changes as described in (1) above.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the department in receiving and processing withholding statements in an efficient and timely manner, saving time and money for employers and the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any business, organization or entity that employs citizens of the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: Any entity currently submitting more than 25 withholding statements in paper form will be required to file them electronically. Most employers (87%) currently utilize electronic filing via either electronic filing software or an accounting firm.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The department is developing a free portal for employers to electronically file withholding statements. So there will be no cost to employers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Time and cost savings in submitting withholding statements electronically to the department versus in paper form.

(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. Costs to upgrade department systems to handle Form K-5 are not required by 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: 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 employers required to file withholding statements with the department must adhere to the same guidelines set forth in 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.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130, 131.250, and 141.335.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 affects the number of electronically filed withholding statements the department receives verses a paper copy.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

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

(c) How much will it cost to administer this program for the first year? No additional 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
Office of Income Taxation
(Amendment)

103 KAR 18:110. Voluntary withholding[methods].

RELATES TO: KRS 141.310, 141.370

STATUTORY AUTHORITY: KRS 131.130[(4)], 141.310, 141.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue[department] to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. This administrative regulation authorizes employers and employees to voluntarily agree to additional withholding as set forth in KRS 141.310(8).[KRS 141.370 requires the department to establish the individual income tax withholding tables. This administrative regulation establishes withholding tables and describes the procedure for supplemental and mechanical withholding.]

Section 1. Additional withholding. In addition to tax required to be withheld by the tables required by KRS 141.370 or by any withholding computer formula published by the department, an employee may authorize his employer to withhold additional Kentucky income tax using Form K-4 "Kentucky Withholding Certificate," Revenue Form 42A804.[Withholding Tables. An employer shall withhold Kentucky individual income tax from wages and salaries in accordance with Kentucky Form 42A003(T), Withholding Kentucky Income Tax, as incorporated by reference in 103 KAR 3:040. This material may also be obtained on the Department of Revenue's Web site at <http://revenue.ky.gov>.]

Section 2. Supplemental Withholding. (1) In addition to tax required to be withheld by the tables in Section 1 of this administrative regulation, an employee may authorize his employer to withhold additional Kentucky income tax.

(2) An employee may authorize additional withholding by filing with the employer an amended Form K-4, Kentucky Department of Revenue Employee's Withholding Exemption Certificate (Revenue Form 42A804), incorporated by reference in 103 KAR 3:040.

(3) Withholding Exemption Certificate (Revenue Form K-4) with his employer. The amended certificate may claim fewer personal exemptions than are allowed, authorize the employer to withhold a specific amount of additional tax, or both.

Section 3. Mechanical Withholding. An employer may use the Computer Formula (Optional Withholding Method) contained in Kentucky Form 42A003(T), Withholding Kentucky Income Tax, as incorporated by reference in 103 KAR 3:040 instead of the tables required by Section 1 of this administrative regulation for the determination of the amount to withhold from an employee's wage or salary.]

DANIEL BORK, Commissioner

APPROVED BY AGENCY: September 14, 2018

FILED WITH LRC: September 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2018 at 10:00 a.m. in Room 8A, State Office Building, 501 High Street, 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 October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed

administrative regulation to the contact person.

CONTACT PERSON: 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 regulation authorizes additional employee voluntary withholding as set forth by KRS 141.310(8).

(b) The necessity of this administrative regulation: KRS 141.310(8) authorizes the department to issue regulations allowing for additional voluntary withholding.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute addresses additional voluntary withholding and authorizes the department to promulgate regulations in this regard.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

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

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

(b) The necessity of the amendment to this administrative regulation: This amendment removes references to withholding tables and "mechanical withholding" as those requirements are clearly set forth in KRS 141.370. It also authorizes additional voluntary withholding using Form K-4.

(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: All those employees who may request additional voluntary withholding are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are necessary. They will continue to use Form K-4 to request additional voluntary withholding.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Employees will not be underwithheld when filing an annual income tax return.

(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 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 employees and employers 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.

(b) How 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 (+/-): \$0

Expenditures (+/-): \$0

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)**

103 KAR 18:120. Security for compliance; bonds.

RELATES TO: KRS 141.310

STATUTORY AUTHORITY: KRS 131.130, 141.310

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation implements KRS 141.310(14)[141.310(12)] which authorizes the Department of Revenue[department] to require certain employers to post withholding performance bonds.

Section 1. Enforcement of Trusteeship. Additional means of enabling the Department of Revenue to collect withholding taxes has been provided in KRS 141.310(14)[141.310(12)] which authorizes the department to fix the amount of and demand the posting of a corporate surety bond or cash not to exceed \$50,000 by any employer required under KRS Chapter 141, or the administrative regulations promulgated thereunder, to withhold Kentucky income taxes from wages of employees.

Section 2. Bond Requirements. For purposes of KRS 141.310(14)[141.310(12)] a person from whom the department is authorized to require a withholding tax security bond and those persons from whom a security bond may be required includes[but is not limited to] the following:

(1) An employer who is delinquent in either filing withholding tax returns required by law or is delinquent in submitting to the department any tax withheld from an employee, or both, or

(2) An employer, who[whom] for any reason, the department determines is or may become an insecure risk for which there is a need to insure compliance with the law[~~including every out-of-state employer during the employer's first year of operation in this state or any employer engaged under one (1) or more contracts the total of which is to be performed within one (1) year~~].

Section 3. Bond Procedures. The department, after determining that a bond is necessary to insure compliance of reporting and paying withholding taxes, shall demand the posting of such a security bond by written notice transmitted by certified mail and shall include therein instructions and forms for the convenience of the employer.

Section 4. Enforcement of Bond Requirement. (1) Failure to post the bond in the amount the department demanded from the employer within twenty (20) days from the date of the written notification by certified mail will, by such failure, authorize the department to invoke forthwith, and without further delay, its statutory authority to seek a court order requiring cessation of all business or activities of such an employer failing to post the bonds[~~; provided, that the employer may accompany the bond with, and simultaneously file with the department, a written protest or appeal from the department's demand for the bond; provided further, that any such protest or appeal shall be supported by a written memorandum advancing the employer's reasons and proposed justifications why such employer should be relieved from posting the bond or the objections to the amount of the bond.~~]

(2) ~~Within sixty (60) days after receipt of any bond posted under protest or appeal, the department shall furnish the employer by certified mail a final ruling or order and notice of any change as to, or in the amount of the bond that may be necessary to be made by the department in accordance with such final ruling or order in response to the protest or appeal.~~

Section 5. Change in Amount of Bond. The department has authority at any time to increase or decrease the amount of any bond that has been posted.

Section 6. Monthly Returns and Payment.~~[Notwithstanding the provisions of 103 KAR 18:040]~~ Any out-of-state or delinquent employer may be required to file monthly withholding tax returns and to accompany such monthly returns with a complete payment of all taxes withheld during the month covered by the return.

Section 7. Court Jurisdiction. The department may initiate action seeking a court order, requiring cessation of all business operation or activity of any employer failing to comply with this administrative regulation, in the Franklin Circuit Court or in any other circuit court which may have jurisdiction over the area in which the employer resides, or in which some or all of the employer's business is conducted, or having jurisdiction of the area in which property of the employer is located. The department may institute any such legal action in accordance with any provision of this administrative regulation.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 14, 2018

FILED WITH LRC: September 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 24, 2018 at 10:00 a.m. in Room 8A, State Office Building, 501 High Street, 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 will be accepted through October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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 18:120 to remove an outdated reference to a department Income Tax Forms Manual, 103 KAR 3:040, that was repealed in 2017; and to remove language guidance regarding a taxpayer's right to protest the departments bonding requirement that is no longer allowed following a recent legal interpretation of the statute.

(b) The necessity of this administrative regulation: The current regulation as written is outdated and deficient. This amendment will bring the regulation in line with the most up to date authorizing statutory language.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By ensuring that statutory revisions are incorporated into affected regulations and passed down to those affected by the change.

(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 for the department, and confusion for the 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: Those employers required by the Department to post withholding performance bonds.

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

(a) List 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.

(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 to comply with the changes in this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Posting a bond will eliminate the need for an employer to defend against expensive collection action by the department.

(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 taxpayers impacted by this regulation will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The 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 141.310.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by the revisions 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 (+/-): \$0

Expenditures (+/-): \$0

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)**

103 KAR 18:150. Employer's withholding reporting requirements.

RELATES TO: KRS 131.155, 141.330[, 1994 Ky. Acts ch. 4, sec. 1]

STATUTORY AUTHORITY: KRS 141.330[, 1994 Ky. Acts ch. 4, sec. 1]

NECESSITY, FUNCTION, AND CONFORMITY: Under authority of KRS 131.155[1994 Ky. Acts ch. 4, sec. 1.] and KRS 141.330, this administrative regulation prescribes the reporting and payment requirements for employers withholding Kentucky income tax.

Section 1. Definitions. "Look-back period" means the twelve (12) month period ending on December 31 of the year immediately preceding the current calendar year. For example, the lookback[~~look-back~~] period for calendar year 2018[1994] is the period beginning on January 1, 2017[1993] and ending on December 31, 2017[1993].

Section 2. Reporting and Payment Requirements. Unless otherwise required or allowed by Section 3 of this administrative regulation:

(1) Any employer who withheld income tax of less than \$400 during the lookback period shall report and pay the tax annually using Revenue Form K-3, "Employer's Annual Reconciliation Return." Revenue Form K-3 and the income tax withheld shall be filed and paid on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(2) Any employer who withheld income tax of \$400 or more but less than \$2,000 during the lookback period shall report and pay the tax quarterly using Revenue Form K-1, "Employer's Return of

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

Income Tax Withheld." Revenue Form K-1 and the income tax withheld each quarter shall be filed and paid on or before the last day of the month following the close of each of the first three (3) quarters of the calendar year (April 30, July 31, and October 31). Revenue Form K-3, "Employer's Annual Reconciliation Return," and the income tax withheld for the fourth quarter shall be filed and paid on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(3) Any employer who withheld income tax of \$2,000 or more but less than \$50,000 during the lookback period shall report and pay the tax monthly using Revenue Form K-1, "Employer's Return of Income Tax Withheld." Revenue Form K-1 and the income tax withheld each month shall be filed and paid on or before the 15th day of the following month for each of the first eleven (11) months of the calendar year. Revenue Form K-3, "Employer's Annual Reconciliation Return," and the income tax withheld for the last month shall be filed and paid on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(4)(a) Except as provided in paragraph (b) of this subsection, any employer who withheld income tax of \$50,000 or more during the lookback period shall report and pay the tax twice monthly using Revenue Form K-1, "Employer's Return of Income Tax Withheld." Revenue Form K-1 and the income tax withheld during the first through the 15th day of each month of the calendar year shall be reported and paid on or before the 25th day of that month. Revenue Form K-1 and the income tax withheld during the 16th through the last day of each month of the calendar year shall be reported and paid on or before the tenth day of the following month. However, Revenue Form K-1 and the income tax withheld during the first calendar month shall be filed and paid on or before the tenth of the following month (February 10), and the income tax withheld for the period beginning December 16 and ending on December 31 shall be paid with Revenue Form K-3, "Employer's Annual Reconciliation Return," which shall be filed on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(b) Any employer who withheld income tax during the lookback period of \$50,000 or more and whose average monthly income tax withheld during the lookback period is more than \$25,000 shall pay the tax withheld by electronic funds transfer~~and shall report the tax withheld in accordance with Section 3(3) of this administrative regulation~~.

(5) The ~~department~~[cabinet] shall provide written notification of the reporting and payment requirements to any employer who does not have a lookback period.

Section 3. Electronic Fund Transfers. (1) If, on any day during a reporting period, an employer accumulates \$100,000 or more of total income tax withheld before a current electronic transaction is otherwise due, the employer shall pay the tax withheld by electronic funds transfer. The employer shall electronically transfer the tax withheld as provided by 103 KAR 1:060 by the close of the first banking day after the first day the employer accumulates \$100,000 or more of income tax withheld~~and shall report the tax withheld in accordance with subsection (3) of this section~~.

(2)(a) Any employer not required to pay the tax by electronic funds transfer may make a written request to the ~~department~~[cabinet] and, if approved by the ~~department~~[cabinet], shall be subject to the same requirements as those employers required to electronically transfer the tax.

(b) Any employer permitted to pay by electronic funds transfer shall continue to pay the tax withheld by electronic funds transfer until the ~~department~~[cabinet] authorizes the employer in writing to change his reporting and payment method.~~(3) Any employer paying the tax withheld by electronic funds transfer shall do so in accordance with 103 KAR 1:060 and shall file a quarterly report with the cabinet using Revenue Form K-1-E, "Employer's EFT Return of Income Tax Withheld." Revenue Form K-1-E shall be filed with the cabinet on or before the last day of the month following the close of each of the first three (3) quarters of the calendar year (April 30, July 31, and October 31). Revenue Form K-3, "Employer's Annual Reconciliation Return," shall be filed on or~~

~~before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).~~

Section 4. Authority to Change Reporting and Payment Requirements. Pursuant to the provisions of Section 2 of this administrative regulation:

(1) The ~~department~~[cabinet] may change annually the reporting or payment requirements of any employer upon written notice to the employer.

(2) Upon written request by any employer and approval by the ~~department~~[cabinet], the ~~department~~[cabinet] may change the reporting or payment frequency prescribed by this administrative regulation.

Section 5. Penalties and Interest. Any employer who fails to comply with the provisions of this administrative regulation shall be subject to penalties as provided in KRS 131.180 and interest as provided in KRS 131.183. ~~[Section 6. The provisions of this administrative regulation shall apply to any payroll period beginning after December 31, 1994.]~~

DANIEL BORK, Commissioner

APPROVED BY AGENCY: September 14, 2018

FILED WITH LRC: September 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 24, 2018 at 10:00 a.m. in Room 8A, State Office Building, 501 High Street, 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 will be accepted through October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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 regulation provides rules for determining employer withholding tax reporting and remittance requirements.

(b) The necessity of this administrative regulation: This regulation is necessary to provide employers with requirements for timing reporting and remitting withholding tax.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes require that the department provide rules to employers regarding the filing and remittance requirements for withholding tax.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will reduce errors by employers and reduce compliance efforts and time for 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 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: This amendment updates references to the "department" instead of the "cabinet" and removes references to

an obsolete withholding form (See also (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: All employers required to withhold and remit tax are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions, other than reporting as before. Elimination of Form K-1-E reduced employer reporting requirements.

(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, employers will comply with withholding reporting and remittance requirements. Elimination of Form K-1-E reduces employer withholding reporting requirements.

(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 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 employers 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? 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 (+/-): \$0

Expenditures (+/-): \$0

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 19:010. Computation of income; estates and trusts.

RELATES TO: KRS 141.010, 141.019, 141.020, 141.030, 141.081, 141.190, ~~141.020~~

STATUTORY AUTHORITY: KRS 131.130[Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Kentucky Department of Revenue to promulgate administrative regulations to prescribe tax return filing requirements for fiduciaries including estates and trusts. This administrative regulation outlines procedure for computing estate and trust income for Kentucky income tax purposes including instructions covering both resident and nonresident situations.

Section 1. General. All provisions of KRS Chapter 141 (and related administrative regulations) that apply to individuals shall also apply to fiduciaries and returns filed by fiduciaries, except when such provisions conflict with provisions dealing specifically with fiduciaries.

Section 2. Computation of Income. Taxable income of an estate or trust is net income as defined in KRS 141.019[~~141.040(11)~~] except:

(1) The standard deduction permitted individuals in KRS 141.081[~~141.080~~] is not allowed;

(2) Federal estate tax paid on income accrued at the date of death of a decedent is deductible;

(3) Deductions that have been allowed on the Kentucky inheritance tax return or the Kentucky individual income tax return cannot be claimed on the fiduciary income tax return; and

(4) Any deductions (or federal tax) related to nontaxable income are not allowed.

Section 3. Tax Credits. A trust is allowed a tax credit of two (2) dollars; an estate is allowed a tax credit of ten (10)[~~twenty (20)~~] dollars.

Section 4. Resident Estate or Trust. A resident estate or trust shall report and pay tax on all taxable income except that portion of net income distributable or distributed during the taxable year, and that portion of the net income from intangible personal property attributable to a nonresident beneficiary.

Section 5. Resident Beneficiary. A resident beneficiary must report and pay tax on his share of the distributed or distributable income from a resident or nonresident estate or trust.

Section 6. Nonresident Estate or Trust. A nonresident estate with gross income for the taxable year from Kentucky sources of \$1,200 or more and a nonresident trust with gross income for the taxable year from Kentucky sources of \$100 or more must pay tax on all taxable income except that portion of net income distributable or distributed during the taxable year and that portion of the net income from intangible personal property attributable to a nonresident beneficiary[~~and Nonresident Beneficiaries. A nonresident estate, trust, or beneficiary is subject to tax only on income received from real or tangible personal property located in Kentucky.~~]

Section 7. Nonresident Beneficiaries. Nonresident beneficiaries must pay tax on income derived from:

(1) Kentucky sources:

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

- (2) Activities carried on in Kentucky;
- (3) The performance of services in Kentucky;
- (4) Real or tangible property located in Kentucky; and
- (5) From a partnership, S corporation, or other pass-through entity doing business in Kentucky.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 14, 2018

FILED WITH LRC: September 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 24, 2018 at 10:00 a.m. in Room 8A, State Office Building, 501 High Street, 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 will be accepted through October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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 regulation sets forth filing requirements for resident and nonresident fiduciaries (estates and trusts) and provides guidance for nonresident beneficiaries.

(b) The necessity of this administrative regulation: Fiduciaries are treated the same as individuals except where differences are set forth in statute. These differences are contained in various statutes, and this regulation assists taxpayers comply with the law by setting forth the requirements in one location for fiduciaries.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes allow the department to promulgate guidance in the form of regulations to assist taxpayers comply with the law. The various statutes addressing the taxation of fiduciaries forth filing requirements, describe taxable income, and authorize deductions and credits to arrive at taxable income.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Providing clarity in guidance assists taxpayers understand tax law and assists department personnel with efficient administration.

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

(a) How the amendment will change this existing administrative regulation: Several statutory references have been updated due to the passage of HB 487/GA18, and an error in the amount of credit allowed an estate has been corrected per KRS 141.020(3)(a)(9). Prior guidance for nonresident estates, trusts, and beneficiaries has been significantly clarified and separated into two sections (6 and 7) instead of combined into one.

(b) The necessity of the amendment to this administrative regulation: Statutory references must be updated after the passage of HB 487/GA18, and the estate credit must be corrected. Ineffective guidance for nonresident fiduciaries and beneficiaries should be updated and clarified.

(c) How the amendment conforms to the content of the authorizing statutes: The requirements of the authorizing statutes are not clearly represented in this regulation as currently promulgated.

(d) How the amendment will assist in the effective administration

of the statutes: Statutory reference updates and the correction of an error will assist taxpayers comply with the tax law. Clarifying requirements for nonresident fiduciaries and beneficiaries removes ambiguity and provides more effective guidance for taxpayers and department staff.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All fiduciaries (estates and trusts) and beneficiaries of those entities are governed by the statutes described 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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost to any entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Less confusion once the regulation language is consistent with the statutory language.

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

(a) Initially: Current budget funding and staff will implement this amendment.

(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 staff and 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 fiduciaries and beneficiaries required to file returns affected by this regulation will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No government offices will be impacted other than the 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)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

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

(c) How much will it cost to administer this program for the first year? No additional 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 (+/-): \$0

Expenditures (+/-): \$0

Other Explanation:

**GENERAL GOVERNMENT CABINET
Kentucky Board of Chiropractic Examiners
(Amendment)**

201 KAR 21:015. Code of ethical conduct and standards of practice.

RELATES TO: KRS 312.019(9)(a)

STATUTORY AUTHORITY: KRS 312.019(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9)(a) authorizes the board to promulgate and amend administrative regulations for the practice of chiropractic, including adopting a code of ethical conduct. This administrative regulation establishes the minimum standards of professional and ethical conduct and practice that a licensee shall maintain.

Section 1. Each licensee shall comply with the minimum standards of professional and ethical conduct established in subsections (1) through (9) of this section.

(1) A licensee shall not advertise the licensee's services except as provided by 201 KAR 21:065.

(2) A licensee shall not commit an act of sexual misconduct, sexual harassment, or any act punishable as a sexual offense.

(3) A licensee shall refrain from chemical or substance abuse. The chemical or substance abuse shall not have to take place in a chiropractic office for the board to take action against a licensee.

(4)(a) Division of a professional fee shall not be made, except upon the basis of actual services rendered.

(b) Unless prohibited by law, each licensed chiropractor of a business entity shall be allowed to pool or apportion fees received in accordance with a business agreement.

(5)(a) A licensee shall not pay or receive compensation for the referral or unlawful solicitation of patients.

(b) A licensee, employee of a licensee, agent of a licensee, contractor of a licensee, or anyone acting in concert with the licensee shall not provide monetary compensation or other consideration of value to an individual in order to induce or entice the individual to commence a chiropractor-patient relationship or continue as a patient of the licensee.

(6)(a) Telemarketing shall be permitted only if the telemarketing is nontargeted, taken from a general list of phone numbers, and if not violating the state's no-call provisions.

(b) The licensee shall be held responsible for the content of any contact made by a telemarketer, agent, employee, or contractor representing the chiropractor.

(7) A licensee shall report to the board any reasonably suspected violation of KRS Chapter 312 or 201 KAR Chapter 21 by another licensee or applicant within thirty (30) days.

(8) A licensee shall report to the board any guilty plea, criminal conviction other than minor traffic violations, civil judgment, settlement, or civil claim made against the licensee within thirty (30) days.

(9) A licensee shall report to the board any discipline from another state licensing board within thirty (30) days of receiving notice of final disciplinary action.

Section 2. Each licensee shall comply with the minimum standards of practice established in subsections (1) through (6) of this section. (1) A licensee shall keep in confidence whatever the licensee may learn about a patient in the discharge of professional duties. Information shall be divulged by the licensee only if required by law or authorized by the patient.

(2) A licensee shall render care to each patient that is consistent with treatment and care that would be rendered by a reasonably prudent chiropractor licensed in the Commonwealth of Kentucky and shall give a candid account of a patient's condition to the patient, or to those responsible for the patient's care.

(3) A licensee shall inform the patient of the licensee's clinical diagnosis, treatment plan, and expected outcome of treatment prior to the onset of care.

(4) A licensee shall give timely notice to the licensee's patient or to those responsible for a patient's care if the licensee withdraws from a case so that the patient may obtain another chiropractor.

(5) A licensee shall not abandon a patient.

(6) A licensee shall practice the licensee's profession in accordance with the provisions of KRS Chapter 312 and 201 KAR Chapter 21.

Section 3. (1) Each licensee shall cooperate with the board by:

(a) Furnishing germane documents requested by the board;

(b) Furnishing in writing a complete explanation covering the matter contained in the complaint filed with the board;

(c) Appearing before the board at the time and place designated; and

(d) Properly responding to a subpoena issued by the board.

(2) A licensee shall comply with an order issued by the board.

JEFF SMITH, D.C., President

APPROVED BY AGENCY: September 5, 2018

FILED WITH LRC: September 13, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2018, at 8:00 a.m., local time, at the Kentucky Board of Chiropractic Examiners office, 209 South Green Street, Glasgow, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Karalee Oldenkamp, D.C., Executive Director, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-8784, email kychiro@glasgow-ky.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Karalee Oldenkamp

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the code of ethical conduct and standards of practice for Kentucky licensed chiropractors.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the code of ethical conduct and standards of practice for Kentucky licensed chiropractors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9)(a) authorizes the board to amend administrative regulations to establish a code of ethical conduct governing the practice of chiropractic.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the code of ethical conduct and standards of practice for Kentucky licensed chiropractors.

(2) If 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 amended administrative regulation adds the requirement to report guilty pleas and criminal charges other than minor traffic violations to the board within thirty (30) days. This was intended in the original amendment, but was inadvertently left out.

(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to allow the board access to all information relevant to a licensee's ability to practice, moral character and civil and criminal standing for licensure considerations.

(c) How the amendment conforms to the content of the authorizing statutes: The addition of this reportable information

stays within the allowance of the board to establish a code of ethics.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will give the board access to all information relevant to a licensee's ability to practice, moral character and civil and criminal standing for licensure considerations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts the approximately 1075 licensed doctors of chiropractic in the Commonwealth of Kentucky.

(4) Provide an analysis of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities in question (3) will have to take to comply with this administrative regulation or amendment: All licensees must conduct their practice within the ethical code and standards of practice outlined in this regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will clarify the ethical code and standards of practice, making compliance easier for the licensee.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis 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 board's operation is funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not establish a fee or directly or indirectly increase any fee.

(9) TIERING: Is tiering applied? Tiering was not applied since this regulation applies 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?

Board of Chiropractic Examiners

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 312.019(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? 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 Explanations:

GENERAL GOVERNMENT CABINET Kentucky Board of Chiropractic Examiners (Amendment)

201 KAR 21:045. Specialties.

RELATES TO: KRS 312.019, 312.021

STATUTORY AUTHORITY: KRS ~~312.019~~[312.042], 312.021

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.021

provides that the board shall identify by administrative regulation those specialties of chiropractic for which certification may be granted and shall establish by administrative regulation the procedure for obtaining and maintaining certification and the fees therefor. The purpose of this administrative regulation is to carry out that legislative direction.

Section 1. (1) A licensee who is in active practice and in good standing with the board who applies to the board and pays the fee provided for in Section 4 of this administrative regulation shall be certified as a specialist in their field of certification[chiropractic orthopedics], if the licensee[he] holds certified or diplomate status with a certification granting entity.

(2) The certification granting entity must be:

(a) Recognized by the American Chiropractic Board of Specialties; and

(b) Within the scope of practice as defined in KRS 312.015 and 312.017[the American Board of Chiropractic Orthopedists or meets equivalent standards].

~~Section 2. [A licensee who is in active practice and in good standing with the board who applies to the board and pays the fee provided for in Section 4 of this administrative regulation shall be certified as a specialist in roentgenology, if he holds diplomate status with the American Chiropractic Board of Roentgenology or meets equivalent standards.~~

~~Section 3. [The applicant for certified status under either Section 1 or 2 of this administrative regulation shall submit with the applicant's [his] application proof of current status with the specialty certificate issuing board [American Board of Chiropractic Orthopedists or the American Chiropractic Board of Roentgenology or proof of meeting equivalent standards]. Certification by the board shall be for a stated period of time not exceeding one (1) year.~~

Section 3[4]. The board may charge a reasonable fee for certification of specialties. The fees currently charged by the board are \$100 for certification of each specialty and thirty (30) dollars for annual renewal.

JEFF SMITH, D.C., President

APPROVED BY AGENCY: September 5, 2018

FILED WITH LRC: September 13, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2018, at 8:00 a.m., local time, at the Kentucky Board of Chiropractic Examiners office, 209 South Green Street, Glasgow, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Karalee Oldenkamp, D.C., Executive Director, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-8784, email kychiro@glasgow-ky.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Karalee Oldenkamp

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies those specialties of chiropractic for which certification may be granted and establishes the procedure for obtaining and maintaining certification and the fees therefor.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish specialties for which certification may be granted by the licensure board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9)(a) authorizes the board to amend administrative regulations and KRS 312.021(2) allows the board to identify those specialties of chiropractic for which certification may be granted and establishes the procedure for obtaining and maintaining certification and the fees therefor.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation identifies those specialties of chiropractic for which certification may be granted and establishes the procedure for obtaining and maintaining certification and the fees therefor.

(2) If 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 amended administrative regulation updates the specialties for which a licensee may be certified to include the newer specialty certificates available.

(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to identify and allow for certification by the board of all specialty certifications available to licensees.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes require the regulation to identify the specialties for which certification may be granted and establish the procedures for obtaining and maintaining such certification and the fees therefor.

(d) How the amendment will assist in the effective administration of the statutes: Update of the regulation by inclusion of all available specialty certifications will provide for equal recognition, making administration of this regulation more effective.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts the approximately 1075 licensed doctors of chiropractic in the Commonwealth of Kentucky.

(4) Provide an analysis of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities in question (3) will have to take to comply with this administrative regulation or amendment: All licensees will be placed on notice of the specialty certifications recognized and certified by the board.

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

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): This amendment will allow for registration of all specialty certifications. The specialty of each licensee is listed on the licensee database, available to the public. This amendment will make it fair for all licensees who wish to register their specialty education with the board.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis 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 board's operation is funded by fees paid by licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not directly or indirectly increase any fee.

(9) TIERING: Is tiering applied? Tiering was not applied since this regulation applies 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?

Board of Chiropractic Examiners

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 312.019 and KRS 312.021

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-):

Expenditures (+/-):

Other Explanations:

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

301 KAR 2:095. Importation of cervid carcasses and parts.

RELATES TO: KRS 150.180, 150.280, 150.290

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.720(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations governing the buying, selling, or transporting of wildlife. KRS 150.720(2) authorizes the department and the Department of Agriculture to hold a person responsible for

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

all costs incurred in the investigation, response, and eradication of a disease if the person imports a diseased animal into the Commonwealth. This administrative regulation establishes procedures for the importation and possession of ~~whole~~ cervid carcasses or carcass parts ~~from states or Canadian provinces that have known cases of chronic wasting disease~~.

Section 1. Definitions. (1) "Cervid" means a member of the family Cervidae.

(2) "Chronic wasting disease" or "CWD" means a fatal disease affecting the brain of cervids which belongs to a group of diseases called transmissible spongiform encephalopathies.

(3) "Clean" means having no meat matter or tissue attached to the carcass part.

(4) ~~"Import"~~ ~~"Importation"~~ means to transport ~~the transportation of~~ a cervid carcass or carcass part ~~into Kentucky~~ ~~the Commonwealth~~. ~~[(5) "Infected area" means a state or Canadian province that has a known case of chronic wasting disease.]~~

~~(6) "Whole" means the entire carcass whether eviscerated or not, prior to the carcass being processed.]~~

Section 2. Importation ~~and Possession~~. (1) A person shall not import ~~or possess~~ a ~~whole~~ cervid carcass or carcass part ~~that has~~ ~~from an infected area without first converting the carcass or part, pursuant to subsection (2) and (3) of this section.~~

~~(2) A person may import a cervid carcass or a carcass part from an infected area if the carcass or carcass part does not have~~ any part of the spinal column or head ~~attached~~;

~~(2) [(3)] A person importing a legally taken cervid carcass or carcass part may possess the items listed in paragraphs (a) through (f) of this subsection. [following inedible parts of a legally taken cervid carcass from an infected area:]~~

~~(a) Antlers;~~

~~(b) Antlers that are attached to a clean skull plate;~~

~~(c) A clean skull;~~

~~(d) Clean upper canine teeth;~~

~~(e) A finished taxidermy product; or~~

~~(f) The hide.~~

~~(4) A licensed taxidermist or deer processor who accepts~~ ~~may accept~~ a cervid head with an intact skull, spinal column, or spinal column part originating from ~~another state or country shall~~ ~~an infected area if the taxidermist or deer processor~~;

~~(a) Contact~~ ~~Contacts~~ the department within forty-eight (48) hours after receiving the cervid head, spinal column, or spinal column part;

~~(b) Provide~~ ~~Provides~~ to the department the hunter's:

1. Name; and

2. Address; and

~~(c) Transfer~~ ~~Transfers~~ all spinal column parts and the skull with the intact brain to the department once the skull plate has been removed.

MISTY JUDY, Acting Deputy Commissioner

For FRANK JEMLEY III, Acting Commissioner

REGINA STIVERS

For DON PARKINSON, Secretary

APPROVED BY AGENCY: September 12, 2018

FILED WITH LRC: September 12, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 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 October 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes procedures for the importation and possession of cervid carcasses or carcass parts from other states or countries.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to prevent the importation of cervid parts most likely to be contaminated with the agent that causes Chronic Wasting Disease (CWD).

(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 the requirements for the transportation of wildlife. KRS 150.720(2) authorizes the department to hold individuals responsible for violating administrative regulations regarding the importation of diseased animals into the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by helping to protect the state's deer and elk herds from CWD.

(2) If 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 prohibits the importation of cervid carcasses and high-risk carcass parts from all states and countries.

(b) The necessity of the amendment to this administrative regulation: CWD may persist in the environment for years before clinical symptoms develop in cervids or the disease is discovered. By prohibiting the importation of cervid carcasses and high-risk carcass parts, the likelihood that infectious materials enter the state is greatly reduced.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All deer and elk hunters from Kentucky who transport legally taken deer and elk from other states or countries will be affected. The number of affected hunters is unknown. Currently deer processors are unlicensed by the department and the number of processors in Kentucky is also unknown. There are approximately 350 licensed taxidermists within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Hunters who hunt in other states or countries will not be allowed to import a carcass or carcass parts from these areas unless the entire spinal column and head are removed prior to importation. A processor or taxidermist who accepts a whole carcass or carcass parts from another state or country must report this to the department within 48 hours, provide the department with the name and address of the hunter, and transfer possession of high-risk cervid parts to the department.

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

amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no direct benefits to the entities identified in question (3), only the secondary benefit of protecting the deer herd in Kentucky.

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

(a) Initially: There will be no initial cost to the agency to implement this regulation.

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

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because all individuals, taxidermists, and deer processors 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 Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be affected by this regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) and 150.720(2).

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 3:100. Special commission permits.

RELATES TO: KRS 150.170, 150.175, 26 U.S.C. 501(c)(3)
STATUTORY AUTHORITY: KRS 150.025, 150.177, 150.195(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations

to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue a special permit to an incorporated nonprofit wildlife conservation organization. KRS 150.195(1) authorizes the department to promulgate administrative regulations pertaining to the issuance of licenses and permits. This administrative regulation establishes the requirements for the issuance and use of Special Commission Permits.

Section 1. Definitions. (1) ~~["Proceeds" means the amount of money received by a wildlife conservation organization from the sale or transfer of a special permit minus expenses directly attributable to the sale of that permit.~~

(2) ~~"Incorporated nonprofit wildlife conservation organization" means an entity that:~~

(a) Has a primary purpose, as expressed in its articles of incorporation or bylaws, to conserve and enhance fish and wildlife resources to provide opportunities for hunting, fishing, trapping, wildlife education, habitat enhancement, or related activities;

(b)1. Holds status as a nonprofit organization pursuant to 26 U.S.C. Section 501(c)(3); and

2. Is incorporated under the laws of this state or any other state; or

(c) Holds a charter status under an incorporated parent organization.

(2) "Proceeds" means the amount of money received by an incorporated nonprofit wildlife conservation organization from the sale or transfer of a special commission permit minus expenses directly attributable to the sale of the permit.

(3) "Special commission permit" means a species-specific permit issued by the Kentucky Fish and Wildlife Commission to an incorporated nonprofit wildlife conservation organization that allows the permit recipient, depending on the species listed on the permit, to harvest:

(a) One (1) additional antlered or antlerless deer per license year;

(b) One (1) additional turkey of either sex per license year;

(c) One (1) elk of either sex per license year; or

(d) Up to a daily bag limit of waterfowl per day.

Section 2. Issuance ~~and Sale~~, and Sale, ~~and Transfer~~ of Special Commission Permit. (1) There shall be no more than ten (10) special commission permits issued per species per year.

(2) An incorporated nonprofit wildlife conservation organization may apply for one (1) special commission permit per species. The incorporated nonprofit wildlife conservation organization shall accurately complete a Special Commission Permits Application Form.

(3) A national organization and its affiliated regional, state, and local chapters shall all be eligible to apply for a special commission permit in the same year if each organization meets the definition in Section 1(2) of this administrative regulation.

(4) A national organization and its affiliated regional, state, and local chapters shall not be eligible to be awarded more than one (1) special commission permit per species unless each applicant has a separate and distinct nonprofit organization status under 26 U.S.C. 501(c)(3) and a separate and distinct tax identification number.

(5) In addition to the completed application, the organization shall also submit:

(a)1. One (1) copy of the organization's articles of incorporation or bylaws that state the purpose of the organization; or

2. A separate charter status from a parent organization and the parent organization's articles of incorporation or bylaws that state the purpose of the parent organization;

(b) Written proof of the organization's tax-exempt status including the applicant's tax identification number; and

(c) A letter from the organization's parent organization, if applicable, that states that the chapter organization is in good-standing and is recognized by the parent organization.

(6) The completed application and accompanying documents listed in subsection (5) of this section shall be delivered to the department by May 1 of each year.

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

(7) The items listed in paragraphs (a) through (e) of this subsection shall be grounds for disqualification from the award process:

- (a) An incomplete application;
- (b) Incomplete or missing accompanying documents, pursuant to subsection (5) of this section;
- (c) Failure to submit the required application and accompanying documents to the department by the May 1 deadline;
- (d) The wildlife conservation organization applicant did not use or transfer a special commission permit awarded in a previous year; or
- (e) Failure to qualify as an incorporated nonprofit wildlife conservation organization.

(8) Prior to selecting special commission permit recipients, the Fish and Wildlife Commission shall review and consider all applications and documents submitted by each wildlife conservation organization that has not been disqualified pursuant to subsection (5) of this section.

(9) The department shall provide the Fish and Wildlife Commission with information concerning each applicant's relative standing with regard to:

- (a) Content and quality of submitted application materials;
- (b) Past compliance;
- (c) Ability to generate funds; and
- (d) The proposed conservation project's potential for enhancing fish and wildlife, habitats, fish and wildlife education, or fish and wildlife-related recreation in Kentucky.

(10) The Fish and Wildlife Commission shall select permit recipients based on the information listed in subsection (9) of this section.

(11) An incorporated nonprofit wildlife conservation organization that is awarded a special commission permit[recipient] shall:

- (a) Use all proceeds from the sale [~~or transfer~~] of the permit for conservation projects in Kentucky as approved by the Fish and Wildlife Commission;
- (b) Underwrite all promotional and administrative costs for the selling [~~and transferring~~] of the permit;
- (c) Sell[~~and transfer~~] each permit as stated in the application;
- (d) Submit, by June first (1) of the year the permit is valid, to[Provide] the department[with] the[following] information listed in subparagraphs 1. through 4. of this paragraph on the[each] hunter [individual] who receives the[a—transferred] permit from the nonprofit wildlife conservation organization.[:]

- 1. Name;
- 2. Address;[and]
- 3. Date of birth; and

4. A copy of the hunter's valid Kentucky Hunting license; and

(e) Submit, by May 1 of the following year, a report that includes:

- 1. A financial statement containing:
 - a. Total funds raised;
 - b. Overhead costs or expenses related to the sale of the permit; and
 - c. Net profit;
- 2. A summary of:
 - a. The conservation project; and
 - b. Expenditures related to the conservation project; and
- 3. A synopsis of the impact the conservation project had on enhancing fish and wildlife, habitats, fish and wildlife education, or fish and wildlife-related recreation.

(12) Once a special commission permit has been issued to a hunter, it shall not be transferred to another hunter.

Section 3. Special Permit Use. (1) A special permit shall only be valid for the:

- (a) Individual named on the permit;
- (b) Species of wildlife listed on the permit; and
- (c) The first season for that species in the calendar year following the quarterly commission meeting that the special permit was awarded, except for the special commission permit for deer and for waterfowl, which shall be valid for the first season following

the quarterly commission meeting that the special permit was awarded.

(2) A special commission permit holder shall comply with all other department statutes and Title 301 KAR.

(3) A holder of a special commission permit to hunt deer may hunt on any Wildlife Management Area during an open deer season or nonmobility impaired quota hunt pursuant to 301 KAR 2:178, except:

(a) Hunting shall not be allowed on closed waterfowl refuges, pursuant to 301 KAR 2:222;

(b) A permit holder shall contact the wildlife area manager at least forty-eight (48) hours before hunting; and

(c) A permit holder shall notify the area manager upon leaving a Wildlife Management Area.

(4) A holder of a special commission permit to hunt wild turkey shall not hunt on a Wildlife Management Area that is closed to turkey hunting.

(5) A holder of a special commission permit to hunt waterfowl may hunt on Ballard, Boatwright, or Sloughs Wildlife Management Areas from one (1) of the areas' permanent waterfowl blinds by:

- (a) Contacting the department no later than September 30; and
- (b) Reserving a blind for one (1) of the available hunt periods established by the department, pursuant to 301 KAR 2:222.

(6) A holder of any special commission permit may hunt on private land with the permission of the landowner.

(7) Unless specific equipment is prohibited on a Wildlife Management Area, a special permit holder shall only harvest game with hunting equipment that is allowed for the season during which the permit holder is hunting.

Section 4. Incorporation by Reference. (1) "Special Commission Permits Application Form", 2015 edition, is incorporated by reference.

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

MISTY JUDY, Acting Deputy Commissioner

For FRANK JEMLEY III, Acting Commissioner

REGINA STIVERS

For DON PARKINSON, Secretary

APPROVED BY AGENCY: September 12, 2018

FILED WITH LRC: September 12, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 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 October 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation authorizes the Fish and Wildlife Commission to issue special permits to qualified incorporated nonprofit wildlife

conservation organizations for the organizations to use as a fund-raising tool to create wildlife conservation projects that enhance fish and wildlife, habitats, fish and wildlife education, or fish and wildlife-related recreation.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the procedures and requirements for the issuance of special commission permits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue special game permits to incorporated non-profit wildlife conservation organizations. KRS 150.195(1) authorizes the department to promulgate administrative regulations pertaining to the issuance of licenses and permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation defines the process and criteria for applying for a special permit, the selection process used by the Commission, and report requirements for wildlife conservation organizations.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that the permits are no longer transferrable after they have been issued to a hunter by the department, requires permit recipients to submit a copy of their hunting or fishing license and requires pertinent information on the hunter to be provided to the department by June 1st by the nonprofit wildlife conservation organization.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that all special commission permits are issued to a hunter properly, and to prohibit the transfer of a permit from one hunter to another.

(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: In 2017, there were approximately 24 wildlife conservation organizations that applied for at least one permit. Eighteen organizations received at least one permit.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each incorporated nonprofit wildlife conservation organization will need to meet eligibility requirements, follow the application and reporting procedures and requirements. A nonprofit wildlife conservation organization shall not transfer a permit from one hunter to another after it has been issued.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The conservation organizations that receive a permit will benefit by using the permit for fund-raising events that will in turn be used for wildlife conservation projects, thus furthering their missions in Kentucky.

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

(a) Initially: There will be a small cost to administer and coordinate the permit application and selection process.

(b) On a continuing basis: There will be a small cost to the agency on a continuing basis to administer.

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

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

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding will be necessary to implement the amendment to 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 directly or indirectly nor does it increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, as all incorporated nonprofit wildlife conservation organizations applying for special permits are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Fisheries Division, Wildlife Division, and Administrative Services Division of the Department 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, 150.177, and 150.195(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There will be a small cost associated with administering and coordinating this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a small 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 (+/-): A small cost relative to employees' time about once a year, plus some mailing costs.

Other Explanation:

GENERAL GOVERNMENT CABINET Department of Agriculture Office of Agricultural Marketing (Amendment)

302 KAR 50:080. Materials incorporated by reference.

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 5940

STATUTORY AUTHORITY: 260.850-260.869

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for any industrial hemp research pilot program in the Commonwealth of Kentucky. This administrative regulation establishes material incorporated by reference for 302 KAR Chapter 50, except 302 KAR 50:050.

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

(a) "Grower License Application Packet", 2019[2018];

(b) "Field Planting Report", 2018;

(c) "Greenhouse/Indoor Planting Report", 2018;

(d) "Harvest/Destruction Report", 2018;

(e) "Grower Production Report Form", 2017;

(f) "Process/Handler Production Report and Annual License Renewal", 2017;

- (g) "Site Modification Request Form", 2018;
- (h) "Domestic Seed/Propagule Request Requirements", 2018;
- (i) "International Seed Request Requirements", 2018;
- (j) "Processor/Handler License Application", 2019[2018]; and
- (k) "University/College Affiliation Application", 2019[2018].

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Agricultural Marketing, 105 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. These materials may also be obtained at www.kyagr.com.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: September 13, 2018

FILED WITH LRC: September 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 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 October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established the guidelines for participation in the Industrial Hemp Pilot Project administered by the Kentucky Department of Agriculture.

(b) The necessity of this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of industrial hemp.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp. This administrative regulation satisfies this mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies the industrial hemp pilot program that has been administered by the KDA since the 2014 growing season.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment updates material incorporated by reference for growers, processor, and university applications, replacing the 2018 version.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment updates material incorporated by reference, replacing the 2018 grower, processor, and university applications, with the 2019 version.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make clear the KDA will require the 2019 application for the 2019 growing year.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: The KDA has 210 current grower licenses, 72 processor licenses, and 7 university affiliations for the 2018 growing season.

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

(a) List 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 2019 applicants wishing to grow, process, or handle industrial hemp must use, including a criminal background check and testing of the crop produced.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): there are no cost increases or changes for the 2019 season.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be allowed to grow, process, handle and conduct research on industrial hemp.

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

(a) Initially: The administrative regulation itself adds very little cost to the KDA over previous growing seasons. The KDA employs three (3) full time staff, seasonal contractors, and the partial staff time of several employees to administer the pilot program.

(b) On a continuing basis: The KDA anticipates that the growing market demand for the crop may necessitate additional staff and resources in the future.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funds to administer will come from the fees created by this administrative regulation, as well as the KDA general fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation creates new fees. The KDA will evaluate after a period of time to determine if fee amounts will cover expenses of administration of the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are included in this amendment.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 U.S.C. § 5940.

2. State compliance standards. KRS 260.850-260.869

3. Minimum or uniform standards contained in the federal mandate. 7 U.S.C. § 5940. establish requirements for industrial hemp pilot programs. This administrative regulation establishes the requirements for participation in Kentucky.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture for the administration of the pilot program, plus Kentucky State Police, University of Kentucky Division of Regulatory Services, and local law enforcement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.850-260.869 and 7 U.S.C. § 5940.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The KDA cannot estimate the costs of other agencies, but would reasonably guess that marginal costs increases may be anticipated due to program popularity.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The KDA estimates revenue of \$250,000 at this time. Revenue for UK DRS will be approximately 85 dollars per test sample submitted. We estimate no revenue for law enforcement agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The KDA cannot estimate this amount as it is based on number of applicants and growing addresses.

(c) How much will it cost to administer this program for the first year? The KDA fully anticipates the revenue generated to cover only a fraction of the costs to administer the program.

(d) How much will it cost to administer this program for subsequent years? The KDA cannot estimate this amount as it is based on number of applicants and growing addresses.

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

Revenues (+/-): Perhaps \$250,000

Expenditures (+/-): Well in excess of \$250,000

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Employment and Training
(Amendment)

787 KAR 1:010. Application for employer account; reports.

RELATES TO: KRS 341.190

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.190(1) requires each employing unit to keep specified work records and authorizes the secretary to require additional reports. This administrative regulation establishes the application requirements for an employer account and the requirements for other additional reports required by the division.

Section 1. Each employing unit that has met one (1) or more of the requirements for coverage set forth in KRS 341.070 shall complete and file with the Division of Unemployment Insurance an Application for Unemployment Insurance Employer Reserve Account UI-1 no later than the last day of the calendar quarter in which the coverage requirements are first met.

Section 2. Each employing unit shall complete and file with the Division of Unemployment Insurance the following reports as required in accordance with the instructions contained on the forms:

(1) UI-1S, Supplemental Application for Unemployment Insurance Employer Reserve Account;

(2) UI-3, Employer's Quarterly Unemployment Wage and Tax Report;

(3) UI-3.2, Account Status Information;

(4) UI-21, Report of Change in Ownership or Discontinuance of Business in Whole or Part;

(5) UI-35, Termination of Coverage;

(6) UI-74, Application for Partial Payment Agreement;

(7) UI-412A, Notice to Employer of Claim for Unemployment Insurance Benefits; and

(8) UI-203, Overpayment and Fraud Detection.

Section 3. If an employing unit elects to submit the information required in any report listed in Section 1 or 2 of this administrative regulation through the Web site provided by the Division of Unemployment Insurance for that purpose, the requirement for the filing of that report shall have been satisfied.

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

(a) UI-1, "Application for Unemployment Insurance Employer Reserve Account", Rev. 3/05;

(b) UI-1S, "Supplemental Application for Unemployment Insurance Employer Reserve Account", Rev. 5/11;

(c) UI-3, "Employer's Quarterly Unemployment Wage and Tax Report", Rev. 7/18[4/13];

(d) UI-3.2, "Account Status Information", Rev. 7/18[5/14];

(e) UI-21, "Report of Change in Ownership or Discontinuance of Business in Whole or Part", Rev. 3/05;

(f) UI-35, "Termination of Coverage", Rev. 5/11;

(g) UI-74, "Application for Partial Payment Agreement", Rev. 5/11;

(h) UI-203, "Overpayment and Fraud Detection", Rev. 9/11; and

(i) UI-412A, "Notice to Employer of Claim for Unemployment Insurance Benefits", Rev. 9/11[2].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of Unemployment Insurance, 275 E. Main Street, 2E, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DERRICK RAMSEY, Secretary

APPROVED BY AGENCY: September 13, 2018

FILED WITH LRC: September 13, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2018 at 10:00 a.m. Eastern Time at the offices of the Office of Employment and Training, 275 E. Main Street, 2nd floor, Executive Director's Office, Frankfort, Kentucky 40621. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Dearborn, WFD Manager, Department of Workforce Investment, 275 East Main St, Frankfort, Kentucky 40601, phone (502) 564-3326, fax (502) 564-5442, email beverlym.dearborn@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beverly Dearborn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application requirements for an employer account and outlines incorporated forms used by employers to communicate with the Division of Unemployment Insurance (Division), Tax Section.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the necessary reports an employer is required to file with the Division.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.190(1) requires each employing unit to keep specified work records and authorizes the secretary to require additional reports. In addition, KRS 341.115(1)

authorizes the secretary to promulgate administrative regulations necessary in the administration of KRS Chapter 341.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets required forms an employer is required to file with the Division.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates the updated UI-3 and UI-3.2 forms. It will allow the Division to enforce KRS 341.243.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for employers to report Service Capacity Upgrade Fund (SCUF) fee authorized by KRS 341.243.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure that Unemployment Insurance tax, including SCUF, is reported correctly by Kentucky employers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky employers who are liable to report their covered employees to the Division are 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: Each Kentucky employer who is liable to report their covered employees to the Division and uses the paper forms UI-3 and UI-3.2 will have to begin using the new form revised 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): Kentucky employers who are liable to report their employees to the Division will see no cost associated in implementing the revision of this form.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky employers will receive notice of the correct SCUF charges associated with the amendment to KRS 341.243.

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

(a) Initially: Changes will be necessary to the processing system. These programming changes will be negligible costs and absorbed in the course of normal operating expenses.

(b) On a continuing basis: There is no cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Unemployment Insurance is entirely federally funded. Unemployment Insurance administrative funds will be used to make the necessary programming changes.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: The cost of implementing the form in this regulation will be negligible, and absorbed in the course of normal operating expenses.

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

(9) TIERING: Is tiering applied? This amendment updates the quarterly unemployment wage and tax worksheet to notify employers the correct SCUF amount. The amendment will be applied uniformly to all contributory employers and tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Any state or local government entities that are liable to report their employees to the Division and file by paper forms UI-3 and UI-3.2 will be impacted by this amendment to the administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 341.070, KRS 341.250(2), KRS 341.190, KRS 341.243, and KRS 341.262.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 estimated amount SCUF will generate for the first year is \$3 million.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Because it will be capped at \$60 million, SCUF will generate \$57 million total for subsequent years.

(c) How much will it cost to administer this program for the first full year? Implementation of this amendment will create no additional administrative costs for the first full 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 (+/-): None

Expenditures (+/-): None

Other Explanation:

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Amendment)

804 KAR 8:050. Identification of [Signs-on] vehicles used to transport alcoholic beverages.

RELATES TO: KRS 243.020[243.300]

STATUTORY AUTHORITY: KRS 241.060, 241.090, 243.200

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. Licensed manufacturers, wholesalers, distributors, and retailers may transport alcoholic beverages. KRS 243.200 authorizes the board to promulgate reasonable administrative regulations requiring licensees to display the licensee's name and state licensee number on vehicles and requires licensees to agree to vehicle stops and inspections by authorized department investigators. ~~[used in the transportation of alcoholic beverages. KRS 243.200 requires licensees to agree to vehicle stops and inspections by authorized department investigators.]~~ This administrative regulation establishes identification[sign] requirements for vehicles used to transport[transporting] alcoholic beverages and authorizes department investigators to stop and inspect vehicles used to transport alcoholic beverages.

Section 1. Vehicle Identification[Signs]. (1) Except for a common carrier that has been assigned a USDOT number issued by the Federal Motor Carrier Safety Administration, licensed manufactures[manufacturers], wholesalers, distributors, retailers, and transporters shall display the licensee's name and license number on all vehicles used to transport alcoholic beverages.

(2) The display required by subsection (1) of this section shall

be:

- (a) Painted, magnetic, or adhesive decals or lettering in a color that contrasts with the color of the vehicle; and
- (b) Placed upon the right and left windows or sides of the vehicle in letters that are at least one (1) inch tall.

Section 2. Vehicle Inspections. Except for a common carrier that has been assigned a USDOT number issued by the Federal Motor Carrier Safety Administration, a[Any] vehicle used by a licensee to transport alcoholic beverages shall be subject to a stop and inspection of the vehicle and its contents at any time by authorized department investigators without first obtaining a search warrant.

CHRISTINE TROUT VAN TATENHOVE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: September 12, 2018

FILED WITH LRC: September 13, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2018 at 01:00 p.m. Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing 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. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen Lee Walters, Legal Counsel, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 278-1034, fax (502) 564-7479, email lee.walters@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen Lee Walters

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the identification requirements for vehicles used to transport alcoholic beverages and reinforces authority to inspect cargo of the same.

(b) The necessity of this administrative regulation: This regulation is necessary to aid the department in regulating the transportation of alcoholic beverages. This regulation establishes identification requirements by requiring the licensee to display its name and number on the vehicle transporting alcoholic beverages which assists department investigators in identifying said vehicles. This regulation also aids the department in the regulation of alcoholic beverages by authorizing its investigators to stop and inspect vehicles used to transport alcoholic beverages.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations governing the licensing, supervision, and control of alcoholic beverages. KRS 243.200 authorizes the board to promulgate administrative regulations regarding the vehicles used for transporting alcoholic beverages.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes identification requirements and inspection authority for investigators in regard to vehicles that transport alcoholic beverages.

(2) If 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 brings the regulation in line with KRS

234.200, as amended by House Bill 400 and creates an exception to both the vehicle identification requirement and vehicle stop and inspection powers for common carriers that hold a USDOT number issued by the Federal Motor Carrier Safety Administration.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to maintain consistency and compliance with statutory changes to KRS 243.200 resulting from enactment of House Bill 400 (2018).

(c) How the amendment conforms to the content of the authorizing statutes: The exception language included in this amendment is identical to KRS 243.200(3)-(4).

(d) How the amendment will assist in the effective administration of the statutes: KRS 243.200 provides for an exception to transporters who hold a USDOT number issued by the Federal Motor Carrier Safety Administration. This amendment mirrors the statute thereby removing any confusion or inconsistency in its interpretation or administration.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment applies to all state license holders.

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

(a) List 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 steps will be required to comply with this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those assigned a USDOT number issued by the Federal Motor Carrier Safety Administration will be spared the responsibility of labeling vehicles designated for alcoholic beverage transportation as they will no longer be subject to cargo inspection performed by the department.

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

(a) Initially: There are no initial anticipated costs associated with the implementation of this amendment.

(b) On a continuing basis: There are no anticipated costs associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be necessary for the implementation and enforcement of this amendment.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because this regulation treats similarly situated licensees similarly. The exception for common carriers that have been assigned a USDOT number issued by the Federal Motor Carrier Safety Administration applies equally to all such 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 Department of Alcoholic Beverage Control as well as local administrators are 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 241.060(1) authorizes the board to promulgate

administrative regulations related to alcoholic beverages. KRS 243.200 requires licensees who transport alcoholic beverages to comply with administrative regulations issued by the board.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amendment of 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? No revenue will be generated by the amendment of this administrative regulation.

(c) How much will it cost to administer this program for the first year? No costs are expected for the first year with the amendment of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are expected for subsequent years with the amendment of this administrative regulation.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

**PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Board of Home Inspectors
(Amendment)**

815 KAR 6:001. Definitions for 815 KAR Chapter 6.

RELATES TO: KRS 198B.700(2), 198B.706

STATUTORY AUTHORITY: KRS 198B.706(15)

NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(15) requires the Kentucky Board of Home Inspectors, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations to carry out the effective administration and requirements~~[necessary to enforce the provisions]~~ of KRS 198B.700 to 198B.738~~[and to establish requirements for continuing education]~~. This administrative regulation establishes the definitions for 815 KAR Chapter 6.

Section 1. Definitions. (1) "Approved" means recognized by the Kentucky Board of Home Inspectors.

(2)~~["Board" is defined by KRS 198B.700(2)].~~

(3) "Complaint" means a written allegation of misconduct by a home inspector, or other allegation of a violation of KRS Chapter 198B, the requirements established in 815 KAR Chapter 6, or another state or federal statute or regulation applicable to home inspectors.~~[(4) "Complaint screening committee" means the committee appointed pursuant to 815 KAR 6:060, Section 1.]~~

~~[(3)][(5)]~~ "Continuing education hour" means fifty (50) clock minutes of instruction, exclusive of any breaks, recesses, testing, or other time not spent ~~on~~ⁱⁿ instruction.~~[(6) "Licensee" is defined by KRS 198B.700(7).]~~

~~[(4) "Expired license" means a license that was not renewed by the last day of the licensee's birth month.~~

~~[(5)][(7)]~~ "Prelicensing course provider" means the person or legal entity approved by the board to conduct prelicensing courses in home inspection.

~~[(6)][(8)]~~ "Probationee" means a licensee, prelicensing course provider, or continuing education provider placed on probation by the board.

~~[(7)][(9)]~~ "Provider" means the person or legal entity approved by the board to provide prelicense or continuing education in home

inspections.

(8) "Terminated license" means a license that has not been renewed within 120 days of expiration.

MITCHELL BUCHANAN, Chair

H.E. CORDER II, Executive Director

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: September 12, 2018

FILED WITH LRC: September 13, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2018 at 10:00 a.m. Eastern Time at the Kentucky Board of Home Inspectors, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this Department 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. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538, email Heather.Becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 815 KAR Chapter 6.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish consistent terminology for licensees and consumers interacting with home inspectors in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.706(15) requires the board to promulgate administrative regulations to carry out the effective administration of the requirements of KRS 198B.700 to 198B.738.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will reduce confusion by establishing consistent terminology.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the existing administrative regulation by removing terms that are already defined in statute and brings the administrative regulation into compliance with KRS 198B.706(15).

(b) The necessity of the amendment to this administrative regulation: Amending this administrative regulation is necessary to keep terminology consistent across 815 KAR Chapter 6.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.706(15) requires the board to promulgate administrative regulations to carry out the effective administration of the statutory requirements within its jurisdiction, and this amendment provides the definitions for terms used throughout 815 KAR Chapter 6.

(d) How the amendment will assist in the effective administration of the statutes: Amendment to this administrative regulation will reduce confusion by establishing consistent terminology and removing definitions for unnecessary terms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: The board currently regulates roughly 550 home inspectors, and they will be impacted by this administrative regulation. Additionally, entities approved to provide prelicensing and continuing education to the board's licensees will be impacted.

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

(a) List 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 of the regulated entities identified in question (3) will be required to take any new action 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 is no cost to the regulated entities identified in question (3) as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this administrative regulation, regulated entities can rely on the meaning of commonly used terms as they appear in this 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 initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing costs associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Kentucky Board of Home Inspectors 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 198B.706.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 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 state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this administrative regulation for the first year.

(d) How much will it cost to administer this program for

subsequent years? There is no cost associated with administering 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: This administrative regulation is not expected to have a fiscal impact.

PUBLIC PROTECTION CABINET Kentucky Real Estate Authority Kentucky Board of Home Inspectors (Amendment)

815 KAR 6:010. Licensing requirements~~[Home inspector licensing requirements and maintenance of records]~~.

RELATES TO: KRS 198B.700, 198B.706, 198B.712, 198B.714, 198B.716, 198B.722, 198B.724, 198B.738

STATUTORY AUTHORITY: KRS 198B.706, 198B.722

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.706(1) and (15) ~~requires~~require the Kentucky Board of Home Inspectors, ~~with the approval of the executive director of the Kentucky Real Estate Authority,~~ to promulgate administrative regulations ~~to carry out the effective administration and requirements~~[necessary to enforce the provisions] of KRS 198B.700 to 198B.738 and to ~~determine the~~establish requirements ~~and prescribe forms and applications~~ for licensing ~~[and certification as well as prescribing forms and applications]~~. KRS 198B.706(7) requires the board to promulgate administrative regulations ~~to provide for the inspection of the records of a licensee.~~ KRS 198B.706(11) requires the board to ~~establish continuing education requirements.~~ KRS 198B.722(7) ~~authorizes~~[requires] the board to establish requirements for licensure renewal~~[of licenses]~~ and authorizes the board to establish an inactive license. This administrative regulation establishes~~[the]~~ licensure~~[and record]~~ requirements for home inspectors.

Section 1. Application Requirements. (1) An applicant for an ~~initial~~[a] home inspector license shall submit:

(a) A completed Application for Licensure, form KBHI-1;

(b) A two (2) inch by two (2) inch passport photograph taken within the past six (6) months and affixed to the application form;

(c) A certificate of board-approved prelicensing course completion and the applicant's passing national examination test score from an examination administered by a board-approved test provider;

(d) A certificate of liability insurance pursuant to KRS 198B.712(3)(d), verifying continuous coverage;

(e) If applicable, other state or local licensure, certification, registration, or permit;

(f) Two (2) criminal~~[A recent]~~ background checks, both completed no more than ninety (90) days prior to the date the board receives the application;

1. A state criminal background check performed by:

a. The Kentucky State Police for Kentucky residents; or

b. A comparable law enforcement agency for non-resident applicants; and

2. A nationwide criminal background investigation check performed by the Federal Bureau of Investigation. If the Federal Bureau of Investigation~~[check performed by the Kentucky State Police and a nationwide criminal background investigation check performed by the Federal Bureau of Investigation. If an applicant submits an application for a nationwide criminal background investigation check performed by the Federal Bureau of Investigation (FBI) and the FBI]~~ cannot complete the background investigation check within thirty (30) days of the request, the~~[an]~~ applicant may submit an Optional Affidavit for Licensure, form KBHI 6, and submit the performed nationwide criminal background investigation check within fourteen (14) days of its completion. If an

applicant has a felony conviction during the applicant's lifetime, a misdemeanor conviction within the past five (5) years or a pending charge, the applicant shall not use the optional affidavit; and

(g) A nonrefundable fee of \$250. ~~[(2) An applicant for a home inspector license shall:~~

~~(a) Complete and pass a precertifying training course approved by the board pursuant to subsection (8) of this section and that is administered by a provider who has been approved by the board in accordance with 815 KAR 6:040 and subsection (8) of this section; and~~

~~(b) Pass an examination conducted by a board-approved test provider.]~~

Section 2. Examination. (1) ~~[(3)]~~ A request to sit for the examination shall be made directly to the test provider.

~~[(2)]~~ (4) The examination fee shall be set by the testing company and shall be paid directly to the test provider.

(5) A passing score on the examination shall be valid for a period of three (3) years.

(3) If an applicant fails to pass the examination two (2) times, the applicant shall wait at least fourteen (14) calendar days prior to retaking the examination.

(4) If an applicant fails to pass the examination three (3) times, the applicant shall not be eligible to retake the examination until the applicant has again completed and again passed the precertifying training course required by this administrative regulation before retaking the examination a fourth time and each subsequent examination failure thereafter. ~~[(6) Failing the examination.~~

~~(a) An applicant who fails to pass the examination two (2) times shall wait at least fourteen (14) calendar days from the date of the second failed examination prior to retaking the examination.~~

~~(b) An applicant who fails to pass the examination three (3) or more times shall wait at least thirty (30) calendar days from the date of the third or subsequent failed examination prior to retaking the examination.~~

~~(c) An applicant who fails to pass the examination three (3) times shall not be eligible to retake the examination until the applicant has again completed and again passed the precertifying training course required by subsection (2)(a) of this section before retaking the examination a fourth time, and also for each subsequent examination failure thereafter.]~~

(6) [(7) Procedures and conduct:

(a) The applicant shall follow all written and oral instructions, procedures, and appropriate standards of conduct established by the board or testing service administering the examination.]:

~~1. Procedures and appropriate conduct established by the board or testing service administering an examination if the procedures and conduct requirements are provided or made available to each applicant or orally announced before the start of the examination; and~~

~~2. Written instructions communicated prior to the examination date and instructions communicated at the testing site, either written or oral, on the date of the examination.]~~

[(7)] ~~[(b)]~~ Failure to comply with all instructions, procedures, and appropriate standards of conduct ~~[procedures]~~ established by the board or the testing service ~~[with regard to conduct at the examination]~~ shall be grounds for denial of the application. ~~[(8) Course requirements. To be approved by the board, a precertifying training course shall require a minimum of:~~

~~(a) Sixty-four (64) credit hours of training in the subject areas listed in subparagraphs 1 through 9 of this paragraph for at least the number of hours specified:~~

~~1. Manufactured housing: two (2) hours;~~

~~2. Standards of practice, KRS 198B.700 to 198B.738 and 815 KAR Chapter 6, contracts, report writing, and communications: twelve (12) hours;~~

~~3. Exterior, roofing, insulation, and ventilation: six (6) hours;~~

~~4. Structure and interior: nine (9) hours;~~

~~5. Electrical and plumbing: nine (9) hours;~~

~~6. Heating and air conditioning: six (6) hours;~~

~~7. Field training: sixteen (16) hours, including not more than eight (8) hours in a laboratory;~~

~~8. General residential construction: three (3) hours; and~~

~~9. Environmental hazards, mitigation, water quality, and indoor air quality: one (1) hour;~~

~~(b) The completion of three (3) unpaid home inspections under the supervision of a Kentucky licensed home inspector with satisfactory written reports submitted to the course provider in addition to the sixteen (16) hours of field training required by paragraph (a) 7 of this subsection; and~~

~~(c) An exit examination with a passing score.~~

~~(9) An online precertifying training course shall not be accepted by the board unless the applicant:~~

~~(a) Is enrolled in a precertifying course on or before September 4, 2015;~~

~~(b) Maintains continuous enrollment; and~~

~~(c) Completes the precertifying course no later than six (6) months from September 4, 2015.~~

~~(10) Criminal background checks and other disciplinary proceedings.~~

~~(a) Except as established in subsection (1)(f) of this section, each applicant shall submit a recent background check performed by the Kentucky State Police and a nationwide criminal background investigation check performed by the Federal Bureau of Investigation.~~

~~(b) If an applicant has resided in a state for less than five (5) years prior to application, the applicant shall also obtain and submit a state-wide criminal background check by a law enforcement agency capable of conducting a state-wide background check from the state where the applicant previously resided.]~~

Section 3[2]. Reciprocity. An applicant seeking licensure ~~[a license]~~ through reciprocity in accordance with KRS 198B.714 shall:

(1) Submit a completed Application for Licensure, form KBHI-1, and attachments established in Section 1(1)(b) through (f) of this administrative regulation; and

(2) Pay the fee established in Section 1(1)(g) of this administrative regulation.

Section 4[3]. Nonresident Licensees. A nonresident licensee shall:

(1) Submit a completed Application for Licensure, form KBHI-1, and attachments established in Section 1(1)(b) through (f) of this administrative regulation;

(2) Pay the fee established in Section 1(1)(g) of this administrative regulation; and

(3) Comply with the provisions established in KRS 198B.716, by submitting a complete Consent to Service of Jurisdiction, form KBHI-8, and this administrative regulation.

Section 5[4]. Renewal of Licenses. (1) To be eligible for licensure renewal ~~[of license]~~, an applicant shall hold a valid and current license issued by the board and shall:

(a) Satisfy the continuing education requirements established by 815 KAR 6:040 ~~[of Section 5 of this administrative regulation];~~

(b) Pay a nonrefundable renewal fee of \$200 ~~[\$250]~~ per year for each year of licensure;

(c) Submit a completed Application for Licensure Renewal, Reinstatement or Reactivation, form KBHI-2 with the following attachments ~~[and attachments, including]:~~

1. A certificate of completion for continuing education;

2. A certification of insurance showing continuous coverage ~~[information];~~

3. If applicable, a letter of good standing from all other jurisdictions where the licensee is licensed ~~[other state or local licensure, certification, registration, or permit]; and~~

4. A ~~[state-wide]~~ criminal background check performed by the Kentucky State Police completed within ninety (90) days of the date the board receives the renewal application; and

(d) Submit a copy of a completed inspection report that has been compiled within the previous twelve (12) months immediately preceding renewal.

(2)(a) The renewal application shall be postmarked by the last day of the month in which the licensee is to renew the license.

(b) If the renewal application is postmarked within sixty (60)

days after the last day of the licensee's renewal month, the licensee shall:

1. Cease and desist from conducting home inspections, and
2. Pay the nonrefundable renewal fee of \$200 and the late renewal fee of \$250.

(c) If the renewal application is postmarked between sixty-one (61) and 120 days after the renewal was due, the licensee shall:

1. Cease and desist from conducting home inspections, and
2. Pay the nonrefundable renewal fee of \$200, late renewal fee of \$250, and reinstatement fee of \$250. ~~the licensee shall pay a nonrefundable:~~

1. Renewal fee of \$250 per year for each year of licensure; and
2. Late fee of \$250.

(3) If a licensee has not submitted a renewal application within sixty (60) days of the last day of the licensee's renewal month, the license shall be cancelled and the licensee shall cease and desist from conducting home inspections.

(4)(a) If a licensee failed to submit a renewal application more than sixty (60) days from the last day of the licensee's renewal month and wants to be licensed, the licensee shall submit a completed Application for Licensure Reinstatement, form KBHI-6, within 120 days of the last day of the licensee's renewal month. The licensee shall pay a nonrefundable:

1. Renewal fee of \$250 per year for each year of licensure; and
2. Late fee of \$500.]

(d)[(b)] If a licensee failed to submit an Application for Licensure Renewal, Reinstatement or Reactivation[or an Application for Licensure Reinstatement] within 120 days of the last day of the licensee's renewal month, the license shall be terminated, and wants to be licensed, the licensee shall submit a new application in accordance with existing requirements for initial applicants under KRS 198B.700 to 198B.738 and 815 KAR Chapter 6.

Section 5. Continuing Education. (1) The continuing education requirements of this section shall apply only to those licensees who will have been licensed at least twelve (12) months at license renewal.

(2) Each licensee who renews a license in an odd year shall have at least fourteen (14) hours of continuing education per license year. Each licensee who renews a license during an even year shall have at least twenty-eight (28) hours of continuing education during the license biennial period.

(3) Prior to renewal, the continuing education shall include a minimum of:

- (a) Two (2) hours in manufactured housing;
- (b) Three (3) hours in KRS 198B.700 to 198B.738 and 815 KAR Chapter 6;
- (c) Three (3) hours in report writing; and
- (d) Six (6) hours in technical courses, including identification and determination, as applicable within the standards of practice.

(4)(a) The continuing education courses identified in subsection (3)(a) through (c) of this section shall be completed face-to-face. An online continuing education course shall not satisfy the continuing education requirement for each respective category.

(b) The face-to-face requirement identified for the continuing education courses shall be effective beginning the next renewal period following September 4, 2015.

(5) Continuing education shall be obtained from those providers approved by the board as provided in 815 KAR 6:080.

(6) An approved prelicensing course shall satisfy the initial fourteen (14) hour continuing education requirement.

(7) A maximum of three (3) hours per license year shall be awarded for teaching part of a home inspection credit course or home inspection continuing education course as applied to the appropriate content area established in subsection (3)(a) through (d) of this section.

(8) A maximum of three (3) hours per license year shall be awarded for appointment to the board for a board member who is licensed and who has attended not less than eighty (80) percent of the board meetings each license year as applied to the content area established in subsection (3)(b) of this section.

~~(9) A licensee shall not take the same continuing education course during a licensure period.~~

~~(10) A licensee may complete the required continuing education hours within the sixty (60) day grace period from the last day of the licensee's renewal month.]~~

Section 6. Inactive License. (1)[Placement of a license in inactive status.

(a)1.] To place a license in inactive status, a licensee shall submit a [notarized] statement indicating the desire to have the license placed in inactive status.

(2)[2.] This[notarized] statement shall be mailed to the board and shall be accompanied by:

(a)[a.] A nonrefundable fee off[check for] ten (10) dollars made payable to the Kentucky State Treasurer;

(b)[b.] The licensee's[actual] license card[of the licensee]; and

(c)[c.] A current mailing address for the licensee.

(3) If the licensee no longer has his or her license card, the statement shall be notarized and provide a reason for the missing license card.

(4)[(b)] A licensee in inactive status shall not engage in home inspection activities within the Commonwealth of Kentucky.

(5)[(2)] Renewal of license in inactive status.

(a) A licensee with an inactive license shall pay an annual inactive status fee equal to fifty (50) percent of the current renewal fee for an active license.

(b) Failure to pay this annual fee shall result in the expiration of the license on the last day of the licensee's birth month.

(6)[(3) Insurance coverage for licensees with inactive license.] A licensee with an inactive status license shall not be required to maintain the insurance coverage required by KRS 198B.712(3)(d)[during inactive status].

Section 7. License Reactivation[of Inactive License to Active Status]. (1) A licensee who wishes to reactivate a license shall[contact the board and] submit a completed Application for Licensure Renewal, Reinstatement or Reactivation, form KBHI-2 with the following attachments:

(a) A certificate of completion for continuing education as required by 815 KAR 6:040;

(b) A certification of insurance showing continuous coverage; and

(c) If applicable, a letter of good standing from all other jurisdictions where the licensee is licensed.

(2) The reactivation application shall be accompanied by:

(a) A criminal background check performed by the Kentucky State Police completed within ninety (90) days of the date the board receives the reactivation application; and

(b) A nonrefundable reactivation fee in the amount of ten (10) dollars made payable to the Kentucky State Treasurer.[notarized statement requesting approval to return to active status.

(2) This request shall be accompanied by:

(a) The name of the licensee requesting activation;

(b) The license number of the licensee requesting reactivation;

(c) The birth date of the licensee requesting reactivation;

(d) A current mailing address for the licensee requesting reactivation;

(e) A check in the amount of ten (10) dollars made payable to the Kentucky State Treasurer;

(f) Proof of liability insurance naming the individual in the amount of \$250,000 as required by KRS 198B.712(3)(d);

(g) A state-wide criminal background check administered by a law enforcement agency capable of conducting a state-wide background check; and

(h) Proof of continuing education as required by Section 8 of this administrative regulation.]

(3) A license that has been inactive for a period of five (5) years from the date of board action shall be considered terminated[expired].

Section 8. Grounds for Denial or Nonrenewal and Appeal Rights. (1) The board may deny a license or refuse to renew or reactivate a license to an applicant or licensee who:

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

(a) Has entered a guilty plea to, pled guilty to, or been convicted of a crime directly related to the home inspection profession; or

(b) Has had disciplinary action taken against a home inspector license, certificate, registration, or permit held by the applicant or licensee in any jurisdiction or state.

(2) The board shall base its decision on the nature, seriousness of the offense or disciplinary action, and passage of time since the offense or disciplinary action.

(3) If the board denies an initial or renewal license application, the board shall issue written notice of the denial to the applicant. The notice shall contain:

(a) The specific reason for the board's action, including:

1. The statutory or regulatory violation; and

2. The factual basis on which the denial is based; and

(b) Notice that the applicant may request an administrative hearing on the pending denial by the board.

(4) The request for an administrative hearing shall be postmarked no more than twenty (20) calendar days after receipt of this notification, excluding the day he or she receives notice.

(5) The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(6) If the request for an administrative hearing is not timely filed, the notice of denial shall be effective upon the expiration of the time to request an administrative hearing. [Continuing Education Requirements for Licensees in Inactive Status Returning to Active Status. (1) Except as provided by subsection (2) of this section, a licensee with an inactive status who wishes to reactivate the license shall complete the continuing education requirements established in this subsection prior to application to return to active status. The licensee shall complete fourteen (14) hours per year that the license has been inactive, which shall include:

(a) Two (2) hours in manufactured housing;

(b) Three (3) hours of KRS 198B.700 to 198B.738 and 815 KAR Chapter 6; and

(c) Nine (9) hours, in any combination, of:

1. Electrical;

2. Plumbing;

3. Heating, ventilation, and air conditioning;

4. Roofing; or

5. Report writing.

(2) A board approved sixty-four (64) hour preclicensing training course may be used to satisfy the requirement established in subsection (1) of this section.

Section 9. Maintenance of Records. (1) Address.

(a) A license holder shall report a change of address to the board in writing within ten (10) days after the change.

(b) The board shall not be responsible for the license holder's failure to receive notices, communications, or correspondence caused by the license holder's failure to promptly notify the board of a change of address.

(2) Names.

(a) A license holder shall notify the board in writing of a name change within thirty (30) days of the change.

(b) The notification shall be accompanied by a copy of a marriage certificate, divorce decree, court order, or other documentation that verifies the name change.

(c) The board shall not be responsible for the license holder's failure to receive notices, communications, or correspondence caused by the license holder's failure to promptly notify the board of a name change.

(3) Inspection records.

(a) A licensed home inspector shall retain for at least three (3) years from the date of the inspection:

1. The written reports;

2. The contract; and

3. Supporting documentation, if applicable.

(b) Records may be retained in retrievable, electronic format.

(c) The licensee shall provide all records requested by the board within ten (10) days of receipt of the request.

~~Section 10. (1) The board may deny a license or refuse to renew or reactivate a license to an applicant or licensee who:~~

~~(a) Has entered a guilty plea to, pled guilty to, or been convicted of a:~~

~~1. Felony; or~~

~~2. Misdemeanor; or~~

~~(b) Has had disciplinary action taken against a professional license, certificate, registration, or permit held by the applicant or licensee in any jurisdiction or state, including Kentucky.~~

~~(2) The board shall base its decision on the seriousness of the offense or disciplinary action, the length of time since the offense or disciplinary action, and the applicant's or licensee's showing of remorse, rehabilitation, and restitution by clear and convincing evidence.~~

~~Section 11. The board shall deny a license or refuse to renew or reactivate a license to an applicant or licensee who fails to comply with a provision of KRS 198B.700 to 198B.738 or 815 KAR Chapter 6.]~~

~~Section 9.~~ [Section 12.] Incorporation by Reference. (1) The following material is incorporated by reference:

~~(a) "Application for Licensure", Form KBHI-1, 9/2018[2/2016];~~

~~(b) "Application for Licensure Renewal, Reinstatement or Reactivation", Form KBHI-2, 9/2018[2/2016];~~

~~(c) ["Application for Licensure Reinstatement", Form KBHI-6, 2/2016; and~~

~~(d)] "Optional Affidavit for Licensure", Form KBHI-6[7], 9/2018[2/2016]; and~~

~~(d) "Consent to Service of Jurisdiction", Form KBHI-8, 9/2018.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Home Inspectors[Office of Occupations and Professions], 656 Chamberlin Avenue, Suite B [941 Leawood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~

MITCHELL BUCHANAN, Chair

H.E. CORDER II, Executive Director

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: September 12, 2018

FILED WITH LRC: September 13, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2018 at 10:00 a.m. Eastern Time at the Kentucky Board of Home Inspectors, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this Department 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. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538, email Heather.Becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensing processes and procedures for home inspectors in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process for

and fees associated with applying for, renewing, deactivating, and reactivating a license to perform home inspections in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.706(1)(a) requires the board to promulgate administrative regulations to determine the requirements for and prescribe the form of licenses, applications, and other documents required by KRS 198B.700 to KRS 198B.738.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment will provide increased efficiency and consistency for current and prospective licensees in the licensing process.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amendment consolidates all licensing requirements into one easy to find location, and removes all unrelated requirements from this administrative regulation. This administrative regulation amendment simplifies the licensing and renewal process by reducing the number of forms required.

(b) The necessity of the amendment to this administrative regulation: KRS 198B.706(1)(a) requires the board to promulgate administrative regulations to determine the requirements for and prescribe the form of licenses, applications, and other documents required by KRS 198B.700 to KRS 198B.738.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the process for and fees associated with applying for, renewing, deactivating, and reactivating a license to perform home inspections in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment will provide increased efficiency and consistency for current and prospective licensees in the licensing process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board currently regulates roughly 550 home inspectors, and they will be impacted by this administrative regulation. Additionally, entities approved to provide prelicensing and continuing education to the board's licensees will be impacted.

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

(a) List 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 of the regulated entities identified in question (3) will be required to take any new action to comply with this administrative regulation. Licensees renewing their licenses will receive a cost savings, as the board is lowering the cost to renew a license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the regulated entities identified in question (3) as a result of this administrative regulation. Licensees renewing their licenses will receive a cost savings, as the board is lowering the cost to renew a license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees renewing their licenses will receive a cost savings, as the board is lowering the cost to renew a license. Additionally, licensees will save time as the board has eliminated unnecessary forms. This easing of administrative burden will allow a licensee to focus on his or her trade.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing costs associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board is a self-funded agency, funded through licensing fees

and late fees. No fees are increased through this administrative regulation. The board is lowering renewal fees for current licensees. No additional funding is required to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is applied. New licensees are assessed a nonrefundable \$250 application fee. Licensees renewing existing licenses are receiving a reduction in renewal costs to a nonrefundable \$200 renewal fee for each year of licensure. All other fees and late penalties apply equally to all.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Home Inspectors 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 198B.706.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 revenue for the Kentucky Board of Home Inspectors in the form of licensing fees. For the roughly 500 currently licensed home inspectors, each will pay a renewal fee of at least \$200 per year. This is a \$50 reduction from previous years. Therefore, in the first year, the Kentucky Board of Home Inspectors expects to receive at least \$100,000 in revenue in the first year. This administrative regulation will not generate revenue for 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 administrative regulation will not generate revenue for state or local government in subsequent years. This administrative regulation will generate revenue for the Kentucky Board of Home Inspectors in the form of licensing fees. For the roughly 500 currently licensed home inspectors, each will pay a renewal fee of at least \$200 per year. This is a \$50 reduction from previous years. Therefore, in the first year, the Kentucky Board of Home Inspectors expects to receive at least \$100,000 in revenue in subsequent years. This administrative regulation will not generate revenue for local government in the first year.

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering 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 (+/-): -\$25,000

Expenditures (+/-): Neutral

Other Explanation: By lowering renewal fees for existing licensees, the board anticipates a revenue reduction of \$25,000 per year.

PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Board of Home Inspectors
(Amendment)

815 KAR 6:030. Standards of conduct, complaints, and discipline~~[Home inspector standards of conduct]~~.

RELATES TO: KRS 198B.706, 198B.712, 198B.722, 198B.728, 198B.730

STATUTORY AUTHORITY: KRS 198B.706[(43), (45)]

NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(15) requires the Kentucky Board of Home Inspectors, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations to carry out the effective administration and requirements~~[necessary to enforce the provisions]~~ of KRS 198B.700 to 198B.738. KRS 198B.706(13) authorizes the board to establish standards of practice for home inspectors. KRS 198B.706(1) requires the board to determine the requirements for and prescribe the form of documents required by KRS 198B.700 to 198B.738. KRS 198B.706(4) requires the board to investigate, and take action if appropriate, complaints concerning licensees, or persons the board has reason to believe should be licensees, including complaints concerning failure to comply with KRS Chapter 198B or 815 KAR Chapter 6. KRS 198B.728 requires the board to take disciplinary actions against or impose sanctions on a licensee for failing to comply with any provision of KRS 198B.700 to 198B.738 or administrative regulations promulgated thereunder. KRS 198B.730(1) requires the board to schedule and conduct an administrative hearing in accordance with the provisions of KRS Chapter 13B. This administrative regulation establishes standards of conduct for home inspectors, the guidelines for advertising by home inspectors, and the process for filing and investigating complaints. KRS 411.272(2) requires KRS 411.270 to 411.282 to prevail over any conflicting law otherwise applicable to any action, claim or cause of action against a home inspector, with specified exceptions. This administrative regulation also establishes supplemental administrative hearing procedures for matters before the board and the required forms for a complaint or answer.

Section 1. Standards of Conduct. A licensed home inspector or an entity under which the inspector conducts business shall:

- (1) Act as an unbiased third party to the real estate transaction;
- (2) Discharge the duties of a home inspector with integrity and fidelity to the client;

(3) Only express an opinion on any aspect of the inspected property~~[only]~~ if that opinion is based upon the experience, training, education, and professional~~[personal]~~ opinion of the inspector;

(4) Provide a written disclosure to the client of any interest the inspector maintains in the transaction and advise the client to obtain competitive bids before products or additional services are offered by the licensee including:

- (a) Products or additional services to be purchased from or provided by the inspector, his or her agents, or employees;
- (b) Products or additional services to be purchased from or provided by any entity, organization, or venture in which the inspector has an interest; or
- (c) Products or additional services to be purchased that will result in any additional compensation or benefit to the inspector, financial or otherwise;~~[and]~~

(5) Provide the license number, following the licensee's signature, on any document signed by the home inspector pertaining to the home inspection;~~[and]~~

(6) Report a conviction, plea of guilty, or an "Alford" plea to any felony or a misdemeanor involving sexual misconduct, theft, attempted sexual misconduct, or attempted theft to the board within thirty (30) days.

Section 2. Prohibited Conduct~~[Additional—Standards]~~. In addition to the affirmative duties imposed by Section 1 of this administrative regulation, a licensed home inspector or an entity under which the licensee conducts business shall not:

(1) Engage in or knowingly cooperate in the commission of fraud or material deception to obtain a license to engage in the practice of home inspection, including cheating on the licensing examination;

(2) Perform repairs or modifications for compensation, or for other direct or indirect financial benefit, to a residential dwelling within twelve (12) months after performing a home inspection on the same residential dwelling, if the repairs or modifications are based upon the findings in the home inspection report. This subsection shall not apply if the home inspector purchases the residence after performing the inspection;

(3) Perform~~[Provide]~~ a home inspection to the client that does not conform to the Standards of Practice selected on the initial or renewal application for licensure~~[or the application for renewal]~~ submitted pursuant to 815 KAR 6:010;

(4) Provide services that constitute the unauthorized practice of any profession that requires a special license if the home inspector does not hold that license;

(5) Provide any compensation, inducement, or reward, either directly or indirectly, to any person or entity other than the client for the referral of business to the inspector. The purchase or use of advertising, marketing services, or products shall not be considered compensation, inducement, or reward;

(6) Conduct a home inspection or prepare a home inspection report for which the inspector's fee is contingent upon the conclusions contained in the report;

(7) Misrepresent the financial interests, either personally or through his or her employment, of any of the parties to the transfer or sale of a residential dwelling upon which the licensee has performed a home inspection;

(8) Disclose any information concerning the results or content of the home inspection report without the prior, written approval of the client for whom the home inspection was performed. The home inspector may disclose information if:

- (a) There is an imminent danger to life, health, or safety; or
- (b) The home inspector is compelled to disclose information by court order or a lawfully issued subpoena;

(9) Accept compensation, financial or otherwise, from more than one (1) interested party for the same home inspection on the same property without the written consent of all interested parties;

(10) Make a false or misleading representation regarding the:

- (a) Condition of a residential dwelling for which the licensee has performed or contracted to perform a home inspection;
- (b) Extent of~~[the]~~ services the licensee has performed or will perform; or
- (c) Type of license held by the licensee;

(11) Be convicted of a crime in the course of the practice of home inspection or commit any act constituting a violation of state law during the course of a home inspection;

~~(12) Make a false or misleading representation in:~~

- ~~(a) A license or renewal application form; or~~
- ~~(b) Information provided to the board;~~

~~(13) Fail to pay any fees required by 815 KAR 6:010;~~

~~(14)] Fail to continuously maintain the insurance or other evidence of financial responsibility required by KRS Chapter 198B or 815 KAR Chapter 6;~~

~~(13)]~~~~(15)] Engage in any course of lewd or immoral conduct in connection with the delivery of services to clients;~~

~~(14)]~~~~(16) Fail to complete the continuing education requirements established by the board in 815 KAR 6:010;~~

~~(17)] Use the term "certified" in advertising, unless the certification is current and the full name of the certifying body is clearly identified;~~

~~(15)]~~~~(18)] Use the term "fully insured," unless the person or entity has business liability and worker's compensation insurance coverage in effect at the time of the advertisement;~~

~~(16)]~~~~(19)] Continue to practice, if the licensed home inspector has become unfit to practice due to:~~

- ~~(a) Professional incompetence;~~
- ~~(b) Failure to keep abreast of current professional theory or practice;~~
- ~~(c) Physical or mental disability; or~~
- ~~(d) Addiction to, abuse of, or severe dependency on alcohol or~~

other drugs that endanger the public by impairing a licensed home inspector's ability to practice safely;[or

(e) ~~Failure to maintain a valid home inspector's license;~~

(19)[(20)] Omit information in a home inspection report required to be disclosed to a client by the Standards of Practice selected on the initial application for licensure or the application for renewal submitted pursuant to 815 KAR 6:010; or

(20)[(24)] Fail to comply with an order of the board.

Section 3. Content of Report. (1) A home inspection report shall state the Standards of Practice being followed by the licensee.

(2) A home inspection report shall include a statement that the report does not address environmental hazards and shall list all other exclusions with specificity. The presence or evidence of the following environmental hazards shall not be addressed in the report:

(a)[(1)] Air-borne hazards;

(b)[(2)] The air quality or the sickness of any building, including[~~but not limited to,~~] the presence or[~~of~~] absence of all manner of biological activity, such as hazardous plants, insects, birds, pets, mammals, and other flora and fauna, and their consequent physical damage, toxicity, noxiousness, odors, waste products, and wood destroying animals and fungi;

(c)[(3)] Animals, insects, or rodents;

(d)[(4)] Asbestos;

(e)[(5)] Carcinogens, including[~~but not limited to,~~] radon;

(f)[(6)] Contaminants in soil, water, and air;

(g)[(7)] Electro-magnetic fields;

(h)[(8)] Hazardous materials including[~~but not limited to,~~] the presence of lead in paint;

(i)[(9)] Hazardous waste conditions;

(j)[(10)] Mold, mildew, or fungus;

(k)[(11)] Hazardous plants or animals including[~~but not limited to,~~] wood destroying organisms, wood destroying insects, or diseases harmful to humans including molds or mold-like substances;

(l)[(12)] Noise;

(m)[(13)] Potability of any water;

(n)[(14)] Toxins;

(o)[(15)] Urea formaldehyde;

(p)[(16)] The effectiveness of any system installed or method utilized to control or remove suspected environmental hazards; and

(q)[(17)] Compliance with regulatory requirements (for example, codes, regulations, laws, and ordinances[~~—etc.~~]), any manufacturer's recalls, conformance with manufacturer installation or instructions, or any information for consumer protection purposes.

Section 4. Maintenance of Records. (1) A licensed home inspector shall retain for at least three (3) years from the date of the inspection:

(a) The written reports; and

(b) The contract.

(2) Records may be retained in retrievable, electronic format.

(3) A licensee shall provide all records requested by the board within ten (10) days of receipt of the request.

Section 5. Advertising Standards. (1) Every person licensed as a home inspector or claiming to be a home inspector shall identify and display his or her license number in all advertising disseminated, either directly or indirectly, to the general public, unless the advertisement is a promotional item.

(2) Any vehicle used in advertising a home inspector business shall bear the license number of the home inspector in a conspicuous location. The letters and numbers shall be at least two (2) inches in height and shall be visible and legible while the vehicle is being operated.

(3) If the home inspector is operating under the name of a business entity, the requirements of this administrative regulation shall be satisfied by displaying the license number of the owner or an employee of the business who is a licensed home inspector.

Section 6. Complaint Screening Committee. (1) The board chair shall create a complaint screening committee consisting of at least one (1) board member who is also a licensed home inspector.

(2) The complaint screening committee shall:

(a) Review new complaints and responses;

(b) Order investigation or further investigation;

(c) Review investigative reports; and

(d) Make recommendations for disposition of complaints to the full board.

(3) The committee may be assisted by the board staff and counsel.

(4) The committee shall report the committee's findings and recommendations to the board, and the board shall:

(a) Dismiss the complaint and notify the person making the complaint and the licensee that no further action shall be taken at the present time;

(b) Find an investigation is warranted; or

(c) Find a violation of a provision of KRS 198B.700 to 198B.738 or 815 KAR Chapter 6 and issue notice of disciplinary action to the licensee.

Section 7. Settlement by Informal Proceedings. (1) The board, through counsel and the complaint screening committee, may, at any time during the complaint process established in this administrative regulation, enter into informal proceedings with the licensee who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved or denied by the board and signed by the individual who is the subject of the complaint.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 8. Complaints. (1) A complaint may be initiated by the board, an individual, an entity, or any governmental agency. The complaint shall be submitted on a Complaint Form, KBHI-7.

(2) If the complaint is initiated by the public, it shall be notarized by a notary public.

(3) Upon a recommendation by the complaint screening committee, a copy of the initiating complaint shall be mailed to the licensee. The licensee shall file a written response to the initiating complaint with the board within twenty-one (21) days. The written response shall:

(a) Identify the respondent;

(b) State his or her response to the complaint;

(c) Include any documentation in dispute of the complaint;

(d) If applicable, state if he or she proposes to inspect the residence that is the subject of the claim and state the date by which the inspection will be complete. Any proposal shall include the statement that the home inspector shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim; offer to compromise and settle the claim by monetary payment without inspection; or state that the home inspector disputes the claim; and

(e) Be notarized by a notary public.

(3) A complaint shall be filed within one (1) year of the date the complainant knew or should have known of a violation by the licensee.

(4) The complainant may withdraw a complaint, which shall render the complaint null, void, and without effect, if:

(a) An answer has not been filed in accordance with this section;

(b) The withdrawal is made within twenty (20) days of the date the complaint was filed; or

(c) The withdrawal would not result in harm to the public.

(5) A withdrawn complaint shall not be refiled or reheard.

(6) A request for the board to take or refrain from taking an action shall be made by an oral or written motion and shall state the basis for the relief sought.

Section 9. Disciplinary Action. (1) The board shall investigate any complaint that alleges a violation of KRS 198B.700 to 198B.738 and 815 KAR Chapter 6.

(2) The board may appoint any of its members or any agent or representative of the board to conduct an investigation of the complaint.

(3) Upon the completion of the investigation, the investigator shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(4) Based on consideration of the complaint and the investigative report, if any, the board shall determine if there has been a prima facie violation of a provision of KRS 198B.700 to 198B.738 or 815 KAR Chapter 6.

(5) If the investigator is a member of the board, he or she shall not vote.

(6) If it is found that the facts alleged in the initiating complaint or investigative report do not constitute a prima facie violation of KRS 198B.700 to 198B.738 or 815 KAR Chapter 6, the board shall notify the person making the complaint and the licensee that no further action shall be taken at the present time.

(7) If it is found that there is a prima facie violation of a provision of KRS 198B.700 to 198B.738 or 815 KAR Chapter 6, the board shall issue written notice of disciplinary action to the licensee or initiate any remedy permitted by KRS 198B.700 to 198B.738 against an unlicensed individual. The board may propose any combination of discipline permitted by KRS 198B.700 to 198B.738.

(8) The written notice of disciplinary action shall be sent to the licensee's address on file with the board and inform the licensee:

(a) Of the specific reason for the board's action, including:

1. The statutory or regulatory violation; and

2. The factual basis on which the disciplinary action is based;

(b) Of the proposed penalty; and

(c) That the licensee may request an administrative hearing of the penalty to the board within twenty (20) calendar days of the date of the board's notice.

(9) A written request for an administrative hearing shall be postmarked no later than twenty (20) calendar days of the date of the board's notice. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(10) If the request for an administrative hearing is not timely filed, the notice of disciplinary action shall be effective upon the expiration of the time for the licensee to request an administrative hearing.

Section 10. Revocation of Probation. (1) If the board moves to revoke probation previously granted, the board shall issue written notice of the revocation and inform the probationee:

(a) Of the factual basis on which the revocation is based;

(b) Of each probation term violated; and

(c) That the probationee may request an administrative hearing of the revocation to the board within twenty (20) calendar days of the date of notification of revocation. The notification shall be sent to the last known address on file with the board for the certificate holder.

(2) A written request for an administrative hearing shall be postmarked no later than twenty (20) calendar days of the date of the board's notice. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(3) If the request for an administrative hearing is not timely filed, the notice of revocation shall be effective upon the expiration of the time for the certificate holder to request an administrative hearing.

Section 11. Incorporation by Reference. (1) "Complaint Form", Form KBHI-7, 9/2018, is incorporated by reference.

MITCHELL BUCHANAN, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: September 12, 2018

FILED WITH LRC: September 13, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2018 at 10:00 a.m. Eastern Time at the Kentucky

Board of Home Inspectors, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this Department 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. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538, email Heather.Becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards of practice for home inspectors in Kentucky. This administrative regulation also establishes the disciplinary procedures of the board, including the process for the public to file a complaint against a home inspector and the administrative notice and hearing requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to fulfill the board's duties under KRS 198B.706(15) to establish disciplinary procedures for handling complaints against licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation enumerates the required standards of conduct for licensed home inspectors in Kentucky and also establishes the disciplinary procedures of the board, including the process for the public to file a complaint against a home inspector and the administrative notice and hearing requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes committed to the board's enforcement by establishing the process for receiving, investigating, and adjudicating complaints against home inspectors.

(2) If 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 brings into one administrative regulation all standards of conduct applicable to licensed home inspectors. It details the complaint, investigation, and disciplinary hearing processes utilized by the board. Additionally, this amendment removes regulations that were duplicative of statute.

(b) The necessity of the amendment to this administrative regulation: Amending this administrative regulation is necessary to update the public and the board's licensees as to the complaint, investigation, and disciplinary hearing processes utilized by the board.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation enumerates the specific and additional required standards of conduct for licensed home inspectors in Kentucky and also establishes the disciplinary procedures of the board, including the process for the public to file a complaint against a home inspector and the administrative notice and hearing requirements.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes committed to the board's enforcement by establishing the process for receiving, investigating, and adjudicating complaints against home inspectors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board currently regulates roughly 550 home inspectors, and they will be impacted by this administrative regulation. Additionally, the public will be impacted by this administrative regulation, since it governs the process for filing complaints with the board. Also, entities approved to provide prelicensing and continuing education to the board's licensees will be impacted because approved education providers will have to update their education courses to reflect current law and practice of the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will have to inform themselves of the new requirements of this administrative regulation and the updates to the standards of conduct contained therein. The public will have to follow the complaint process set forth in this administrative regulation. Education providers will have to revise their course content to ensure they are educating licensed and prospective home inspectors appropriately.

(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 increased costs for licensees, prospective licensees, or the public to comply with this administrative regulation. Approved education providers may experience *de minimis* costs updating their course materials to reflect current law.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Current and prospective licensees will have to look in just one administrative regulation to learn the standards of conduct expected of licensed home inspectors. Similarly, the public will have to reference just one regulation to determine whether a home inspector has or has not acted accordingly. Streamlining the standards of conduct will make updating education materials easier, because all required or prohibited conduct will be located in one administrative regulation.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing costs associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Kentucky Board of Home Inspectors 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 198B.706.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 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 state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering 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: This administrative regulation is not expected to have a fiscal impact.

PUBLIC PROTECTION CABINET Kentucky Real Estate Authority Kentucky Board of Home Inspectors (Amendment)

815 KAR 6:040. Education requirements and providers[Home inspector prelicensing providers].

RELATES TO: KRS Chapter 165A, 198B.706, 198B.712, 198B.722, 198B.724

STATUTORY AUTHORITY: KRS 198B.706[(2), (13), (15)], 198B.712[(2)(e)], 198B.722, 198B.724

NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(15) requires the Kentucky Board of Home Inspectors, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations to carry out the effective administration and requirements[necessary to enforce the provisions] of KRS 198B.700 to 198B.738. KRS 198B.706(11) and KRS 198B.724 require the board to establish requirements for continuing education courses and providers. KRS 198B.712(2)(c) requires an applicant to complete a board-approved course of study prior to seeking licensure. This administrative regulation establishes continuing education requirements for licensees and the procedures for obtaining board approval to be[being approved by the board as] a prelicensing provider and a continuing education provider.

Section 1. Education[Prelicense Course] Provider Approval. (1) A prelicensing course provider applicant[An applicant to be a prelicensing course provider] shall submit:

(a) A completed Application for Pre-licensing Course Provider, form KBHI-3;

(b)[(2)] A \$500 nonrefundable application fee;

(c)[(3)] A copy of:

1. The Certificate of Approval from the Kentucky State Commission for Proprietary Education, if required by KRS Chapter 165A; or

2. Proof that the applicant is exempt from licensure;

(d)[(4)] A syllabus of all courses that will be offered, which shall include the physical location of each laboratory and field training portion of the courses;

(e)[(5)] A list of all course instructors and copies of their current curriculum vitae;

(f)[(6)] A copy of each brochure used to advertise the courses;

and

(g) [(7)] A sample of the official transcript.

(2) A continuing education course provider applicant shall submit to the board:

(a) A completed Application for Continuing Education Course Provider, form KBHI-4; and

(b) A \$500 nonrefundable application fee.

(3) Upon approval, the board shall assign the provider a provider number. The provider shall use the provider number in the course syllabus, all course materials, and all written advertising materials for the course.

(4) A provider's approval shall expire every two (2) years. Each provider shall resubmit the application and fee required for initial approval.

Section 2. Prelicensing Course Approval. (1) To be approved by the board, a prelicensing training course shall require a minimum of:

(a) Sixty-four (64) credit hours of training in the subject areas listed in subparagraphs 1 through 9 of this paragraph for at least the number of hours specified:

1. Manufactured housing: two (2) hours;

2. Standards of practice, KRS 198B.700 to 198B.738 and 815 KAR Chapter 6, contracts, report writing, and communications: twelve (12) hours;

3. Exterior, roofing, insulation, and ventilation: six (6) hours;

4. Structure and interior: nine (9) hours;

5. Electrical and plumbing: nine (9) hours;

6. Heating and air conditioning: six (6) hours;

7. Field training: sixteen (16) hours, including not more than eight (8) hours in a laboratory;

8. General residential construction: three (3) hours; and

9. Environmental hazards, mitigation, water quality, and indoor air quality: one (1) hour;

(b) The completion of three (3) unpaid home inspections under the direct supervision of a Kentucky licensed home inspector with satisfactory written reports submitted to the course provider in addition to the sixteen (16) hours of field training required by paragraph (a)7 of this subsection; and

(c) An exit examination with a passing score to be determined by the provider.

(2) An online prelicensing training course shall not be accepted by the board unless the applicant:

(a) Was enrolled in a prelicensing course on or before September 4, 2015;

(b) Maintained continuous enrollment; and

(c) Completed the prelicensing course no later than six (6) months from September 4, 2015.

Section 3. Continuing Education Course Approval. (1) To offer a continuing education course, an approved continuing education provider shall submit to the board at least thirty (30) days prior to the next regularly scheduled board meeting:

(a) A completed Application for Continuing Education Course, form KBHI-5;

(c) An official course curriculum and description;

(d) A copy of the course agenda indicating hours of education and breaks;

(e) The number of continuing education hours requested;

(f) A list of all course instructors and copies of their current curriculum vitae; and

(g) An official certificate of completion.

(2) To receive approval, each course shall be in hourly increments from one (1) to six (6) hours.

(a) One (1) hour of continuing education shall be allowed for each fifty (50) minutes of actual instruction; and

(b) The board may approve a course for hours different than the provider's request based on the education and experience of the licensed home inspector board members.

(3) The board shall approve continuing education courses that:

(a) Relate to the technical skills required of licensees,

(b) Contain sufficient educational content to improve the quality of licensee performance, and

(c) Comply with this administrative regulation.

(4) If the continuing education course is an online course, the course:

(a) Shall not satisfy the continuing education requirements established in Section 10(2)(a) and (b) of this administrative regulation, and

(b) Shall contain an explanation or provide proof that the continuing education provider has an attendance verification process.

(5) Upon approval, the board shall assign the course a number. The course provider shall use the course number in the course syllabus, all course materials, and all written advertising materials for the course.

(6) Prelicensing and continuing education course approval shall be valid for two (2) years from date of issue if no substantial change is made in the course and the board has not imposed discipline upon the provider or its instructors.

(7) Substantial changes, such as a change in the agenda, published course description, or instructor, made in any course shall require a new approval of that course.

(8) A provider shall apply for course approval no later than forty-five (45) days prior to the date of expiration of the original course approval.

Section 4. Denial of Application. Unless a denial is being considered pursuant to 815 KAR 6:030, a course that has been denied may be resubmitted to the board after adopting the suggested modifications provided by the board.

Section 5. [Renewals. A provider's approval shall expire every two (2) years. To renew its approval, each provider shall file the application and fee required for initial approval.

Section 3. Required Records. (1) Each provider shall maintain with respect to each course:

(a) The time, date, and location of [place] each course [is] completed;

(b) The name, address, and qualifications of each instructor who teaches any portion of the course and if each instructor has been approved by the board;

(c) The name and address of each person who registered for the course;

(d) The course syllabus used for each course; and

(e) The course evaluations.

(2) The provider shall issue to each person who successfully completes an approved course, a certificate of completion containing:

(a) The name of the attendee;

(b) The name of the provider;

(c) The course name;

(d) The course number;

(e) The date of the course; and

(f) The total number of continuing education [contact] hours successfully completed in each subject covered by the course.

(3) Each provider shall maintain its records for at least three (3) years after the completion of each course. These records shall be submitted to the board or its agents upon request. [(4) Each provider shall submit to the board, in writing, notice of any changes in the information provided in the initial registration of the provider. The notification shall be made within thirty (30) days following the date the change is effective.]

Section 6. [4.] Qualifications of Course Instructors. (1) Each course instructor shall be qualified, by education or experience, to teach the course, or parts of a course, to which the instructor is assigned.

(2) Any person with a four (4) year college degree or graduate degree, with at least two (2) years of work experience in that field, shall be qualified to teach a prelicensing or continuing education course in that person's field of study.

(3) To qualify as an instructor based on experience, an individual shall:

(a) Be licensed and have actively practiced for at least five (5)

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

years as a home inspector; or

(b) Have five (5) years of experience in a related field of home inspection or the building sciences.

(4)(a) A licensee whose license is suspended~~[or-revoked]~~ as a result of board discipline shall not teach or serve as a course instructor during the time the license is suspended~~[or-revoked]~~.

(b) A licensee whose license has been revoked as a result of board discipline shall not teach or serve as a course instructor after the license has been revoked.

(5) A course provider may request prior approval by the board regarding the qualifications of a particular instructor for a particular course.

Section 7.~~[5.]~~ Course Syllabus. (1) Each course shall have a course syllabus that identifies:

(a) The name of the course;

(b)~~[The number of the course assigned by the board;~~

(e)] The name and address of the provider;

(c)~~[(d)]~~ A description or outline of the contents of the course; and

(d)~~[(e)]~~ The location of each course component.

(2) Each person who registers for a course shall be given the course syllabus prior to the beginning of the course.

Section 8.~~[6.]~~ Course Advertising. (1) A provider shall not advertise a course as approved until the approval is granted by the board.

(2) A provider shall not include any false or misleading information regarding the contents, instructors, location of classrooms or laboratory courses, or number of continuing education~~[contact]~~ hours of any course approved under this administrative regulation.~~[(3) A provider shall include its provider number and course numbers in all advertising.]~~

Section 9. Complaints and Disciplinary Action Against a Prelicensing Provider or Continuing Educational Provider. (1) A complaint against an approved provider shall be notarized and filed on the Complaint Form, form KBHI-7, which is incorporated by reference in 815 KAR 6:030.

(2) The board may deny, suspend, probate, or revoke the registration of any prelicensing course provider or continuing educational provider for:

(a) Obtaining or attempting to obtain registration or approval through fraud, deceit, false statements, or misrepresentation;

(b) Failing to timely provide complete and accurate information in registration materials;

(c) Falsifying any records, including attendance, regarding courses conducted;

(d) Failing to maintain, or provide to the board upon request, any required records regarding courses;

(e) Failing to take attendance at any approved course; or

(f) Failing to comply with any other duty established for providers in this administrative regulation.

(3) The board shall issue written notice of disciplinary action sent to the prelicensing course or continuing educational provider's address on file with the board and inform the provider:

(a) Of the disciplinary action being taken by the board;

(b) Of the specific reason for the board's action, including:

1. The statutory or regulatory violation; and

2. The factual basis on which the disciplinary action is based;

and

(c) That the provider may request an administrative hearing on the board's proposed disciplinary action by written request to the board, postmarked no more than ten (10) calendar days following the date of the board's notice.

(4) If the request for an administrative hearing is not timely filed, the notice of disciplinary action shall be effective upon the expiration of the time for the licensee to request an administrative hearing.

(5) A provider whose approval has been revoked shall not be approved for two (2) years from the date of revocation.

Section 10. Continuing Education for Licensees. (1) The

continuing education requirements of this section shall apply only to those licensees who will have been licensed at least twelve (12) months at license renewal.

(2)(a) Each licensee who renews a license in an odd year shall have at least fourteen (14) hours of continuing education per license year from at least five (5) separate courses.

(b) Each licensee who renews a license during an even year shall have at least twenty-eight (28) hours of continuing education from at least ten (10) separate courses during the license biennial period, including a minimum of:

1. Three (3) hours in KRS 198B.700 to 198B.738 and 815 KAR Chapter 6;

2. Three (3) hours in report writing; and

3. Eight (8) hours in technical courses, including identification and determination, as applicable within the standards of practice.

(3) An approved prelicensing course shall satisfy the initial fourteen (14) hour continuing education requirement.

(4) The continuing education courses established in subsection (2)(a) and (b) of this section shall be completed face-to-face. An online continuing education course shall not satisfy the continuing education requirement for each respective category.

(5) A maximum of three (3) hours per license year shall be awarded for teaching part of a home inspection continuing education course as applied to the appropriate content area established in subsection (2)(a) through (c) of this section.

(6) A maximum of three (3) hours per license year shall be awarded to a board member who is licensed and who has attended not less than eighty (80) percent of the board meetings each license. The hours awarded shall apply to the content area established in subsection (2)(a) of this section.

(7) A licensee shall not receive credit for the same continuing education course during a licensure period.

Section 11. Continuing Education Requirements for Inactive Licensees Returning to Active Status. An inactive licensee who wishes to reactivate his or her license shall complete either:

(1) Fourteen (14) hours of continuing education per year that the license has been inactive, which shall include:

(a) Three (3) hours of KRS 198B.700 to 198B.738 and 815 KAR Chapter 6; and

(b) Eleven (11) hours, in any combination, of:

1. Electrical;

2. Plumbing;

3. Heating, ventilation, and air conditioning;

4. Roofing; or

5. Report writing; or

(2) A board approved sixty-four (64) hour prelicensing training course.

Section 12.~~[7.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a)~~[(1)]~~ "Application for Continuing Education~~[Pre-Licensing]~~ Course Provider", Form KBHI-4~~[3]~~, 9/2018~~[2/2016]~~;

(b) "Application for Continuing Education Course", Form KBHI-5, 9/2018; and

(c) "Application for Pre-Licensing Course Provider", Form KBHI-3, 9/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Home Inspectors,~~[Division of Occupations and Professions,]~~ 656 Chamberlain Avenue, Suite B~~[911 Leewood Drive]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MITCHELL BUCHANAN, Chair

H.E. CORDER II, Executive Director

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: September 12, 2018

FILED WITH LRC: September 13, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2018 at 10:00 a.m. Eastern Time at the Kentucky Board of Home Inspectors, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky. Individuals interested in being heard at this

hearing shall notify this Department 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. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538, email Heather.Becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for prelicensing and continuing education courses, providers, licensees, and prospective licensees.

(b) The necessity of this administrative regulation: KRS 198B.706(11) and KRS 198B.724 require the board to establish requirements for continuing education courses and providers and the applicable requirements to maintain licensure. KRS 198B.712(2)(c) requires an applicant to complete a board-approved course of study prior to seeking licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.706(11) and 198B.724 require the board to establish requirements for continuing education courses and providers. KRS 198B.712(2)(c) requires an applicant to complete a board-approved course of study prior to seeking licensure. This administrative regulation establishes continuing education requirements for licensees and the procedures for obtaining board approval to be a prelicensing provider and a continuing education provider.

(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 within the board's enforcement because it establishes the continuing education requirements for licensees and the procedures for obtaining board approval to be a prelicensing provider and a continuing education provider.

(2) If 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 consolidates all regulatory provisions regarding prelicensing education and continuing education course and provider approval as well as the licensee requirements for continuing education. This amendment also removes the requirement that licensees take two hours of instruction in manufactured housing in order to renew their licenses.

(b) The necessity of the amendment to this administrative regulation: Amendment to this administrative regulation is necessary to streamline the provider and course approval process as well as to update the continuing education requirements for current licensees.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes continuing education requirements for licensees and the procedures for obtaining board approval to be a prelicensing provider and a continuing education provider.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes within the board's enforcement because it establishes the continuing education requirements for licensees and the procedures for

obtaining board approval to be a prelicensing provider and a continuing education provider.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board currently regulates roughly 550 home inspectors, and they will be impacted by this administrative regulation. Additionally, the public will be impacted by this administrative regulation, since it governs the process for filing complaints with the board. Also, entities approved to provide prelicensing and continuing education to the board's licensees will be impacted because approved education providers will have to update their education courses to reflect current law and practice of the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will have to inform themselves of the new requirements in this administrative regulation regarding their ongoing continuing education requirements. Prospective licensees will have to refer to the amended prelicensing education requirements. Education providers will have to revise their course content to ensure they are educating licensed and prospective home inspectors appropriately.

(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 increased costs for current or prospective licensees to comply with this administrative regulation. Approved education providers may experience *de minimis* costs updating their course materials to reflect current law.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Current and prospective licensees will have to look in just one administrative regulation to learn their educational requirements. Education providers will benefit from a streamlined approval and review process. Licensees completing continuing education courses for renewal will no longer have to take two hours of manufactured housing education. The manufactured housing education materials have not been updated in years and no longer serve an educational purpose.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing costs associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Kentucky Board of Home Inspectors 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 198B.706.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 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 state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering 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: This administrative regulation is not expected to have a fiscal impact.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amendment)

900 KAR 2:040. Citations and violations; criteria and specific acts.

RELATES TO: KRS 13B.040, 13B.050, 13B.080, 13B.090, 13B.110, 13B.130, 216.510 – 216.525, [216.550,] 216.555 – 216.567, [216.557, 216.560, 216.563, 216.565,] 216.577, 216A.010(3), 42 C.F.R. 483.10, 45 C.F.R. Part 160, Part 164, 42 U.S.C. 1320d-2 - 1320-8

STATUTORY AUTHORITY: KRS [194.050, 216.555, 216.557,] 216.563, 216.567 [216.577]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.563 requires the Cabinet for Health and Family Services to promulgate administrative regulations setting forth the criteria and, where feasible, the specific acts that constitute Type A and B violations as specified by KRS 216.537 to 216.590. This administrative regulation establishes the criteria for Type A and B violations in long-term care facilities and the process for appeal of any decision on citations or penalties as required by KRS 216.567(1).

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216.510(3).

(2) "Citation" means written notification of a Type A or Type B violation.

(3) "Long-term care administrator" is defined by KRS 216A.010(3).

(4) "Long-term care facility" means the same as "long-term care facilities" defined by KRS 216.510(1).

(5) "Resident" is defined by KRS 216.510(2).

(6) "Type A violation" means a violation, as described by KRS 216.557(1), by a long-term care facility of the administrative regulations, standards, and requirements established by the cabinet pursuant to KRS 216.563 or the provisions of KRS 216.510 to 216.525, or applicable federal laws and regulations that present an imminent danger to any resident of a long-term care facility and creates substantial risk that death or serious mental or physical harm to a resident will occur.

(7) "Type B violation" means a violation, as described by KRS 216.557(2), by a long-term care facility of the administrative

regulations, standards, and requirements established by the cabinet pursuant to KRS 216.563 or the provisions of KRS 216.510 to 216.525, or applicable federal laws and regulations that present a direct or immediate relationship to the health, safety, or security of any resident, but which does not create an imminent danger.

Section 2. Written Citations and Imposition of Penalties. (1) The cabinet's finding of a Type A or Type B violation shall be:

(a) Communicated to the long-term care facility at the exit conference of an onsite survey; and

(b) Issued as a written citation in the statement of deficiencies, including:

1. The nature of the violation;

2. The statutory provision or administrative regulation alleged to have been violated pursuant to KRS 216.555; and

3. Notice of the right to appeal the:

a. Citation; and

b. Proposed assessment of the civil penalty.

(2) The cabinet shall issue the citation and statement of deficiencies as soon as practicable to the licensee, long-term care administrator, or designated representative by:

(a) Certified mail, return receipt requested;

(b) Personal service; or

(c) Other method of delivery, which may include electronic service.

(3) If the cabinet sends notice of a citation and statement of deficiencies to a long-term care facility electronically, the cabinet shall request that the facility reply immediately upon receipt to confirm that the facility received the citation.

(4) If a long-term care facility fails to reply to the cabinet within one (1) business day after the cabinet sends a citation and statement of deficiencies electronically, the cabinet:

(a) Shall contact the licensee, long-term care administrator, or administrator's designee by telephone to determine receipt; and

(b) May deliver the citation and statement of deficiencies by certified mail or personal service if a second attempt to send the citation electronically is not successful.

(5) The date of the exit conference shall be day one (1) of the time period specified for abatement of a Type A or Type B violation.

(6) The cabinet shall consider the factors described in KRS 216.565 in determining the amount of the initial penalty to be imposed for a Type A or Type B violation.

Section 3. Criteria for Finding a Type A Violation. (1) The following specific acts or circumstances shall constitute a Type A violation:

(a) The cabinet determines that one (1) or more violations related to resident care or physical plant standards:

1. Resulted in actual harm to a resident; or

2. Represent an imminent danger and create a substantial risk that death or serious mental or physical harm to a resident will occur;

(b) The facility fails to implement a regular program to prevent pressure sores with emphasis on the following:

1. Procedures to maintain clean linens for each resident;

2. Procedures to assure that clothes and linens are cleaned each time the bed or clothing is soiled;

3. Procedures to assure that rubber, plastic, or other types of linen protectors are cleaned and completely covered to prevent direct contact with the resident;

4. Procedures to assist the resident in being up and out of bed as much as his or her condition permits, unless medically contraindicated; and

5. If the resident is unable to move himself or herself, procedures that require staff to change the resident's position as often as necessary, but not less than every two (2) hours;

(c) The facility fails to ensure that a resident who is admitted to the facility without pressure sores does not develop pressure sores, unless the individual's clinical condition demonstrates that they were unavoidable;

(d) If a resident has pressure sores, the facility fails to provide necessary treatment and services to:

1. Promote healing;

2. Prevent infection; and

3. Prevent new sores from developing;

(e) The facility knowingly admits or retains an individual whose needs exceed the facility's capability to care for the resident;

(f) The facility fails to disclose to a resident a serious preventable adverse event that affected the resident;

(g) The cabinet finds an actual violation of a resident's rights pursuant to:

1. KRS 216.515 to 216.520; or

2. 42 C.F.R. 483.10;

(h) The facility fails to consult a physician if a resident experiences a serious accident or illness;

(i) The facility fails to follow the written instructions of an attending physician, or in case of emergency, verbal order given by the physician or licensed practitioner acting within his or her scope of practice during use of a physical restraint or pharmaceutical agent that restricts a resident's movement;

(j) The facility fails to advise the attending physician if an error in medication occurs, the error is not recorded in the resident's file, and correction is not made within one (1) day of the date of discovery;

(k) The facility fails to store all drugs and biologicals in locked compartments under proper temperature controls;

(l) The facility fails to comply with a resident's medically prescribed special diet or dietary restriction, except for special days or celebrations in which the restriction has been lifted and is medically approved;

(m) The facility fails to maintain no less than a three (3) day supply of food in the facility; or

(n) The facility fails to maintain a written fire control and evacuation plan in which staff present and responsible for supervision are familiar.

(2) A long-term care facility that fails to correct a Type A violation within the time specified for correction by the cabinet shall be subject to at least one (1) of the actions described under KRS 216.577.

Section 4. Criteria for Finding a Type B Violation. The following specific acts or circumstances shall constitute a Type B violation:

(1) The cabinet finds one (1) or more violations related to resident care or physical plant standards that:

(a) Present a direct or immediate relationship to the health, safety, or security of any resident;

(b) Do not create an imminent danger;

(c) May be isolated or occasional; and

(d) Do not represent a pattern or widespread practice throughout the facility;

(2) The facility maintains or admits more residents to a long-term care facility than the maximum capacity permitted under the license, except in an emergency as documented by the facility in a contemporaneous notice to the cabinet;

(3) The facility fails to maintain an active program of pest control for all areas of its physical plant;

(4) The facility fails to serve at least three (3) meals per day with not more than fourteen (14) hours between the evening meal and breakfast, unless an exception is allowed pursuant to the applicable administrative regulations under 902 KAR Chapter 20;

(5) The facility fails to meet the nutritional needs of residents by not complying with the recommended dietary allowances of the Food and Nutrition Board of the National Academies of Sciences adjusted for age, sex, and activity, and provided in accordance with physician's orders;

(6) The facility fails to make between meal and bedtime snacks available, unless medically contraindicated;

(7) The facility fails to maintain a complete medical record for each resident with all entries current, dated, and signed;

(8) Except for a long-term care facility with an integrated heating, ventilation and air conditioning system (HVAC system), the facility fails to maintain screens on windows;

(9) The facility fails to offer a nutritional substitute to a resident who refuses food served;

(10) The facility fails to modify the texture or change the

consistency of food served based upon a resident's need;

(11) The facility fails to maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law;

(12) Except in family care homes, the facility fails to assure that cold water and hot water is available for resident use;

(13) The facility fails to assure that the maximum water temperature available for use by a resident does not exceed 110 degrees Fahrenheit;

(14) The facility fails to provide substitutions of equal nutritive value if changes in the menu are necessary; or

(15) The facility fails to have an administrator on staff who is responsible for the operation of the facility, or who fails to delegate responsibility in his or her absence.

Section 5. Penalties. (1) Civil penalties shall be trebled in accordance with the provisions of KRS 216.560(3).

(2) The amount of the initial penalty shall be determined with consideration given to those factors identified in KRS 216.565.

Section 6. Appeals. (1) Within twenty (20) days of the receipt of the citation and statement of deficiencies described in Section 2 of this administrative regulation, the licensee may file a written request for a hearing with the cabinet secretary.

(2) Upon receipt of the written request for a hearing, the secretary shall designate a hearing officer in accordance with KRS 216.567(2).

(3) A hearing shall be scheduled and commenced as soon as practicable after receipt of the request for hearing.

(4) Notice of the hearing shall:

(a) Be served on the party pursuant to KRS 13B.050(1) and (2); and

(b) Include the information required by KRS 13B.050(3).

(5) The hearing officer may hold a prehearing conference in accordance with KRS 13B.070.

(6) The hearing shall be conducted pursuant to KRS 13B.080 and 13B.090.

(7) Within sixty (60) days of the closing of the record or hearing, the hearing officer shall make written findings of fact, conclusions of law, and a final decision based upon the official record of the proceeding.

(8) The official record of the hearing shall include the following in addition to KRS 13B.130:

(a) The notice of citation within the statement of deficiencies or penalty assessed;

(b) Any staff reports, memoranda, or documents prepared by, or for the cabinet regarding the matter under review as introduced at the hearing;

(c) Any information provided by the parties as introduced at the hearing;

(d) Any other evidence admitted during the hearing with respect to the matter under review; and

(e) Upon its completion, the prehearing orders, if any, and the report of the hearing officer containing the:

1. Findings of fact;

2. Conclusions of law; and

3. Final decision.

(9) Any party aggrieved by the final decision may appeal that decision to the Franklin Circuit Court in accordance with KRS 216.567(3).

(10) An appeal of a Type A or Type B violation shall not be construed to limit the authority of the cabinet to act pursuant to KRS 216.573 or KRS 216.577 for failure to correct the violation in a timely manner.

(11) In addition to the grounds for disqualification established by KRS 13B.040(2)(b), a hearing officer shall not participate in a hearing involving a long-term care facility if the hearing officer has, within the twelve (12) month period preceding the hearing, had any ownership interest, employment, staff, fiduciary, contractual,

creditor, or consultative relationship with the facility. [The Cabinet for Human Resources is required to publish, after consultation with industry, professional and consumer groups, administrative regulations setting forth the criteria and, where feasible, the specific acts which constitute Type A and B violations. This administrative regulation is designed to set forth the criteria and, where feasible, the specific acts.]

Section 1. Definitions. (1) "Active treatment" means daily participation in accordance with an individual plan of care and services, in activities, experiences, or therapy which are part of a professionally developed and supervised program of health, social and/or habilitative services offered by or procured by contract or other written agreement by the institution for its residents.

(2) "Activities of daily living" means activities of self-help (example: being able to feed, bathe and/or dress oneself), communication (example: being able to place phone calls, write letters and understanding instructions) and socialization (example: being able to shop, being considerate of others, working with others and participating in activities).

(3) "Administrator" means the administrator of a long-term care facility.

(4) "Citation" means a written notification of violation of administrative regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 or the provisions of KRS 216.510 to 216.525, or applicable federal law and regulations governing the certification of a long-term care facility under Title 18 or 19 of the Social Security Act which violation has been classified a "Type A" or "Type B" violation pursuant to this administrative regulation. A citation is not a statement of deficiency.

(5) "Developmental nursing services" means treatment of a person's developmental needs by designing interventions to modify the rate and/or direction of the individual's development especially in the areas of self-help skills, personal hygiene and sex education while also meeting his physical and medical needs.

(6) "Nonambulatory" means unable to walk without assistance.

(7) "Nonmobile" means unable to move from place to place.

(8) "Protective device" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(9) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body, and when used in the context of an intermediate care facility for the mentally retarded or developmentally disabled, means any pharmaceutical agent or any physical or mechanical device used to restrict the movement of an individual or the movement or normal function of a portion of the individual's body, excluding only those devices used to provide support for the achievement of functional body position or proper balance (such as positioning chairs) and devices used for specific medical and surgical (as distinguished from behavioral) treatment.

(10) "Type A violation" means a violation by a long-term care facility of the administrative regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 and 216.563 or the provisions of KRS 216.510 to 216.525, or applicable federal laws and regulations governing the certification of a long-term care facility under Title 18 or 19 of the Social Security Act which has been classified a "Type A" violation pursuant to this administrative regulation. Said violation presents an imminent danger to any resident of a long-term care facility and creates substantial risk that death or serious mental or physical harm will occur.

(11) "Type B violation" means a violation by a long-term care facility of the administrative regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 and 216.563 or the provisions of KRS 216.510 to 216.525, or applicable federal law and regulations governing the certification of a long-term care facility under Title 18 or 19 of the Social Security Act which has been classified a "Type B" violation pursuant to this administrative regulation. Such violation presents a direct or immediate relationship to the health, safety or security of any resident, but which does not create an imminent danger and which is categorized a "Type B" violation in this administrative regulation.

Section 2. If, upon inspection of a long-term care facility for quality of care rating or investigation of such facility, the cabinet finds that there exists a "Type A" or "Type B" violation at the facility, a citation shall be issued to the licensee. Said citation shall specify, in writing, the nature of the violation and specify statutory provisions or administrative regulations alleged to have been violated.

Section 3. Type A Violations. (1) Upon the finding of a Type A violation, the cabinet shall advise the licensee, administrator or his designated representative, in writing, delivered as soon as practicable but no later than three (3) days, of the existence of said violation. Written notification may be delivered either by certified mail, return receipt requested, or by personal service of said notification upon the licensee, administrator or his designated representative. The time for correction of said violation shall begin upon the date written notification is received, or in the event the delivery is refused, upon the date of refusal.

(2) A "Type A" violation shall be abated or eliminated immediately upon written notification, unless a fixed period of time not to exceed ten (10) days, as determined by and within the discretion of the cabinet, is required for correction.

(3) A "Type A" violation is subject to a civil penalty in an amount not less than \$1,000 nor more than \$5,000 for each and every violation.

(4) Where a licensee has failed to correct a "Type A" violation within the time specified for correction, the cabinet shall assess the licensee a civil penalty in the amount of \$500 for each day such deficiency continues beyond the date specified for correction.

(5) Application for an extension of time may be granted by the cabinet upon a showing by the licensee that adequate arrangements have been made to protect the health and safety of the residents. No extension of time so granted shall exceed ten (10) days.

Section 4. (1) The criteria for the conditions which constitute "Type A" and "Type B" violations are:

(a) The uniform criteria established for rating quality of care in accordance with KRS 216.550;

(b) The provisions of KRS 216.515 to 216.525; and

(c) Applicable federal laws and regulations governing the certification of long-term care facilities under Titles 18 and 19 of the Social Security Act.

(2) Any violation of the criteria set forth in subsection (1)(a) through (c) of this section which constitutes an imminent danger and substantial risk of death or serious mental or physical harm to a resident is classified a "Type A" violation.

(3) Any violation of the criteria set forth in subsection (1)(a) through (c) of this section which presents a direct or immediate relationship to the health, safety or security of any resident, but which does not create an imminent danger, is classified a "Type B" violation.

(4) The criteria are to be reviewed at least quarterly for the purpose of more clearly defining the specific acts or circumstances which constitute "Type A" and "Type B" violations.

Section 5. (1) The following specific acts or circumstances in violation of the rating system developed pursuant to KRS 216.550, the provisions of KRS 216.510 to KRS 216.525, or the applicable federal laws and regulations governing certification of long-term care facilities under Title 18 or 19 of the Social Security Act and which presents an imminent danger and substantial risk of death or serious physical or mental harm to a resident or patient of the long-term care facility shall constitute "Type A" violations.

(a) In all long-term care facilities.

1. Persons whose care needs exceed the capability of the facility to provide are knowingly admitted as residents or patients of the facility.

2. A physician is not available and not consulted in the case of serious accident or illness and such consultation and the response of the facility is not reflected within the resident's or patient's file.

3. Physical and pharmaceutical restraints are not used in accordance with the written instructions of the attending physician

(and in cases of emergency, oral orders of the physician or nursing assessments made pursuant to KRS 314.011(6)(e) and 314.011(10)(e) are not subsequently reduced to writing), dated and placed within the resident's or patient's file.

4. Protective devices are not used in accordance with the written instructions of the attending physician, dated and within the patient's file.

5. Except in family care homes, the licensee has no evidence of a current inspection by the state fire marshal indicating the facility complies with the applicable provisions of the life safety code.

6. The licensee does not maintain a system of heating and cooling capable of attaining a minimum temperature of seventy-two (72) degrees which shall be provided in occupied areas in winter conditions and a maximum temperature of eighty-five (85) degrees which shall be provided in summer conditions, and in cases of emergency, the licensee does not take necessary precautions to protect the health of residents or patients.

7. In the event of an error in medication, the attending physician is not advised and the error is not recorded within the patient's or resident's file, and correction is not made within one (1) day of the date of discovery.

8. Prescription medication is not kept under lock.

9. The resident's or patient's daily diet provided by the facility does not comply with his medically prescribed special diet or dietary restriction (except for special days or celebrations medically approved), said special diet or dietary restriction is to appear in writing within the resident's or patient's file.

10. There is not at least three (3) days' supply of food in the facility at all times.

11. The care required by admitted residents retained within the facility exceeds the skill of the licensee to provide.

(b) Family care homes.

1. The licensee does not provide twenty-four (24) hour supervision and assistance to the residents.

2. The licensee is not that person directly responsible for the daily operation of the home and, when temporarily absent, the name of the individual to whom responsibility is delegated is not in writing and available to the cabinet.

3. When prescription medication is required to be administered by licensed personnel, arrangements are not made in writing to assure the use of said personnel.

4. Basements in which residents are housed are not constructed for sleeping quarters and have no outside door.

5. Residents are housed in rooms or detached buildings or enclosures which have not been inspected and approved by the cabinet.

6. The facility has admitted more than three (3) persons as residents.

(c) Personal care homes.

1. Residents of the facility are under the age of sixteen (16) years or are nonambulatory or nonmobile.

2. The number and classifications of personnel required at the facility are not based upon the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:036 as determined in accordance with 902 KAR 20:036, Section 3(8)(f)2.

3. One (1) attendant is not awake and on duty on each floor of the facility at all times.

(d) Intermediate care facilities.

1. Physician services for medical emergencies are not available on a twenty-four (24) hour, seven (7) day a week basis.

2. A responsible staff member is not on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire and other emergencies.

3. The facility does not have personnel to meet the needs of the patients on a twenty-four (24) hour basis, the number and classification of personnel are not based upon the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:051, in accordance with 902 KAR 20:051, Section

3(10)(c)2.

4. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or skilled nursing facility or services are not contracted for from other community services.

(e) Skilled nursing facilities and nursing facilities.

1. The licensee does not provide the facility with a director of nursing services who is a registered nurse and who works full time during the day and who does devote full time to the nursing service of the facility.

2. There is not at least one (1) registered nurse or licensed practical nurse on duty at all times who is responsible for the nursing care of residents during her tour of duty; when a licensed practical nurse is on duty, no registered nurse is on call.

3. The licensee does not provide the personnel required to meet the needs of the patients on a twenty-four (24) hour a day basis, the number and classification of personnel so required are not based upon the number of patients, the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:026, in accordance with 902 KAR 20:026, Section 3(9)(d)2, or 902 KAR 20:300, in accordance with 902 KAR 20:300, Section 15(5). The cabinet shall use the administrative regulation that corresponds to the facility's license.

4. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or services are not contracted for from other community resources.

(f) Nursing homes (including Alzheimer's).

1. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or skilled nursing facility or services are not contracted for from other community resources.

2. A responsible staff member is not on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergency.

3. The health care of each patient is not under the supervision of a physician and the patient's records do not reflect the frequency of the physician's contacts with the patient.

4. The licensee does not provide the personnel required to meet the needs of the patients on a twenty-four (24) hour a day basis, the number and classification of personnel so required are not based upon the number of patients, the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:048, in accordance with 902 KAR 20:048, Section 3(10)(c)2, or 902 KAR 20:291, in accordance with 902 KAR 20:291, Section 3(10)(c)2. The cabinet shall use the administrative regulation that corresponds to the facility's license.

(g) Intermediate care facilities for the mentally retarded and developmentally disabled.

1. The facility does not maintain and does not follow a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a resident is determined to be lost, unaccounted for, or other unauthorized absence.

2. The facility admits as patients those persons who do not have a physical or mental condition which requires developmental nursing services and an active treatment plan.

3. The licensee does not provide the personnel required to meet the needs of the patients on a twenty-four (24) hours a day basis. The number and classification required is not determined in a manner consistent with the requirements of 902 KAR 20:086, Section 3(11)(c) and in accordance with 902 KAR 20:086, Section 3(11)(f).

4. Physician services for medical emergencies are not available on a twenty-four (24) hour, seven (7) day a week basis.

5. A responsible staff member is not on duty and awake at all times to assure prompt, appropriate action in cases of injury,

illness, fire and other emergencies.

6. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or skilled nursing facility or services are not contracted for from other community services.

(2) Pursuant to KRS 216.577, upon a finding that conditions within the facility which constitute the "Type A" violation have not been corrected within the time allowed by the cabinet for correction, the secretary shall take at least one (1) of the following actions with respect to the facility in addition to the issuance of a citation or the assessment of a civil penalty therefor:

(a) Institute proceedings to compel the facility's compliance with the requirement alleged to have been violated.

(b) Institute injunctive proceedings in circuit court to terminate the operation of the facility.

(c) Selectively transfer residents whose care needs are not being adequately met by the long-term care facility.

Section 6. Type B Violations. (1) A "Type B" violation shall be corrected within a time determined and approved by the Cabinet.

(2) A "Type B" violation is subject to a civil penalty in an amount not less than \$100 nor more than \$500, provided, however, that if such violation is corrected within the time specified by the Cabinet, no civil penalty shall be imposed.

(3) Where a licensee has failed to correct a "Type B" violation within the time specified for correction by the cabinet, the cabinet shall assess the licensee a civil penalty in the amount of \$200 for each day the deficiency continues beyond the date specified for correction.

(4) Application for an extension of time may be granted by the cabinet upon a showing by the licensee that adequate arrangements have been made to protect the health and safety of the residents. No extension of time so granted shall exceed ten (10) days.

Section 7. (1) Upon the finding of a "Type B" violation, the cabinet shall advise the licensee, administrator, or his designated representative in writing, delivered as soon as practicable, but no later than five (5) days, of the existence of said violation. Delivery shall be by certified mail, return receipt requested or by personal service to the licensee, administrator or his designated representative. The time within which the citation shall be corrected shall run from the date of receipt of written notification, or in the event said written notification is refused, from the date of refusal.

(2) The following specific acts or circumstances in violation of the rating system developed pursuant to KRS 216.550, the provisions of KRS 216.510 to 216.525, or the applicable federal laws and regulations governing certification of long-term care facilities under Title 18 or 19 of the Social Security Act and which present a direct or immediate relationship to the health, safety or security of any resident but which do not create an imminent danger shall constitute "Type B" violations:

(a) In all long-term care facilities:

1. The facility does not have a written fire control and evacuation plan with which those present and responsible for supervision are familiar.

2. The facility does not maintain an active program of pest control for all areas of its physical plant.

3. The facility does not serve at least three (3) meals per day with not more than fifteen (15) hours between the evening meal and breakfast and such meals do not meet the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders. Between meal and bedtime snacks are not available, except where medically contraindicated.

4. The licensee knowingly violates the provision of KRS 216.515 and 216.520.

5. A complete medical record is not kept on each patient with all entries current, dated and signed.

6. Patients or residents requiring help in eating are not assisted.

7. Except for those facilities with an integrated heating,

ventilation and air conditioning system (HVAC system) the licensee does not maintain the facility with screens on windows.

8. Except for family care homes, all food is not procured, stored, prepared, distributed, and served under sanitary conditions consistent with the Kentucky Food Service Code (902-KAR 45:005).

9. If a patient or resident refuses food served, nutritional substitutions are not offered; the consistency of the food is not prepared with reference to the ability of the individual patient to ingest.

10. The facility does not implement a regular program to prevent decubiti with emphasis on the following:

a. Procedures to maintain clean linen of the patient or resident. Clothes and linens are cleaned each time the bed or clothing is soiled. Rubber, plastic or other type of linen protectors are cleaned and completely covered to prevent direct contact with the patient.

b. Effort is made to assist the patient or resident in being up and out of bed as much as his condition permits, unless medically contraindicated. If the patient or resident cannot move himself, he has his position changed as often as necessary but not less than every two (2) hours.

11. The facility does not keep resident records and patient files confidential in a manner consistent with the requirements of the Kentucky Revised Statutes and administrative regulations.

12. Except in family care homes, cold water and hot water with a maximum temperature of 110 degrees Fahrenheit are not available for resident or patient use.

13. Meals do not correspond to the posted menus; menus are not planned and posted one (1) week in advance; when changes in the menu are necessary, substitutions do not provide equal nutritive value.

14. The facility does not have an administrator who is responsible for the operation of the facility and does not delegate such responsibility in his absence.

(b) Family care homes:

1. The facility does not have a written procedure for providing or obtaining emergency services.

2. Telephone service, if available in the area, is not accessible to the residents.

3. The facility does not have at least one (1) ABC rated fire extinguisher.

4. The facility does not have one (1) toilet for each six (6) persons in the home, which includes residents receiving care, the licensee and family.

5. Residents are not provided beds at least thirty-three (33) inches wide and six (6) feet long.

6. The facility does not comply with the provisions of 902-KAR 20:041, Section 4(4).

(c) Personal care homes:

1. The facility does not provide each resident with a bed equipped with springs, a clean mattress, a mattress cover, two (2) sheets and a pillow, together with bed covering as required for the patient's comfort.

2. The facility uses special purpose areas for the protection or confinement of a resident which are not approved by the cabinet with specification for the use of the area.

3. The facility does not maintain and implement a schedule of activities for groups and individuals, both within and without the facility.

4. The facility does not maintain a program of orientation and in-service training which shall include at least the following component parts:

a. Policies of the facility with regard to the performance of staff duties;

b. Services provided by the facility;

c. Recordkeeping procedures;

d. Procedures for reporting adult and child abuse, neglect and exploitation to the cabinet pursuant to KRS Chapter 209 and KRS Chapter 620;

e. Patient rights;

f. Procedures for proper application of physical restraints;

g. The aging process;

h. The emotional problems of illness;

i. The use of medication;
j. Therapeutic diets;
k. Activities of daily living; and
l. Procedures for maintaining a clean healthful and pleasant environment. A record shall be maintained of each training session indicating topics discussed and staff attendance, by name.

5. The facility does not provide encouragement and assistance, as necessary, to residents in achieving and maintaining good personal hygiene, including such assistance with:

- a. Washing and bathing the body;
- b. Shaving;
- c. Washing, grooming and cutting hair;
- d. Cleaning the mouth and teeth; and
- e. Cleaning of finger and toe nails.

6. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

(d) Intermediate care facilities.

1. Each facility does not maintain a program of rehabilitative nursing care on a twenty-four (24) hour a day, seven (7) day a week basis, which program to include at least the following measures:

- a. Positioning and turning;
- b. Exercises;
- c. Bowel and bladder training, when appropriate; and
- d. Ambulation.

2. The facility does not provide each patient with a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable.

3. The facility does not maintain a program to provide encouragement and assistance to patients to achieve and maintain good personal hygiene, including, as necessary, the following:

- a. Washing and bathing the body;
- b. Shaving;
- c. Cleaning of finger and toe nails;
- d. Cleaning of mouth and teeth; and
- e. Washing, grooming and cutting of hair.

4. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

5. All employees do not receive orientation and in-service training to correspond to their respective jobs; nursing personnel do not participate in in-service training or continuing education at least quarterly.

6. The facility does not maintain and implement a schedule of activities for groups and individuals, both within and without the facility.

(e) Nursing homes (including Alzheimer's).

1. The facility does not include a program of rehabilitative nursing care on a twenty-four (24) hour a day, seven (7) day a week basis, which program to include at least the following measures:

- a. Positioning and turning;
- b. Exercises;
- c. Bowel and bladder training, when appropriate; and
- d. Ambulation.

2. Each patient shall be provided a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable.

3. Each facility does not maintain a program to provide assistance to patients to achieve and maintain good personal hygiene, including, as necessary, the following:

- a. Washing and bathing the body;
- b. Shaving;
- c. Cleaning of finger and toe nails;
- d. Cleaning of mouth and teeth; and
- e. Washing, grooming and cutting of hair.

4. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

5. The facility does not maintain and implement a schedule of

activities for groups and individuals, both within and without the facility.

6. All employees do not receive orientation and in-service training to correspond to their respective jobs; nursing personnel do not participate in in-service training or continuing education at least quarterly.

(f) Skilled nursing facilities and nursing facilities.

1. The facility does not maintain a program of rehabilitative nursing care on a twenty-four (24) hour a day, seven (7) day a week basis, which program to include at least the following measures:

- a. Positioning and turning;
- b. Exercises;
- c. Bowel and bladder training, when appropriate; and
- d. Ambulation.

2. The facility does not provide each patient with a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable.

3. The facility does not maintain a program to provide assistance to patients to achieve and maintain good personal hygiene, including, as necessary, the following:

- a. Washing and bathing the body;
- b. Shaving;
- c. Cleaning of finger and toe nails;
- d. Cleaning of mouth and teeth; and
- e. Washing, grooming and cutting of hair.

4. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

5. The facility does not maintain and implement a schedule of activities for groups and individuals, consistent with the requirements of 902 KAR 20:026, Section 4(9), or 902 KAR 20:300, Section 6(5). The cabinet shall use the administrative regulation that corresponds to the facility's license.

6. The licensee does not provide in-service training to its personnel in accordance with the requirements of 902 KAR 20:026, Section 3(9)(e), or 902 KAR 20:300, Section 15(3)(c). The cabinet shall use the administrative regulation that corresponds to the facility's license.

(g) Intermediate care facilities for the mentally retarded and developmentally disabled.

1. Within one (1) month after the admission of each resident, the facility does not enter the following in the resident's record:

- a. A report of the review and updating of the preadmission updating;
- b. A prognosis that can be used in programming and placement;
- c. A comprehensive evaluation and individual program plan designed by an interdisciplinary team.

2. The facility does not assure that:

- a. Each resident who does not eliminate appropriately and independently must be in a regular systematic toilet training program and a record must be kept of his progress in the program; and
- b. Any resident who is incontinent is bathed or cleaned immediately upon voiding or soiling unless specifically contraindicated by the training program, and all soiled items are changed.

3. The facility does not maintain and implement a schedule of activities for groups and individuals, consistent with requirements of 902 KAR 20:086, Section 4(9), and (10).

4. The facility does not maintain an orientation and in-service training program which is consistent with the requirements of 902 KAR 20:086, Section 3(11)(n).

5. The facility does not provide each patient with a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable. Rubber or other impervious sheets shall be placed over the mattress cover when necessary.

Section 8. Civil penalties assessed for "Type A" and "Type B" violations pursuant to KRS 216.557 shall be trebled when a

~~licensee has received a citation for violating a requirement for which it has received a citation and paid a fine during the previous twelve (12) months.~~

~~Section 9. (1) In determining the amount of any penalty imposed for "Type A" and "Type B" violations, the cabinet shall consider at least the following factors:~~

~~(a) The gravity of the violation, including the probability that death or serious physical or mental harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or administrative regulations were violated;~~

~~(b) The reasonable diligence exercised by the licensee and efforts to correct violations;~~

~~(c) The number and type of previous violations committed by the licensee; and~~

~~(d) The amount of assessment necessary to insure immediate and continued compliance~~

~~(2) All fines collected by the cabinet shall be paid and administered in accordance with the requirements of KRS 216.560.]~~

STEVEN D. DAVIS, Inspector General
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: September 6, 2018

FILED WITH LRC: September 13, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 22, 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 October 15, 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 October 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes, email stephanie.brammer@ky.gov, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for Type A and B violations in long-term care facilities and the process for appeal of any decision on citations or penalties as required by KRS 216.567(1).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216.563, which requires the cabinet to promulgate administrative regulations setting forth the criteria and, where feasible, the specific acts that constitute Type A and B violations as specified by KRS 216.537 to 216.590.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216.563, which requires the cabinet to promulgate administrative regulations setting forth the criteria and, where feasible, the specific acts that constitute Type A and B violations as specified by KRS 216.537 to 216.590.

(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 criteria for Type A and B violations in long-term care facilities and the process for appeal of any decision on citations or penalties as required by KRS 216.567(1).

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

(a) How the amendment will change this existing administrative regulation: This amendment updates definitions and clarifies the process for issuing a Type A or Type B violation, requires the cabinet to cite "failure to implement a regular program to prevent pressure sores" as a Type A violation, and clarifies the specific acts and conditions that constitute a Type A or Type B violation. In addition, 900 KAR 2:020 is being repealed concurrent with this amendment because the process for appealing citations or civil penalties is added to this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to make revisions and updates as described in (2)(a) above.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by setting forth the criteria and, where feasible, the specific acts that constitute Type A and B violations as specified by KRS 216.537 to 216.590.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing the criteria for Type A and B violations in long-term care facilities and the process for appeal of any decision on citations or penalties as required by KRS 216.567(1).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts the approximately 450 licensed long-term care facilities subject to a Type A or B violation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not require long-term care facilities to take 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): No additional costs will be incurred to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment assists in the effective administration of the statutes by establishing the criteria for Type A and B violations in long-term care facilities.

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

(a) Initially: This amendment imposes no additional costs on the administrative body.

(b) On a continuing basis: This amendment imposes no additional costs on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary to implement this amendment.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts licensed long-term care facilities subject to a Type A or B violation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.555, 216.557, 216.560, 216.563, 216.565, 216.567

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
(Amendment)

900 KAR 6:020. Certificate of need application fee schedule.

RELATES TO: KRS 216B.040(3)(c)

STATUTORY AUTHORITY: KRS 216B.040(3)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(3)(c) authorizes the Cabinet for Health and Family Services to establish, by administrative regulation, reasonable application fees for certificates of need. This administrative regulation establishes the fee schedule for certificate of need applications.

Section 1. (1) A certificate of need application that is~~[applications which are]~~ submitted by an existing licensed healthcare facility or service that has met the emergency circumstances provision as provided in 900 KAR 6:080 and has received notice from the Office of Inspector General~~[Health Policy]~~ that an emergency exists~~[.]~~ shall be assessed an application fee of \$100.

(2) A certificate of need application~~[applications]~~ not proposing a capital expenditure or proposing a capital expenditure of up to \$200,000 shall be assessed an application fee of \$1,000.

(3) A certificate of need application that proposes~~[applications which propose]~~ a capital expenditure greater than \$200,000 up to \$5,000,000 shall be assessed an application fee of five-tenths (.5) percent of the capital expenditure~~[and shall be]~~ computed to the nearest dollar.

(4) A certificate of need application that proposes~~[applications which propose]~~ a capital expenditure greater than \$5,000,000 shall be assessed an application fee of \$25,000.~~[(5) Certificate of need applications which propose to expand their existing diagnostic cardiac catheterization service to also provide primary (i.e.~~

~~emergency) Percutaneous Coronary Intervention (PCI) services on a two (2) year trial basis or to provide comprehensive (diagnostic and therapeutic) cardiac catheterization services on a two (2) year trial basis shall be assessed an additional application fee of \$10,000.]~~

Section 2. (1) The application fee~~[fees]~~ shall be submitted with the application.

(2) An application~~[Applications]~~ shall not be deemed complete until the application fee has been paid.

(3) An~~[Except as provided in subsection (4) of this section,]~~ application fee~~[fees]~~ shall be refunded only if notice of withdrawal of the application is received by the cabinet within five (5) working days of the date the application is received by the Cabinet for Health and Family Services.~~[(4) Application fees submitted pursuant to Section 1(5) of this administrative regulation shall be refunded if:~~

~~(a) The certificate of need application is denied; and~~

~~(b) All administrative remedies provided for in KRS 216B.085 are exhausted.]~~

MOLLY NICOL LEWIS, Deputy Inspector

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: September 6, 2018

FILED WITH LRC: September 13, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 22, 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 October 15, 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 October 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Molly Lewis, (502) 564-9592, ext. 3150, email molly.lewis@ky.gov; or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fee schedule for certificate of need applications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 216B.040(3)(c) authorizes the cabinet to establish, by administrative regulation, reasonable application fees for certificates of need.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes a fee schedule of reasonable fees for certificate of need applications.

(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 fees authorized by KRS 216B.040(3)(c).

(2) If 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 deletes language related to filing fees for the cardiac catheterization pilot program and makes other changes to comply with the drafting requirements of KRS 13A.222.

(b) The necessity of the amendment to this administrative regulation: The cardiac catheterization program was deleted from the 2017-2019 State Health Plan and the program requirement administrative regulation, 900 KAR 6:120, was repealed effective June 1, 2018.

(c) How the amendment conforms to the content of the authorizing statutes: 900 KAR 5:020 establishes the State Health Plan, which includes review criteria for the establishment and expansion of specific health services and is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. The 2017-2019 State Health Plan does not include review criteria for a cardiac catheterization pilot program included in prior plans and effectively terminated the program through which hospitals without on-site open heart surgery obtained limited certificate of need authority to perform angioplasty services. Because the program has been terminated, program requirements were no longer necessary and 900 KAR 6:120 was repealed, effective June 1, 2018. This amended administrative regulation revises the certificate of need filing fee schedule to delete fee requirements for applications proposing to participate in the now terminated pilot program.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by removing the fee requirements for the cardiac catheterization pilot program because that program has been terminated.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation revision should not impact any entities as the related program has been terminated.

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

(a) List 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 not any actions that regulated entities will have to take to comply with this administrative regulation as the related program has been terminated.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not any costs to complying with this amended administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation revision should not impact any entities as the related program has been terminated.

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

(a) Initially: There are no costs to implementing this administrative regulation either initially or on a continuing basis.

(b) On a continuing basis: There are no costs to implementing this administrative regulation either initially or on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of 900 KAR Chapter 6 are state funds of general and agency appropriations and fees collected by the Office of Inspector General.

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

(8) State whether or not this administrative regulation

established any fees or directly or indirectly increased any fees: This amended administrative regulation does not establish any fees or directly or indirectly increase any fees. This amended administrative regulation deletes the \$10,000 application fee for applications for the now terminated pilot program for cardiac catheterizations.

(9) TIERING: Is tiering applied? Tiering is applied in Section 1, which establishes different fees based on the type of application submitted. Tiering is not applied in Section 2, which establishes general application requirements that are the same for all applicants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Office of Inspector General

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040

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

(a) How much 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? Nothing.

(d) How much will it cost to administer this program for subsequent years? Nothing.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of the Secretary

(Amendment)

900 KAR 11:010. Medical review panels.

RELATES TO: KRS 216C.010, 216C.030, 216C.040, 216C.050, 216C.060, 216C.070, 216C.080, 216C.090, 216C.100, 216C.110, 216C.120, 216C.160, 216C.170, 216C.180, 216C.200, 216C.210, 216C.220, 216C.230

STATUTORY AUTHORITY: KRS 194A.050(1), 216C.040(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS Chapter 216C establishes the framework and general requirements for medical review panels in Kentucky and KRS 216C.040(3) requires the cabinet to establish the filing fee that shall accompany each proposed complaint filed with a medical review panel. This administrative regulation establishes the requirements for medical review panels in accordance with KRS Chapter 216C.

Section 1. Definitions. (1) "Claimant" means a patient who is pursuing a malpractice or malpractice-related claim against a health care provider.

(2) "Defendant" means the health care provider or providers against whom a complaint is filed.

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

(3) "Derivative claim" means a claim included in the description of a derivative claim within the KRS 216C.010(7) definition of "patient".

(4) "Health care provider" is defined by KRS 216C.010(4).

(5) "Licensing agency" means a licensure board that licenses health care providers.

(6) "Patient" is defined by KRS 216C.010(7).

(7) "Proposed complaint" or "complaint" means the documentation required by Section 4(1) of this administrative regulation.

Section 2. Application Process for Prospective Panel Chairperson. (1) To apply to serve as chairperson of a medical review panel, an attorney shall complete and submit to the Cabinet for Health and Family Services, Medical Review Panel Branch, Form MRP-001, Application to Serve as Chairperson of a Medical Review Panel.

(2) The name of each attorney who submits a Form MRP-001 shall remain on the list of attorneys required by KRS 216C.070(8) until the:

(a) Attorney notifies the cabinet that the application is withdrawn; or

(b) Cabinet receives notification that the attorney is no longer licensed to practice law in Kentucky.

Section 3. Identification of Prospective Panelists. (1) The cabinet shall request each licensing agency to provide a current list of all health care providers who:

(a) Are licensed by that agency;

(b) Are natural persons; and

(c) Hold a valid, active license to practice in his or her profession in Kentucky.

(2) The list provided by the licensing agency shall include each licensee's:

(a) Name;

(b) Mailing address;

(c) Business address;

(d) Type of license; and

(e) If applicable, known specialty fields.

Section 4. Proposed Complaints and Filing Fee. (1) A proposed complaint:

(a) May be filed on Form MRP-002;

(b) Shall include:

1.a. The name and current mailing address, phone number, and if known, email address of each named party; and

b. For each named defendant, the name, current mailing address, phone number, and if known, email address of the person authorized to receive summons under the Kentucky Rules of Civil Procedure on behalf of that named defendant;

2. The name and current mailing address, phone number, and email address of the claimant's attorney, if retained;

3. Identification of the claimant, including:

a. If the claimant is the individual who received or should have received health care from a health care provider and the patient's date of birth; or

b. If the claimant is pursuing a derivative claim, a description of that derivative claim, including the name and birth date of the individual who received or should have received health care from a health care provider, and the reason that the claimant is pursuing the claim on that person's behalf;

4. A description of the malpractice and malpractice-related claims against each named health care provider, including:

a. The nature of the patient's injury;

b. The appropriate standard of care with which each defendant was expected to comply;

c. The actions each defendant took or failed to take that caused the defendant's failure to comply with the appropriate standard of care; and

d. How this failure caused or contributed to the claimant's injury;

5. The date of the alleged occurrence of malpractice;

6. The Kentucky Supreme Court district in which the case

would be filed;[and]

7. The signature of the claimant or the claimant's counsel, if retained; and

8. A signed certificate of service certifying that the complaint and any attachments have been served by hand, or by registered or certified mail, on the specified date upon the Kentucky Cabinet for Health and Family Services, Medical Review Panels, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky 40601; and

(c) Shall not be filed against an unknown defendant. If a complaint is filed that names an unknown defendant, the cabinet shall return the complaint to the claimant or claimant's attorney to:

1. Completely remove the unknown defendant from the proposed complaint; or

2. Replace the unknown defendant with an identified defendant.

(2) Except as provided by Section 14 of this administrative regulation, each proposed complaint shall be accompanied by a filing fee as required by this subsection.

(a)1. Except as provided by subparagraph 2. of this paragraph, the amount of the filing fee shall include:

a. A base amount of \$125; and

b. An additional amount of twelve (12) dollars for each defendant to cover the costs of service of process.

2. If service of process is not completed because a valid address was not provided by the claimant in the complaint, as required by subsection (1)(b)1. of this section, the claimant shall pay an additional twelve (12) dollars for each subsequent attempt at service of process.

(b) A fee required by paragraph (a) of this subsection shall be:

1. In the form of a check or money order; and

2. Payable to the Kentucky State Treasurer.

(3) Medical records shall not be submitted with the complaint. Medical records received by the cabinet shall be returned or destroyed.

(4)(a) Except as provided by Section 14 of this administrative regulation, the proposed complaint and required filing fee shall be delivered or mailed by registered or certified mail to the Cabinet for Health and Family Services, Medical Review Panel Branch, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky 40601.

(b) Upon receipt of the proposed complaint and the required filing fee, the cabinet shall:

1. Issue Form MRP-003, Acknowledgement of Complaint Filing, to the claimant; and

2. Assign a case number in the format of "MRP-(four (4) digit calendar year)-(four (4) digit sequential number)".

(c) The cabinet shall:

1. Serve a copy of the proposed complaint on each defendant as required by KRS 216C.050, which requires service on a person authorized to receive summons under the Kentucky Rules of Civil Procedure; and

2. Include Form MRP-004, Cabinet Letter to Party re Filing of Proposed Complaint.

(5) Within ten (10) days after completion of service on each defendant, determined in accordance with KRS 216C.050, the cabinet shall email Form MRP-005, Cabinet Notification to the Parties Regarding Service of the Complaint and Panel Chairperson Selection, to all parties to notify them:

(a) Of the date service on all defendants was completed; and

(b) Regarding the panel chairperson selection process established by KRS 216C.070.

(6)(a) An inquiry about the medical review panel process may be submitted via email to mrp@ky.gov.

(b) A proposed complaint and the required filing fee shall not be submitted via email.

Section 5. Representation by Counsel. (1) If the complaint is filed by counsel on behalf of a claimant, or if notification is received that the claimant has later become represented by counsel, all subsequent notices and information for the claimant shall be sent to the identified counsel unless notification is received that the claimant has obtained different counsel or is no longer represented by counsel.

(2) If an appearance is made by counsel for a defendant, all

subsequent notices and information for the defendant shall be sent to the identified counsel unless notification is received that the defendant has obtained different counsel or is no longer represented by counsel.

Section 6. Document Templates. (1)(a) The cabinet shall use the document templates listed in subsection (3) of this section for the documents' established purposes.

(b) The panel chairperson shall communicate the information required by KRS Chapter 216C by using either:

1. The document templates listed in subsection (4) of this section; or

2. A document developed by the panel chairperson that communicates the required information.

(c) Except for the items required by KRS 216C.040(2), 216C.050, 216C.110, and 216C.230 to be mailed, a required or recommended communication shall be mailed or emailed to the appropriate recipient.

(2) If the document template includes variable information that is complaint-specific or references information to be determined by the cabinet or chairperson, that information shall be completed as part of the document's preparation.

(3)(a) Form MRP-006, Cabinet Letter to Parties re Chairperson Striking Panel, shall be sent by the cabinet to notify the parties of the five (5) attorneys whose names were drawn pursuant to KRS 216C.070(2).

(b) Form MRP-007, Cabinet Letter to Party re Strike of Chairperson, shall be used by the cabinet to facilitate the selection of the chairperson pursuant to KRS 216C.070(3).

(c) Form MRP-008, Cabinet Letter to Party re Cabinet Strike of Chairperson, shall be used by the cabinet pursuant to KRS 216C.070(5)(b).

(d) Form MRP-009, Cabinet Letter to Chairperson re Selection to Serve, shall be used by the cabinet to send the notification required by KRS 216C.070(6) of the name of the chairperson to the chairperson and to each party.

(e) Form MRP-010, Cabinet Letter to Chairperson re List of Potential Panelists, shall be used by the cabinet to send the chairperson the list of potential panelists required by KRS 216C.080 and 216C.090(1), which is:

1. Based on the list obtained from the applicable licensing agency as required by Section 3(1) and (2) of this administrative regulation; and

2. To the extent reasonably possible, limited to the professions and specialty fields, if any, of one (1) or more of the defendants.

(f) Form MRP-011, Cabinet Letter to Parties re Acknowledgement by Chairperson, shall be used by the cabinet to notify each party that the chairperson has acknowledged the appointment to serve as chairperson.

(4)(a) Form MRP-012, Chairperson Letter to Parties re Panel Striking Lists, may be used by the panel chairperson to provide the lists required by KRS 216C.090(1) to the parties.

(b) Form MRP-013, Chairperson Letter to Party re Strike, may be used by the panel chairperson to remind a party of the need to strike to comply with KRS 216C.090(3).

(c) Form MRP-014, Chairperson Letter to Panel Members re Selection to Serve, may be used by the panel chairperson to explain to the first two (2) panel members the process established in KRS 216C.090(2) for selecting the third panel member and to provide an overview of their responsibilities as panel members.

(d) Form MRP-015, Chairperson Letter to Third Panel Member re Selection to Serve, may be used by the panel chairperson to notify the third panel member of that person's selection pursuant to KRS 216C.090(3) and to provide an overview of the person's responsibilities as a panel member.

(e) Form MRP-016, Authorization to Release Medical Records and Protected Health Care Information, may be used by the panel chairperson to request that a claimant authorize the release of medical records.

(f) Form MRP-017, Chairperson Letter to Parties re Formation of Panel and Schedule of Submissions, may be used by the panel chairperson as authorized by Section 9(4)(b) of this administrative regulation, to provide the notifications required by KRS

216C.110(1) and (2), and to outline the schedule for submission of evidence in accordance with KRS 216C.160(6) and (7).

(g) Form MRP-018, Chairperson Letter to Panel re Evidence, may be used by the panel chairperson as authorized by Section 9(6)(b) of this administrative regulation, to:

1. Identify and transmit to the panel members the evidence to be considered by the medical review panel in accordance with KRS 216C.160; and

2. Determine potential dates for the panel to convene to:

a. Discuss the evidence;

b. Reach a decision; and

c. Issue a report.

(h) Form MRP-019, Chairperson Letter to Parties re Panel Hearing, may be used by the panel chairperson to notify the parties that the panel plans to convene a hearing to question counsel or ask the parties to answer specific questions, in accordance with KRS 216C.170(2)(e).

(i) Form MRP-020, Administrative Subpoena, may be used by the panel chairperson to issue an administrative subpoena as authorized by KRS 216C.160(4).

Section 7. Oath for Panel Members. (1) Before considering any evidence or deliberating with other panel members, each member of the medical review panel shall submit written evidence of taking an oath, which shall read as follows: "I swear or affirm under penalties of perjury that I will well and truly consider the evidence submitted by the parties; that I will render my opinion without bias, based upon the evidence submitted by the parties; and that I will not communicate with any party or representative of a party before rendering my opinion, except as authorized by law."

(2) Form MRP-021, Oath for Panel Members, shall be provided to each panelist by the chairperson either prior to submission of the evidence to the panel members or at the same time the panel members receive the evidence.

(3) The written oath shall be signed by each panelist, witnessed, and returned to the panel chairperson for inclusion in the official record of the panel.

Section 8. Duties of Chairperson. In accordance with KRS 216C.060(3), the chairperson shall:

(1) Rule on motions tendered by the parties to:

(a) Expedite the panel's review of a proposed complaint; and

(b) Allow for the parties to make full and adequate presentation of related facts and authorities; and

(2) Use the Kentucky Rules of Civil Procedure as a reference, including for guidance on whether to add a third party for purposes of having all interested and relevant parties before the medical review panel.

Section 9. Submission to the Panel and Other Parties. (1) Evidence submitted pursuant to KRS 216C.160(6) by a claimant shall be submitted to the panel chairperson and all other parties.

(2) Evidence submitted pursuant to KRS 216C.160(7) by a defendant shall be submitted to the panel chairperson and all other parties.

(3) Evidence shall not be submitted by a claimant or defendant directly to a panel member.

(4)(a) The panel chairperson shall send written notification to the parties to provide the:

1. Email addresses to use to submit evidence in electronic form, as authorized by KRS 216C.160(1); and

2. Mailing addresses to use to submit evidence in written form, as authorized by KRS 216C.160(1).

(b) The panel chairperson may use Form MRP-017, Chairperson Letter to Parties re Formation of Panel and Schedule of Submissions, as a template for the written notification required by paragraph (a) of this subsection.

(5) If evidence is submitted in written form, the mailing to the panel chairperson shall include four (4) copies of each item.

(6) The chairperson:

(a) Shall send all submitted evidence to each panel member, as required by KRS 216C.160(5); and

(b) May use Form MRP-018, Chairperson Letter to Panel re

Evidence, as a template for the written notification required by paragraph (a) of this subsection.

Section 10. Panel Decision. (1) Each member of the medical review panel shall use Form MRP-022, Panel Member's Opinion, to issue that panel member's opinion as to each defendant, as required and limited by KRS 216C.180. One (1) copy of Form MRP-022 shall be completed by each panel member for each defendant. The completed forms shall be submitted to the panel chairperson.

(2)(a) In accordance with KRS 216C.180(3), if two (2) or more members of the panel agree on the conclusion, that conclusion shall be the opinion of the panel and the chairperson shall complete Form MRP-023, Chairperson's Report of Panel's Final Opinion.

(b) If there is not agreement by two (2) or more members as required by KRS 216C.180(3), the panel chairperson shall instruct the panel members to continue deliberations.

(3) The chairperson shall provide a copy of the completed Form MRP-023, the supporting Form MRP-022 submitted by each panel member, and the time and expense reports required by Section 11 of this administrative regulation to:

- (a) Each party;
- (b) Each medical review panel member; and
- (c) The Cabinet for Health and Family Services, Medical Review Panel Branch.

Section 11. Payment for Panel Members and Chairperson. (1)(a) Except as provided in paragraph (b) of this subsection, each panel member shall submit to the chairperson of the medical review panel a completed Form MRP-024, Time and Expense Report for Panel Members, with Form MRP-022, Panel Member's Opinion.

(b) If a proposed complaint is settled or withdrawn prior to receipt of the medical review panel's report pursuant to KRS 216C.180 and 216C.230, each panel member shall submit to the chairperson of the medical review panel, within three (3) business days of notification of the settlement or withdrawal, a completed Form MRP-024, Time and Expense Report for Panel Members.

(c) The Form MRP-024 shall include the log of the panel member's time spent on that medical review panel and the panel member's reasonable travel expenses.

(d) The chairperson shall review each of the forms submitted by the panel members and shall sign the form to verify that the form has been reviewed and appears to be an accurate representation of the panel member's time and expense report.

(2)(a) The chairperson shall complete Form MRP-025, Time and Expense Report for Chairperson, and submit it with the panel's report as required by subsection (3) of this section.

(b) The Form MRP-025 shall include the log of the chairperson's time spent on that medical review panel and the chairperson's reasonable travel expenses.

(3)(a) Pursuant to KRS 216C.220(3), the chairperson shall submit the four (4) completed time and expense reports to the appropriate party or parties with:

1. Form MRP-023, Chairperson's Report of Panel's Final Opinion, as required by KRS 216C.180 and Section 10 of this administrative regulation; or

2. Form MRP-026, Panel's Final Report Following Notification of Settlement or Complaint Withdrawal, if a report will not be issued because the complaint was settled or withdrawn prior to receipt of the medical review panel's report.

(b) The completed time and expense reports shall also be sent by the chairperson to the Cabinet for Health and Family Services, Medical Review Panel Branch.

(4)(a) Except as provided by paragraph (b) of this subsection, payment shall be made as required by KRS 216C.220(4).

(b) If the parties agreed to settle or withdraw the proposed complaint prior to receipt of the medical review panel's report pursuant to KRS 216C.180 and 216C.230:

1. Payment shall be made as agreed to by the parties and stated on Form MRP-027, Notification of Settlement or Withdrawal; or

2. If the Form MRP-027, Notification of Settlement or Withdrawal, does not address payment of the fees and expenses:

a. If there is one (1) claimant and one (1) defendant, the claimant and defendant shall each pay fifty (50) percent of the fees and expenses; and

b. If there are multiple claimants or defendants, the fees and expenses shall be split equally between the parties, with:

(i) The claimants collectively responsible for fifty (50) percent of the fees and expenses; and

(ii) The defendants collectively responsible for fifty (50) percent of the fees and expenses.

(5)(a) A party required to pay the fees and expenses shall submit payment by check or money order:

1. To the medical review panel's chairperson, who shall distribute the payments to each panel member; and

2. Within thirty (30) days of the date of the panel's report or the date of the settlement.

(b) If full payment is not received by the deadline established in paragraph (a)2. of this subsection, interest shall accrue:

1. From the date of the panel's report or the date of the settlement; and

2. At the current Kentucky post-judgment interest rate.

Section 12. Settlements or Withdrawals. (1) Upon settlement or withdrawal of a matter pending before a medical review panel prior to receipt of the medical review panel's opinion pursuant to KRS 216C.180 and 216C.230, the claimant and defendant shall complete and file Form MRP-027, Notification of Settlement or Withdrawal, as required by subsection (2) or (3) of this section.

(2) If the settlement or withdrawal occurs before the chairperson is selected, the claimant and defendant shall file Form MRP-027 with the Cabinet for Health and Family Services, Medical Review Panel Branch, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky 40601.

(3)(a) If the settlement or withdrawal occurs after the chairperson is selected and before the opinion is issued by the medical review panel, the claimant and defendant shall file Form MRP-027 with the chairperson.

(b) The chairperson shall:

1. Notify the panel members that the complaint has been settled or withdrawn and shall request submission of Form MRP-024, Time and Expense Report for Panel Members, for payment as established in Section 11(4) of this administrative regulation; and

2. Forward a copy of the Form MRP-027, Notification of Settlement or Withdrawal, to the Cabinet for Health and Family Services, Medical Review Panel Branch.

(4) Settlement with, or withdrawal regarding, one (1) or more, but not all, claimants or defendants shall not conclude the medical review panel's obligation to review the remaining claims.

Section 13. Sample Form for Waiver of Medical Review Panel Process. (1) To waive the medical review process, a claimant and all parties shall complete:

(a) Form MRP-028, Parties' Agreement to Waive the Medical Review Panel Process; or

(b) Written documentation, without use of Form MRP-028, that provides evidence of the agreement required by KRS 216C.030.

(2) A waiver of the medical review process may be filed pursuant to KRS 216C.030 without previously filing a proposed complaint and filing fee as required by Section 4(1) and (2) of this administrative regulation.

(3) A copy of the Form MRP-028 or the alternative written documentation shall be filed with the Cabinet for Health and Family Services, Medical Review Panel Branch.

Section 14. Indigent Claimants. (1) If a claimant is unable to pay the filing fee established by Section 4(2) of this administrative regulation and the twenty-five (25) dollar fee for selecting a panel chair established by KRS 216C.070(2), the claimant shall file Form MRP-029, Attestation of Indigency. The proposed complaint and the Form MRP-029, Attestation of Indigency, shall be delivered or mailed by registered or certified mail to the Cabinet for Health and Family Services, Medical Review Panel Branch, 105 Sea Hero

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

Road, Suite 2, Frankfort, Kentucky 40601.

(2) The cabinet secretary or designee shall consider the following factors in evaluating a request that is filed pursuant to subsection (1) of this section:

- (a) Income;
- (b) Source of income;
- (c) Property owned;
- (d) Number of motor vehicles owned and in working condition;
- (e) Other assets;
- (f) Outstanding obligations;
- (g) The number and ages of the claimant's dependents; and
- (h) The poverty level income guidelines compiled and published by the United States Department of Labor.

(3) The cabinet secretary or designee shall issue Form MRP-030, Accompanying Order, within two (2) business days either waiving the fees or denying the request.

(4) If the fees are waived:

(a) The filing date for the complaint shall be the date the order is issued;

(b) The required filing fee shall be zero dollars; and

(c) The cabinet shall proceed with the process established in Section 4(4)(b) of this administrative regulation.

(5) If the fees are not waived:

(a) The filing date for the complaint shall be the date the filing fee established by Section 4(2)(a) of this administrative regulation is received by the cabinet; and

(b) The cabinet shall proceed with the process established in Section 4(4)(b) of this administrative regulation once the fee is paid.

(6) Payment for the medical review panel chairperson and members, which is required by KRS 216C.220, shall not be waived.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form MRP-001, "Application to Serve as Chairperson of a Medical Review Panel", July 2018;

(b) Form MRP-002, "Proposed Complaint", August 2018~~(September 2017)~~;

(c) Form MRP-003, "Acknowledgement of Complaint Filing", July 2018;

(d) Form MRP-004, "Cabinet Letter to Party re Filing of Proposed Complaint", July 2018;

(e) Form MRP-005, "Cabinet Notification to the Parties Regarding Service of the Complaint and Panel Chairperson Selection", July 2018;

(f) Form MRP-006, "Cabinet Letter to Parties re Chairperson Striking Panel", July 2018;

(g) Form MRP-007, "Cabinet Letter to Party re Strike of Chairperson", July 2018;

(h) Form MRP-008, "Cabinet Letter to Party re Cabinet Strike of Chairperson", July 2018;

(i) Form MRP-009, "Cabinet Letter to Chairperson re Selection to Serve", July 2018;

(j) Form MRP-010, "Cabinet Letter to Chairperson re List of Potential Panelists", July 2018;

(k) Form MRP-011, "Cabinet Letter to Parties re Acknowledgement by Chairperson", July 2018;

(l) Form MRP-012, "Chairperson Letter to Parties re Panel Striking Lists", September 2017;

(m) Form MRP-013, "Chairperson Letter to Party re Strike", September 2017;

(n) Form MRP-014, "Chairperson Letter to Panel Members re Selection to Serve", September 2017;

(o) Form MRP-015, "Chairperson Letter to Third Panel Member re Selection to Serve", June 2017;

(p) Form MRP-016, "Authorization to Release Medical Records and Protected Health Care Information", September 2017;

(q) Form MRP-017, "Chairperson Letter to Parties re Formation of Panel and Schedule of Submissions", March 2018;

(r) Form MRP-018, "Chairperson Letter to Panel re Evidence", June 2017;

(s) Form MRP-019, "Chairperson Letter to Parties re Panel

Hearing", September 2017;

(t) Form MRP-020, "Administrative Subpoena", July 2018;

(u) Form MRP-021, "Oath for Panel Members", June 2017;

(v) Form MRP-022, "Panel Member's Opinion", July 2018;

(w) Form MRP-023, "Chairperson's Report of Panel's Final Opinion", July 2018;

(x) Form MRP-024, "Time and Expense Report for Panel Members", July 2018;

(y) Form MRP-025, "Time and Expense Report for Chairperson", July 2018;

(z) Form MRP-026, "Panel's Final Report Following Notification of Settlement or Complaint Withdrawal", July 2018;

(aa) Form MRP-027, "Notification of Settlement or Withdrawal", July 2018;

(bb) Form MRP-028, "Parties' Agreement to Waive the Medical Review Panel Process", July 2018;

(cc) Form MRP-029, "Attestation of Indigency", July 2018; and

(dd) Form MRP-030, "Accompanying Order", July 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

- (a) At the Cabinet for Health and Family Services, Medical Review Panel Branch, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or
- (b) Online at <http://mrp.ky.gov>.

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: September 6, 2018

FILED WITH LRC: September 13, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 22, 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 October 15, 2018, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until October 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Anne-Tyler Morgan, (502) 564-7042, annetyler.morgan@ky.gov; or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for medical review panels in accordance with KRS Chapter 216C.

(b) The necessity of this administrative regulation: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS Chapter 216C establishes the framework and general requirements for medical review panels in Kentucky and KRS 216C.040(3) requires the cabinet to establish the filing fee that shall accompany each proposed complaint filed with a medical review panel.

(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 provisions and requirements regarding medical review panels and establishing the fee required by KRS 216C.040(3).

(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 authorizing statutes by establishing the required fee and incorporating by reference standard forms for the cabinet and medical review panel chairpersons to use throughout the medical review panel process.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds a requirement for the proposed complaint to include a certificate of service upon the Cabinet for Health and Family Services. Form MRP-002, which may be used to file a complaint, has been updated to include the required certificate of service.

(b) The necessity of the amendment to this administrative regulation: Having a certificate of service will provide a record for the cabinet as to when the proposed complaint was served upon the cabinet by the claimant or claimant's attorney. It also serves as a reminder that a copy of the proposed complaint needs to be filed with the cabinet and provides the correct address for that service.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 216C.040(1) provides that the filing of a proposed complaint tolls the applicable statute of limitations. KRS 216C.040(2) establishes when a proposed complaint is considered filed, based on the date the complaint and required filing fees are delivered or mailed by registered or certified mail to the cabinet. A certificate of service will help determine those dates.

(d) How the amendment will assist in the effective administration of the statutes: KRS 216C.040(1) provides that the filing of a proposed complaint tolls the applicable statute of limitations. KRS 216C.040(2) establishes when a proposed complaint is considered filed, based on the date the complaint and required filing fees are delivered or mailed by registered or certified mail to the cabinet. A certificate of service will help determine those dates.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendment to this administrative regulation affects anyone who wants to pursue a malpractice or malpractice-related claim against a health care provider in Kentucky and the Medical Review Panels branch of the Cabinet for Health and Family Services. Since June 29, 2017, when KRS Chapter 217C became effective, there have been 508 complaints filed in Kentucky with the cabinet's Medical Review Panels branch.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In filing a proposed complaint, which may be filed using Form MRP-002, a claimant or claimant's attorney will now be required to include a signed certificate of service certifying that the complaint and any attachments were served by hand or by registered or certified mail, on the specified date of service upon the Cabinet for Health and Family Services, Medical Review Panels, at the provided address.

(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 in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): KRS 216C.040(1) provides that the filing of a proposed complaint tolls the applicable statute of limitations. KRS 216C.040(2) establishes when a proposed complaint is considered filed, based on the date the complaint and required filing fees are delivered or mailed by registered or certified mail to the cabinet. A certificate of service will help determine those

dates.

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

(a) Initially: There are very nominal costs to implement this administrative regulation as the revised form simply needs to be uploaded to the cabinet's Web site.

(b) On a continuing basis: There are not any ongoing costs as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Until separate budgetary authority is achieved, costs will be borne in part by user fees and in part by the CHFS Secretary's office 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 needed to implement this amendment, which simply adds a Certificate of Service requirement to the Proposed Complaint.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. The existing administrative regulation established fees specifically required by KRS 216C.040(3); however, this amendment does not establish or increase those fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because it simply adds a Certificate of Service requirement to the Proposed Complaint. All proposed complaints will be required to have a Certificate of Service.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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, Medical Review Panels branch.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 216C.010, 216C.030, 216C.040, 216C.050, 216C.060, 216C.070, 216C.080, 216C.090, 216C.100, 216C.110, 216C.120, 216C.160, 216C.170, 216C.180, 216C.200, 216C.210, 216C.220, 216C.230

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 simply requires a Certificate of Service be included with a Proposed Complaint. It does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment simply requires a Certificate of Service be included with a Proposed Complaint. It does not generate revenue.

(c) How much will it cost to administer this program for the first year? This amendment simply requires a Certificate of Service be included with a Proposed Complaint. There are not additional costs to administer this program based on this amendment.

(d) How much will it cost to administer this program for subsequent years? This amendment simply requires a Certificate of Service be included with a Proposed Complaint. There are not additional costs to administer this program based on this amendment.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amendment)

902 KAR 20:300. Operation and services; nursing facilities.

RELATES TO: KRS 209.030(2)-(4), 209.032, 216.510-216.525, 216.532, 216.535, 216.540, 216.543, 216.545, 216.547, 216.785-216.793, 42 C.F.R. 483.1-483.95[216B.010-216B.130, 216B.990]

STATUTORY AUTHORITY: KRS 216B.042 [and 216B.105]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services[and 216B.105 mandate that the Kentucky Cabinet for Human Resources regulate]. This administrative regulation establishes minimum licensure requirements[provides licensure standards] for the operation of and services provided by nursing facilities[of a nursing facility].

Section 1. Scope of Operations and Licensure.

(1) A nursing facility licensed under this administrative regulation shall comply with federal, state, and local laws and regulations pertaining to the operation of the facility, including compliance with the laws and regulations specified in this subsection.

(a) A nursing facility shall comply with the requirements of 42 C.F.R. 483.1-483.95.

(b) A nursing facility shall not be operated by or employ any person who is listed on the:

1. Nurse aide abuse registry pursuant to KRS 216.532; or

2. Caregiver misconduct registry established by KRS 209.032 and 922 KAR 5:120.

(c) A nursing facility shall comply with the preemployment criminal background check requirements of KRS 216.785 - 216.793.

(d) A nursing facility shall comply with the tuberculosis (TB) testing requirements established by:

1. 902 KAR 20:200; and

2. 902 KAR 20:205;

(e) A nursing facility shall ensure that the rights of residents are protected in accordance with KRS 216.515 - 216.520.

(f) A nursing facility shall conspicuously display the posters required by KRS 216.525 that detail how an individual may make a written or oral complaint to the cabinet.

(g) A nursing facility shall provide the information required by KRS 216.535(3) upon admission of a nursing facility resident.

(h) A nursing facility shall comply with the requirements for access to the facility pursuant to KRS 216.540(2) - (5).

(i) A nursing facility shall comply with the posting requirements of KRS 216.543.

(j) Upon admission, a nursing facility shall provide a copy of the statement required by KRS 216.545(2) to the resident, resident's family member, or guardian.

(k) A nursing facility shall comply with the requirements for public inspection of the information and documents identified in KRS 216.547(1).

(l) A nursing facility shall comply with the license procedures and fee schedule established by 902 KAR 20:008.

(m) A nursing facility shall maintain written policies that assure the reporting of cases of abuse, neglect, or exploitation of adults pursuant to KRS 209.030(2) - (4).

(2) A nursing facility may participate in the Kentucky National Background Check Program established by 906 KAR 1:190 to satisfy the background check requirements of subsection (1)(b) and (c) of this section.
Definitions. (1) "Facility" means a nursing facility licensed pursuant to this administrative regulation and 902 KAR 20:008.

(2) "Nurse aide" means any unlicensed individual providing

nursing or nursing-related services, employed by the facility, to residents in a facility except unpaid volunteers.

(3) "Licensure agency" means the Division for Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources.

Section 2. Scope of Operations. (1) A nursing facility shall be subject to the provisions of Kentucky's nursing home reform laws, KRS Chapter 216.

(2) A nursing facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the cabinet pursuant to KRS Chapters 209 and 620.

(3) Tuberculosis testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long-term care facilities.

Section 3. Resident Rights. The resident has a right to a dignified existence, self-determination and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including each of the following rights:

(1) Exercise of rights:

(a) The resident shall have the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

(b) The resident shall have the right to be free of interference, coercion, discrimination, or reprisal from the facility in exercising his or her rights.

(c) In the case of a resident adjudged incompetent under the laws of a state by a court of competent jurisdiction, the rights of the resident shall be exercised by the person appointed under state law to act on the resident's behalf.

(2) Notice of rights and services.

(a) The facility shall inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and administrative regulations governing resident conduct and responsibilities during the stay in the facility. Such notification shall be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, shall be documented in writing.

(b) The resident shall have the right to inspect and purchase photocopies of all records pertaining to the resident, upon written request and forty-eight (48) hours notice to the facility;

(c) The resident shall have the right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition;

(d) The resident shall have the right to refuse treatment, and to refuse to participate in experimental research; and

(e) The facility shall inform each resident before, or at the time of admission, and periodically during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered by third party payors or the facility's per diem rate.

(f) The facility shall furnish a written description of legal rights which includes:

1. A description of the manner of protecting personal funds, under paragraph (3) of this section; and

2. A statement that the resident may file a complaint with the licensure agency concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(g) The facility shall inform each resident of the name, specialty and way of contacting the physician responsible for his or her care.

(h) The facility shall have available a manual and contact person to provide residents and potential residents oral and written information about how to apply for and use third party benefits, and how to receive refunds for previous payments covered by such benefits.

(i) Notification of changes.

1. Except in a medical emergency or when a resident is incompetent, a facility shall consult with the resident immediately and notify the resident's physician, and if known, the resident's legal representative or interested family member within twenty-four

(24) hours when there is:

a. An accident involving the resident which results in injury;
b. A significant change in the resident's physical, mental, or psychosocial status;

c. A need to alter treatment significantly; or

d. A decision to transfer or discharge the resident from the facility as specified in Section 4(1) of this administrative regulation.

2. The facility shall also promptly notify the resident and, if known, the resident's legal representative or interested family member when there is:

a. A change in room or roommate assignment as specified in Section 6(5)(b) of this administrative regulation; or

b. A change in resident rights under federal or state law or administrative regulations as specified in subsection (2)(a) of this section.

3. The facility shall record and periodically update the address and phone number of the resident's legal representative or interested family member.

(3) Protection of resident funds.

(a) The resident shall have the right to manage his or her financial affairs and the facility shall not require residents to deposit their personal funds with the facility.

(b) Management of personal funds. Upon written authorization of a resident, the facility shall hold, safeguard, manage and account for the personal funds of the resident deposited with the facility, as specified in paragraphs (c) through (g) of this subsection.

(c) Deposit of funds.

1. Funds in excess of fifty (50) dollars. The facility shall deposit any resident's personal funds in excess of fifty (50) dollars in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on the resident's account to his or her account.

2. Funds less than fifty (50) dollars. The facility shall maintain a resident's personal funds that do not exceed fifty (50) dollars in a noninterest bearing account or petty cash fund.

(d) Accounting and records. The facility shall establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

1. The system shall preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

2. The individual financial record shall be available on request to the resident or his or her legal representative.

(e) Conveyance upon death. Upon the death of a resident with a personal fund deposited with the facility, the facility shall convey promptly the resident's funds, and a final accounting of those funds, to the individual administering the resident's estate.

(f) Assurance of financial security. The facility shall purchase a surety bond, or provide self-insurance to assure the security of all personal funds of residents deposited with the facility.

(g) Limitation on charges to personal funds. The facility shall not impose a charge against the personal funds of a resident for any item or service for which payment is made by a third party payor.

(4) Free choice. The resident shall have the right to:

(a) Choose a personal attending physician;

(b) Be fully informed in advance about care and treatment of any changes in that care or treatment that may affect the resident's well-being; and

(c) Unless adjudged incompetent or otherwise found to be incapacitated under the laws of the state, participate in planning care and treatment or changes in care and treatment.

(5) Privacy and confidentiality of personal and clinical records. The resident shall have the right to personal privacy and confidentiality of his personal and clinical records.

(a) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room;

(b) Except as provided in paragraph (c) of this subsection, the resident may approve or refuse the release of personal and clinical

records to any individual outside the facility;

(c) The resident's right to refuse release of personal and clinical records shall not apply when:

1. The resident is transferred to another health care institution;

or

2. Record release is required by law or third-party payment contract.

(6) Grievances. A resident shall have the right to:

(a) Voice grievances with respect to treatment or care that is, or fails to be furnished, without discrimination or reprisal for voicing the grievances; and

(b) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(7) Examination of survey results. A resident shall have the right to:

(a) Examine the results of the most recent survey of the facility conducted by federal or state surveyors and any plan of correction in effect with respect to the facility. The results shall be posted by the facility in a place readily accessible to residents; and

(b) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

(8) Work. The resident shall have the right to:

(a) Refuse to perform services for the facility;

(b) Perform services for the facility, if he or she chooses, when:

1. The facility documents the need or desire for work in the plan of care;

2. The plan specifies the nature of the services performed and whether the services are voluntary or paid;

3. Compensation for paid services is at or above prevailing rates; and

4. The resident agrees to the work arrangements described in the plan of care.

(9) The resident shall have the right to privacy in written communications, including the right to:

(a) Send and receive mail promptly that is unopened; and

(b) Have access to stationery, postage and writing implements at the resident's own expense.

(10) Access and visitation rights.

(a) The resident shall have the right and the facility shall provide immediate access to any resident by the following:

1. Any representative of the federal government;

2. Any representative of the state;

3. The resident's individual physician;

4. Any representative of the Kentucky long-term care ombudsman program;

5. The agency responsible for the protection and advocacy system for developmentally disabled individuals and for mentally ill individuals;

6. Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

7. Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(b) The facility shall provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(c) The facility shall allow representatives of the ombudsman, described in paragraph (a)4 of this subsection, to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with state law.

(11) Telephone. The resident shall have the right to have regular access to the private use of a telephone.

(12) Personal property. The resident shall have the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(13) Married couples. The resident shall have the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.

~~Section 4. Admission, Transfer and Discharge Rights. (1) Transfer and discharge.~~

~~(a) Transfer and discharge requirements. The facility shall permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:~~

~~1. The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;~~

~~2. The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;~~

~~3. The safety of individuals in the facility is immediately endangered;~~

~~4. The health of individuals in the facility would otherwise be immediately endangered;~~

~~5. The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or~~

~~6. The facility ceases to operate.~~

~~(b) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)1 through 5 of this subsection, the resident's clinical record must be documented. The documentation must be made by:~~

~~1. The resident's physician when transfer or discharge is necessary under paragraph (a)1 or 2 of this subsection; and~~

~~2. A physician when transfer or discharge is necessary under paragraph (a)4 of this subsection.~~

~~(c) Notice before transfer. Before a facility transfers or discharges a resident, the facility shall:~~

~~1. Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons;~~

~~2. Record the reasons in the resident's clinical record; and~~

~~3. Include in the notice the items described in paragraph (e) of this subsection.~~

~~(d) Timing of the notice. Except when specified in paragraph (d)2 of this subsection, the notice of transfer or discharge required under paragraph (c) of this subsection must be made by the facility at least thirty (30) days before the resident is transferred or discharged.~~

~~2. Notice may be made as soon as practicable before transfer or discharge when:~~

~~a. The safety of individuals in the facility would be endangered, under paragraph (a)3 of this subsection;~~

~~b. The health of individuals in the facility would be endangered, under paragraph (a)4 of this subsection;~~

~~c. The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (a)2 of this subsection;~~

~~d. An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (a)1 of this subsection;~~

~~e. A resident has not resided in the facility for thirty (30) days.~~

~~(e) Contents of the notice. For nursing facilities, the written notice specified in paragraph (c) of this subsection shall include the following:~~

~~1. A statement that the resident has the right to appeal the action to the state agency designated by the state for such appeals.~~

~~2. The name, address and telephone number of the state long-term care ombudsman;~~

~~3. For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals;~~

~~4. For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals;~~

~~5. The reason for the transfer or discharge;~~

~~6. The effective date of transfer or discharge; and~~

~~7. The location to which the resident is transferred or discharged.~~

~~(f) Orientation for transfer or discharge. A facility shall provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.~~

~~(2) Notice of bed-hold policy and readmission.~~

~~(a) Notice before transfer. Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility shall provide written information to the resident and family member or legal representative that specifies the duration of the bed-hold policy if any, during which the resident is permitted to return and resume residence in the facility; and~~

~~(b) Notice upon transfer. At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility shall provide written notice to the resident and a family member or legal representative, which specifies the duration of the bed-hold policy described in paragraph (a) of this subsection.~~

~~(c) Permitting resident to return to facility. A nursing facility shall establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed hold period, is readmitted to the facility immediately upon the first availability of a bed in a semiprivate room if the resident:~~

~~1. Requires the services provided by the facility; and~~

~~2. Is eligible for nursing facility services.~~

~~(3) Equal access to quality care. A facility shall establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of source of payment;~~

~~(4) Admissions policy.~~

~~(a) The facility shall:~~

~~1. Not require a third-party guarantee of payment to the facility as a condition of admission, or expedited admission, or continued stay in the facility;~~

~~2. Not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid for services, any gift, money, donation or other consideration as a precondition of admission, expedited admission or continued stay in the facility.~~

~~(b) A facility shall:~~

~~1. Not require residents or potential residents to waive their rights to Medicare or Medicaid;~~

~~2. Not require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.~~

~~(c) A facility may require an individual who has legal access to a resident's income or resources available to pay for facility care, to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.~~

~~(d) A nursing facility may charge a resident for items and services the resident has requested and received, and that are not covered in the facility's basic per diem rate.~~

~~(e) A nursing facility may solicit, accept or receive a charitable, religious or philanthropic contribution from an organization or from a person unrelated to the resident, or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility.~~

~~Section 5. Resident Behavior and Facility Practices. (1) Restraints. The resident shall have the right to be free from any physical restraints imposed or psychoactive drug administered for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.~~

~~(2) Abuse. The resident shall have the right to be free from verbal sexual, physical or mental abuse, corporal punishment, and involuntary seclusion.~~

~~(3) Staff treatment of residents. The facility shall develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of residents.~~

~~(a) The facility shall:~~

~~1. Not use verbal, mental, sexual, or physical abuse, including corporal punishment, or involuntary seclusion; and~~

~~2. Not employ individuals who have been convicted of abusing, neglecting or mistreating individuals.~~

~~(b) The facility shall have evidence that all alleged violations are thoroughly investigated, and shall prevent further potential abuse while the investigation is in progress.~~

~~(c) The results of all investigations shall be reported to the administrator or his designated representative within five (5) working days or to other officials in accordance with applicable~~

provisions of KRS Chapter 209 or 620, if the alleged violation is verified appropriate corrective action is taken.

(d) The facility shall document alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, are reported immediately to the administrator of the facility or to other officials in accordance with KRS Chapters 209 and 620.

(e) The facility shall have evidence that all alleged violations are thoroughly investigated, and shall prevent further potential abuse while the investigation is in progress.

Section 6. Quality of Life. A facility shall care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

(1) Dignity. The facility shall promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(2) Self-determination and participation. The resident shall have the right to:

(a) Choose activities, schedules, and health care consistent with his or her interests, assessments and plans of care;

(b) Interact with members of the community both inside and outside the facility; and

(c) Make choices about aspects of his or her life in the facility that are significant to the resident.

(3) Participation in resident and family groups.

(a) A resident shall have the right to organize and participate in resident groups in the facility;

(b) A resident's family shall have the right to meet in the facility with the families of other residents in the facility;

(c) The facility shall provide a resident or family group, if one exists, with private space;

(d) Staff or visitors may attend meetings at the group's invitation;

(e) The facility shall provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings;

(f) When a resident or family group exists, the facility shall listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(4) Accommodation of needs. A resident shall have the right to:

(a) Reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(b) Receive notice before the resident's room or roommate in the facility is changed.

(5) Activities.

(a) The facility shall provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental and psychosocial well-being of each resident.

(b) The activities program shall be directed by a qualified therapeutic recreation specialist who is:

1. Eligible for certification as a therapeutic recreation specialist by a recognized accrediting body; or

2. Has two (2) years of experience in a social or recreational program within the last five (5) years, one (1) of which was full time in a patient activities program in a health care setting; or

3. Is a qualified occupational therapist or occupational therapy assistant; or

4. Has completed a training course approved by the state.

(6) Social services.

(a) The facility shall provide medically-related social services to attain or maintain the highest practicable physical, mental or psychosocial well-being of each resident.

(b) A facility with more than 120 beds shall employ a full-time qualified social worker, or an individual with a bachelor's degree in a related field.

(c) Qualifications of social worker. A qualified social worker is an individual who is licensed pursuant to KRS 335.090, or a

degree in a related field.

(7) Environment.

(a) The facility shall provide:

1. A safe, clean, comfortable and homelike environment, allowing the resident to use his or her personal belongings to the extent possible;

2. Housekeeping and maintenance services necessary to maintain a sanitary, orderly and comfortable interior;

3. Clean bed and bath linens that are in good condition;

4. Private closet space in each resident room.

5. Adequate and comfortable lighting levels in all areas; comfortable and safe temperature levels.

6. For the maintenance of comfortable sound levels.

(b) Infection control and communicable diseases.

1. The facility shall establish policies which are consistent with the Center for Disease Control guidelines, and address the prevention of disease transmission to and from patients, visitors and employees, including:

a. Universal blood and body fluid precautions;

b. Precautions for infections which can be transmitted by the airborne route; and

c. Work restrictions for employees with infectious diseases.

d. The cleaning, disinfection, and sterilization methods used for equipment and the environment.

2. The facility shall establish an infection control program which:

a. Investigates, controls and prevents infections in the facility;

b. Decides what procedures, such as isolation, should be applied to an individual resident; and

c. Maintains a record of incidents and corrective actions related to infections.

d. Addresses the prevention of the spread of infection.

(i) When the infection control program determines that a resident needs isolation to prevent the spread of infection, the facility shall isolate the resident.

(ii) The facility shall prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit the disease.

(iii) The facility shall require staff to wash their hands after each direct resident contact for which handwashing is indicated by accepted professional practice.

3. The facility shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections for all personnel responsible for direct patient care.

4. Sharp wastes.

a. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

b. Needles shall not be recapped by hand, purposely bent or broken, or otherwise manipulated by hand.

c. The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

5. Disposable waste.

a. All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

b. The facility shall establish specific written policies regarding handling and disposal of all wastes.

c. The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

d. Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations pursuant to 40 C.F.R. 403 and 401 KAR 5:055, Section 9.

6. Patients infected with the following diseases shall not be admitted to the facility: anthrax, campylobacteriosis, cholera, diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis,

rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus.

7. A facility may admit a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

8. Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

9. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients, the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(8) Participation in other activities. A resident shall have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

Section 7. Resident Assessment. The facility shall conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity.

(1) Admission orders. At the time each resident is admitted, the facility shall have physician orders for the resident's immediate care.

(2) Comprehensive assessments.

(a) The facility shall make a comprehensive assessment of a resident's needs, which describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

(b) The comprehensive assessment shall include at least the following information:

1. Medically defined conditions and prior medical history;
2. Medical status measurement;
3. Functional status;
4. Sensory and physical impairments;
5. Nutritional status and requirements;
6. Special treatments or procedures;
7. Psychosocial status;
8. Discharge potential;
9. Dental condition;
10. Activities potential;
11. Rehabilitation potential;
12. Cognitive status; and
13. Drug therapy.

(c) Frequency. Assessments shall be conducted:

1. No later than fourteen (14) days after the date of admission;
2. For current residents of a facility, not later than October 1, 1991;

3. Promptly after a significant change in the resident's physical or mental condition; and

4. In no case less often than once every twelve (12) months.

(d) Review of assessments. The nursing facility shall examine each resident no less than once every three (3) months, and as appropriate, revise the resident's assessment to assure the continued accuracy of the assessment.

(e) Use. The results of the assessment are used to develop, review, and revise the resident's comprehensive plan of care, under subsection (4) of this section.

(f) Coordination. The facility shall coordinate assessments with the Kentucky required preadmission screening and annual review program to the maximum extent practicable to avoid duplicative testing and effort.

(3) Accuracy of assessments.

(a) Coordination. Each assessment shall be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment with the appropriate participation of health professionals.

(b) Certification. Each individual who completes a portion of the assessment shall sign and certify the accuracy of that portion of the assessment.

(4) Comprehensive care plans.

(a) The facility shall develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing and psychosocial needs that

are identified in the comprehensive assessment.

(b) A comprehensive care plan shall be:

1. Developed within seven (7) days after completion of the comprehensive assessment;

2. Prepared by an interdisciplinary team, that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs, and with the participation of the resident, the resident's family or legal representative, to the extent practicable; and

3. Periodically reviewed and revised by a team of qualified persons after each assessment.

(c) The services provided or arranged by the facility shall:

1. Meet professional standards of quality; and

2. Be provided by qualified persons in accordance with each resident's written plan of care.

(5) Discharge summary. When the facility anticipates discharge, a resident shall have a discharge summary that includes:

(a) A recapitulation of the resident's stay;

(b) A final summary of the resident's status to include items in subsection (2)(b) of this section, at the time of the discharge that shall be available for release to authorized persons and agencies, with the consent of the resident or legal representative; and

(c) A postdischarge plan of care that developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment.

(6) Preadmission screening for mentally ill individuals and individuals with mental retardation. A nursing facility shall not admit any new resident in conflict with the Kentucky preadmission screening and annual review program.

Section 8. Quality of Care. Each resident shall receive the necessary nursing, medical and psychosocial services to attain and maintain the highest possible mental and physical functional status, as defined by the comprehensive assessment and plan of care. Each resident shall receive services and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

(1) Activities of daily living. Based on the comprehensive assessment of a resident, the facility shall ensure:

(a) A resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the resident's ability to:

1. Bathe, dress and groom;
2. Transfer and ambulate;
3. Toilet;
4. Eat; and
5. To use speech, language or other functional communication systems.

(b) A resident is given the appropriate treatment and services to maintain or improve his or her abilities specified in paragraph (a) of this subsection; and

(c) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(2) Vision and hearing. To ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities, the facility shall, if necessary, assist the resident:

(a) In making appointments; and

(b) By arranging for transportation to and from the office of a medical practitioner specializing in the treatment of vision or hearing impairment of the office of a professional specializing in the provision of vision or hearing assistive devices.

(3) Pressure sores. Based on the comprehensive assessment of a resident, the facility shall ensure that:

(a) A resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and

(b) A resident having pressure sores receives necessary

treatment and services to promote healing, prevent infection and prevent new sores from developing.

(4) Urinary incontinence. Based on the resident's comprehensive assessment, the facility shall ensure that:

(a) A resident who is incontinent of bladder receives the appropriate treatment and services to restore as much normal bladder functioning as possible;

(b) A resident who enters the facility without an in-dwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization was necessary; and

(c) A resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible.

(5) Range of motion. Based on the comprehensive assessment of a resident, the facility shall ensure that:

(a) A resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(b) A resident with a limited range of motion and/or receives appropriate treatment and services to increase range of motion to prevent further decrease in range of motion.

(6) Psychosocial functioning. Based on the comprehensive assessment of a resident, the facility shall ensure that:

(a) A resident who displays psychosocial adjustment difficulty, receives appropriate treatment and services to achieve as much remotivation and reorientation as possible; and

(b) A resident whose assessment did not reveal a psychosocial adjustment difficulty does not display a pattern of decreased social interaction and/or increased withdrawn, angry, or depressive behaviors, unless the resident's clinical condition demonstrates that such a pattern was unavoidable.

(7) Accidents. The facility shall ensure that:

(a) The resident environment remains as free of accident hazards as is possible; and

(b) Each resident receives adequate supervision and assistive devices to prevent accidents.

(8) Nutrition. Based on a resident's comprehensive assessment, the facility shall ensure that a resident:

(a) Maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible; and

(b) Receives a therapeutic diet when there is a nutritional problem.

(9) Special needs. The facility shall ensure that residents receive proper treatment and care for the following special services:

- (a) Injections;
- (b) Parenteral and enteral fluids;
- (c) Colostomy, ureterostomy or ileostomy care;
- (d) Tracheostomy care;
- (e) Tracheal suctioning;
- (f) Respiratory care;
- (g) Podiatric care; and
- (h) Prostheses.

(10) Drug therapy.

(a) Unnecessary drugs. Each resident's drug regimen shall be free from unnecessary drugs.

(b) Antipsychotic drugs. Based on a comprehensive assessment of a resident, the facility shall ensure that:

1. Residents who have not used antipsychotic drugs and are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition; and

2. Residents who use antipsychotic drugs receive gradual dose reductions, drug holidays or behavioral programming, unless clinically contraindicated in an effort to discontinue these drugs.

(11) Hydration. The facility shall provide each resident with sufficient fluid intake to maintain proper hydration and health.

(12) Naso-gastric tubes. Based on the comprehensive assessment of a resident, the facility shall ensure that:

(a) A resident who has been able to eat enough alone or with assistance is not fed by naso-gastric tube unless the resident's

clinical condition demonstrates that use of a naso-gastric tube was unavoidable; and

(b) A resident who is fed by a naso-gastric or gastrostomy tube receives the appropriate treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers and to restore, if possible, normal feeding function.

(c) Medication errors. The facility shall ensure that:

- 1. It is free of significant medication error rates; and
- 2. Residents are free of any significant medication errors.

Section 9. Nursing Services. The facility shall have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.

(1) Sufficient staff.

(a) The facility shall provide services by sufficient numbers of each of the following types of personnel on a twenty-four (24) hour basis to provide nursing care to all residents in accordance with resident care plans:

1. Except when waived under subsection (3) of this section, licensed nurses; and

2. Other nursing personnel.

(b) Except when waived under subsection (3) of this section, the facility shall designate a licensed nurse to serve as a charge nurse on each tour of duty.

(2) Registered nurse.

(a) Except when waived under subsection (3) or (4) of this section, the facility shall use the services of a registered nurse for at least eight (8) consecutive hours a day, seven (7) days a week.

(b) Except when waived under subsection (3) or (4) of this section, the facility must designate a registered nurse to serve as the director of nursing on a full-time basis.

(c) The director of nursing may serve as a charge nurse only when the facility has an average daily occupancy of sixty (60) or fewer residents.

(3) Licensed nurse waiver. Waiver of requirement to provide licensed nurses on a twenty-four (24) hour basis. A facility may request a waiver from the requirement that a nursing facility provide a registered nurse for at least eight (8) consecutive hours a day, seven (7) days a week, as specified in subsection (2) of this section, and the requirement that a nursing facility provide licensed nurses on a twenty-four (24) hour basis, including a charge nurse as specified in subsection (1) of this section, if the following conditions are met:

(a) The facility demonstrates to the satisfaction of the cabinet that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel;

(b) The cabinet determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility;

(c) A waiver granted under the conditions listed in this subsection is subject to revocation if the cabinet finds that the health and safety of the residents is threatened.

(d) In granting or renewing a waiver, a facility may be required by the cabinet to use other qualified, licensed personnel.

(e) The facility shall have an on-call system which provides for an immediate response by a registered nurse or a physician for those times when licensed nursing services are not available.

(4) Registered nurse waiver. Waiver of the requirement to provide services of a registered nurse for more than forty (40) hours a week, including a director of nursing specified in subsection (2) of this section, may be granted if the cabinet finds that the facility:

(a) Is located in a rural area and the supply of skilled nursing facility services in the area is not sufficient to meet the needs of individuals residing in the area;

(b) Has one (1) full-time registered nurse who is regularly on duty at the facility forty (40) hours a week; and

(c) Either:

- 1. Has only patients whose physicians have indicated (through

physicians' orders or admission notes) that they do not require the services of a registered nurse or a physician for a forty-eight (48) hour period; or

2. Has made arrangements for a registered nurse or a physician to spend time at the facility, as determined necessary by the physician, to provide necessary skilled nursing services on days when the regular full-time registered nurse is not on duty.

(d) A waiver of the registered nurse requirement under paragraph (a) of this subsection is subject to revocation if the cabinet finds that the health and safety of the residents is threatened.

(5) When a waiver is granted a facility shall inform the residents, their legal representatives, and members of their immediate family.

Section 10. Dietary service in the facility shall provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

(1) Staffing. The facility shall employ a qualified dietician either full time, part time, or on a consultant basis.

(a) If a qualified dietician is not employed full time, the facility shall designate a person to serve as the director of food service.

(b) Qualified dietician means a person who has earned at least a baccalaureate degree from a college or university which is accredited by the Southern Association of Colleges and Universities, or an accrediting agency recognized by the Southern Association of Colleges and Universities or a successor to the powers of both; and

1. Successfully completed minimum academic requirements established by the Commission on Dietetic Registration, an affiliate of the National Commission for Health Certifying Agencies; or

2. Successfully completed one (1) of the accredited experience options established by the Commission on Dietetic Registration, which includes but is not limited to, completion of an accredited coordinated undergraduate program, an accredited dietetic internship, and approved three (3) preplanned work experience, or a master's degree in nutrition or a related area with six (6) months of full-time or equivalent qualifying experience.

(2) Sufficient staff. The facility shall employ sufficient support personnel competent to carry out the functions of the dietary service.

(3) Menus and nutritional adequacy. Menus shall:

(a) Meet the nutritional needs of residents in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

(b) Be prepared in advance;

(c) Be followed;

(d) Be posted at least one (1) week in advance, with changes recorded on the menu, and kept on file for at least thirty (30) days.

(4) Food. Each resident shall receive and the facility shall provide:

(a) Food prepared by methods that conserve nutritive value, flavor and appearances;

(b) Food that is palatable, attractive and at the proper temperature;

(c) Food prepared in a form designed to meet individual needs; and

(d) Substitutes offered of similar nutritive value to residents who refuse food served.

(5) Therapeutic diets. Therapeutic diets must be prescribed by the attending physician.

(6) Frequency of meals.

(a) Each resident shall receive and the facility shall provide at least three (3) meals daily, at regular times comparable to normal mealtimes in the community.

(b) There shall be no more than fourteen (14) hours between a substantial evening meal and breakfast the following day, except as provided in paragraph (d) of this subsection.

(c) The facility shall offer snacks at bedtime daily.

(d) When a nourishing snack is provided at bedtime, up to sixteen (16) hours may elapse between a substantial evening meal and breakfast the following day if a resident group agrees to this meal span and a nourishing snack is served.

(7) Assistive devices. The facility shall provide special eating equipment and utensils for residents who need them.

(8) Sanitary conditions. The facility shall:

(a) Procure food from sources approved or considered satisfactory by federal, state or local authorities;

(b) Store, prepare, distribute, and serve food under sanitary conditions; and

(c) Dispose of garbage and refuse properly.

Section 11. Physician Services. A physician shall personally approve a recommendation that an individual be admitted to a facility. Each resident shall remain under the care of a physician.

(1) Physician supervision. The facility shall ensure that:

(a) The medical care of each resident is supervised by a physician; and

(b) Another physician supervises the medical care of residents when their attending physician is unavailable.

(2) Physician visits. The physician shall:

(a) Review the resident's total program of care, including medications and treatments, at each visit required by subsection (3) of this section;

(b) Write, sign and date progress notes at each visit; and

(c) Sign all orders.

(3) Frequency of physician visits. The resident shall be seen by a physician at least once every thirty (30) days for the first ninety (90) days after initial admission, and at least once every ninety (90) days thereafter.

(a) A physician visit is considered timely if it occurs not later than ten (10) days after the date the visit was required.

(b) Except as provided in paragraph (c) of this subsection, all required physician visits shall be made by the physician personally.

(c) At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner in accordance with subsection (5) of this section.

(4) Availability of physicians for emergency care. The facility shall provide or arrange for the provision of physician services twenty-four (24) hours a day, in case of an emergency.

(5) Physician delegation of tasks.

(a) Except as specified in paragraph (b) of this subsection, a physician may delegate tasks to a physician assistant or nurse practitioner who is acting within the scope of practice as defined by state law, and is under the supervision of the physician.

(b) A physician shall not delegate a task when the regulations specify that the physician shall perform it personally, or when the delegation is prohibited under state law or by the facility's own policies.

Section 12. Specialized Rehabilitative Services. A facility shall provide or obtain rehabilitative services, such as physical therapy, speech-language pathology, and occupational therapy, to every resident it admits, as indicated by the resident's comprehensive assessment.

(1) Provision of services. If specialized rehabilitative services are required in the resident's comprehensive plan of care, the facility shall:

(a) Provide the required services; or

(b) Obtain the required services from an outside resource in accordance with Section 15(6)(a) and (b) of this administrative regulation, from a provider of specialized rehabilitative services.

(2) Qualifications. Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

Section 13. Dental Services. The facility shall assist residents in obtaining routine and twenty-four (24) hour emergency dental care. The facility shall provide or obtain from an outside resource, in accordance with Section 15(6)(a) and (b) of this administrative regulation following dental services to meet the needs of each resident:

(1) Routine dental services; and

(2) Emergency dental services.

~~Section 14. Pharmacy Services. The facility shall provide routine and emergency drugs and biologicals to its residents, or obtain them under an agreement described in Section 15(6)(a) and (b) of this administrative regulation.~~

~~(1) Procedures.~~

~~(a) A facility shall provide pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident.~~

~~(b) Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical Practice Act (KRS 311.530 to 311.620) and Nurse Practice Act (KRS Chapter 314) or by personnel who have completed a state approved training program from a state approved provider. The administration of oral and topical medicines by certified medicine technicians shall be under the supervision of licensed medical or nursing personnel. Intramuscular injections shall be administered by a licensed or registered nurse, or a physician. If intravenous injections are necessary they shall be administered by a licensed physician, registered nurse, or properly trained licensed practical nurse. Each dose administered shall be recorded in the medical record.~~

~~(2) Service consultation. The facility shall employ or obtain the services of a pharmacist licensed pursuant to KRS Chapter 315 who:~~

~~(a) Provides consultation on all aspects of the provision of pharmacy services in the facility;~~

~~(b) Establishes a system of records of receipt and disposition of all drugs in sufficient detail to enable an accurate reconciliation; and~~

~~(c) Determines that drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled.~~

~~(3) Drug regimen review.~~

~~(a) The drug regimen of each resident shall be reviewed at least once a month by a licensed pharmacist.~~

~~(b) The pharmacist shall report any irregularities to the attending physician or the director of nursing, or both, and these reports shall be acted upon.~~

~~(4) Labeling of drugs and biologicals. The facility shall label drugs and biologicals in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration date.~~

~~(5) Storage of drugs and biologicals. In accordance with state and federal laws, the facility shall store all drugs and biologicals in locked compartments under proper temperature controls, and permit only authorized personnel to have access to the keys.~~

~~(6) The facility shall provide separately locked, permanently affixed compartments for storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and other drugs subject to abuse, except when the facility uses single unit package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.~~

~~Section 15. Administration. A facility shall be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.~~

~~(1) Compliance with federal, state and local laws and professional standards. The facility shall operate and provide services in compliance with all applicable federal, state and local laws, regulations and codes, and with accepted professional standards and principles that apply to professionals providing services in a facility.~~

~~(2) Governing body.~~

~~(a) The facility shall have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility; and~~

~~(b) The governing body appoints the administrator who shall be:~~

~~1. Licensed as a nursing home administrator pursuant to KRS~~

~~216A.080; and~~

~~2. Responsible for management of the facility.~~

~~(3) Required training of nurse aides.~~

~~(a) General rules. A facility shall not use any individual working in the facility as a nurse aide for more than four (4) months, on a full-time, temporary, per diem, or other basis, unless:~~

~~1. That individual is listed on the Kentucky Nurse Aide Registry; and~~

~~2. That individual is competent to provide nursing and nursing related services.~~

~~(b) Competency. A facility shall permit an individual to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competence only when:~~

~~1. The individual is currently enrolled and participating in the Kentucky Medicaid Nurse Aide Training Program; or~~

~~2. The facility has asked and not yet received a reply from the Kentucky Nurse Aide Registry for information concerning the individual.~~

~~(c) Regular in-service education. The facility shall provide regular performance review and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides. In-service education must include training for individuals providing nursing and nursing related services to residents with cognitive impairments.~~

~~(4) Proficiency of nurse aides. The facility shall ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.~~

~~(5) Staff qualifications.~~

~~(a) The facility shall employ on a full-time, part-time, or consultant basis those professionals necessary to carry out the provisions of this administrative regulation.~~

~~(b) Professional staff shall be licensed, certified or registered in accordance with applicable state statutes.~~

~~(6) Use of outside resources.~~

~~(a) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility shall have that service furnished to residents by a person or agency outside the facility.~~

~~(b) Arrangements or agreements pertaining to services furnished by outside resources shall specify in writing that the facility assumes responsibility for:~~

~~1. Obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility; and~~

~~2. The timeliness of the services.~~

~~(7) Medical director.~~

~~(a) The facility shall designate a physician to serve as medical director.~~

~~(b) The medical director shall be responsible for:~~

~~1. Implementation of resident care policies; and~~

~~2. The coordination of medical care in the facility.~~

~~(8) Laboratory services.~~

~~(a) The facility shall provide or obtain clinical laboratory services to meet the needs of its residents. The facility shall be responsible for the quality and timeliness of the services.~~

~~1. If the facility provides its own laboratory services, the services shall meet the applicable state statutes and administrative regulations pursuant to KRS Chapter 333, or laboratory requirements for hospitals for those distinct part units within licensed hospitals.~~

~~2. If the facility provides blood bank and transfusion services, it must meet the applicable conditions for:~~

~~a. Independent laboratories licensed pursuant to KRS Chapter 333; or~~

~~b. Hospitals licensed pursuant to 902 KAR 20:016;~~

~~3. If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be licensed in accordance with KRS Chapter 333, or meet the laboratory standards in 902 KAR 20:016 for hospitals.~~

~~4. If the facility does not provide laboratory services on-site, it shall have an agreement to obtain these services only from a laboratory that is licensed pursuant to KRS Chapter 333 as an~~

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

independent laboratory, or in accordance with 902 KAR 20:016 for hospital laboratories.

(b) The facility shall:

1. Provide or obtain laboratory services only when ordered by the attending physician;
2. Promptly notify the attending physician of the findings;
3. Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance.
4. File in the resident's clinical record signed and dated reports of clinical laboratory services.

(9) Radiology and other diagnostic services.

(a) The nursing facility shall provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

1. If the facility provides its own diagnostic services, the services must meet the standards established in 902 KAR 20:016, Section 4(6).

2. If the facility does not provide diagnostic services, it shall have an agreement to obtain these services from a provider or supplier that is licensed or registered pursuant to KRS 211.842 through KRS 211.852.

(b) The facility shall:

1. Provide or obtain radiology and other diagnostic services only when ordered by the attending physician;
2. Promptly notify the attending physician of the findings;
3. Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and
4. File in the resident's clinical record signed and dated reports of x-ray and other diagnostic services.

(10) Clinical records.

(a) The facility shall maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

1. Complete;
2. Accurately documented;
3. Readily accessible; and
4. Systematically organized.

(b) Retention of records. After resident's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(c) The facility shall safeguard clinical record information against loss, destruction, or unauthorized use;

(d) The facility shall keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:

1. Transfer to another health care institution;
2. Law;
3. Third-party payment contract; or
4. The resident.

(e) The facility shall:

1. Permit each resident to inspect his or her records on request; and
2. Provide copies of the records to each resident no later than forty-eight (48) hours after a written request from a resident, at a photocopying cost not to exceed the amount customarily charged in the community.

(f) The clinical record shall contain:

1. Sufficient information to identify the resident;
2. A record of the resident's assessments;
3. The plan of care and services provided; and
4. The results of any preadmission screening conducted by the state; and
5. Progress notes.

(11) Disaster and emergency preparedness.

(a) The facility shall have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, and missing residents.

(b) The facility shall train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out staff drills

using those procedures.

(12) Transfer agreement.

(a) The facility shall have in effect a written transfer agreement with one (1) or more licensed hospitals that reasonably assures that:

1. Residents shall be transferred from the facility to the hospital, and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the attending physician; and

2. Medical and other information needed for care and treatment of residents and when the transferring facility deems it appropriate, for determining whether such residents can be adequately cared for in a less expensive setting than either the facility or the hospital, will be exchanged between the institutions.

(b) The facility shall be considered to have a transfer agreement in effect if the facility has attempted in good faith to enter into an agreement with a hospital sufficiently close to the facility to make transfer feasible.

(13) Quality assessment and assurance.

(a) A facility shall maintain a quality assessment and assurance committee consisting of:

1. The director of nursing services;
2. A physician designated by the facility; and
3. At least three (3) other members of the facility's staff.

(b) The quality assessment and assurance committee:

1. Meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary; and
2. Develops and implements appropriate plans of action to correct identified quality deficiencies.]

STEVEN D. DAVIS, Inspector General

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: September 6, 2018

FILED WITH LRC: September 13, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 22, 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 October 15, 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 October 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes, email stephanie.brammer@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure requirements for the operation of and services provided by nursing facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042, which requires the cabinet to promulgate administrative regulations necessary for the proper administration of the licensure

function, including licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing the minimum licensure requirements for the operation of and services provided by nursing facilities.

(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 minimum licensure requirements for the operation of and services provided by nursing 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: This amendment aligns Kentucky's nursing facility standards with 42 C.F.R. Part 483, Subpart B. In addition, this amendment requires compliance with the abuse registry checks required by KRS 216.532 and KRS 209.032; requires compliance with the criminal background checks required by KRS 216.785 – 216.793; requires compliance with the tuberculosis (TB) testing requirements established by 902 KAR 20:200 and 902 KAR 20:205; requires facilities to ensure that residents rights are protected in accordance with KRS 216.515 – 216.520; requires facilities to conspicuously display posters required by KRS 216.525; requires facilities to provide information required by KRS 216.535(3); requires compliance with the requirements for access to the facility pursuant to KRS 216.540(2) – (5); requires compliance with the posting requirements of KRS 216.543; requires compliance with the statement required by KRS 215.545(2); requires compliance with the requirements for public inspection of the information and documents identified in KRS 216.547(1); requires compliance with the licensing procedures and fee schedule established by 902 KAR 20:008; and requires compliance with the reporting requirements of KRS 209.030(2) – (4).

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to make revisions and updates as described in (2)(a) above.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing the minimum licensure requirements for the operation of and services provided by nursing facilities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing the minimum licensure requirements for the operation of and services provided by nursing facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts licensed nursing facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not require nursing facilities to take 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): No additional costs will be incurred to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By aligning this administrative regulation with the federal standards for nursing facilities and additional requirements established by state law, this amendment minimizes the potential for state and federal regulations to conflict, avoids unnecessarily duplicative standards, and improves clarity.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: This amendment imposes no additional costs on the administrative body.

(b) On a continuing basis: This amendment imposes no additional costs on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary to implement this amendment.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 483.1-483.95

2. State compliance standards. KRS 216B.042

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 483.1-483.95 establishes the Federal requirements for participation in Medicare and Medicaid to ensure the health and safety of individuals to whom services are furnished in nursing facilities.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? In addition to aligning with 42 C.F.R. 483.1-483.95, this amendment requires compliance with the abuse registry checks required by KRS 216.532 and KRS 209.032; requires compliance with the criminal background checks required by KRS 216.785 – 216.793; requires compliance with the tuberculosis (TB) testing requirements established by 902 KAR 20:200 and 902 KAR 20:205; requires facilities to ensure that residents rights are

protected in accordance with KRS 216.515 – 216.520; requires facilities to conspicuously display posters required by KRS 216.525; requires facilities to provide information required by KRS 216.535(3); requires compliance with the requirements for access to the facility pursuant to KRS 216.540(2) – (5); requires compliance with the posting requirements of KRS 216.543; requires compliance with the statement required by KRS 215.545(2); requires compliance with the requirements for public inspection of the information and documents identified in KRS 216.547(1); requires compliance with the licensing procedures and fee schedule established by 902 KAR 20:008; and requires compliance with the reporting requirements of KRS 209.030(2) – (4).

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional requirements for nursing facilities are established in state law as identified above.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 45:005. Kentucky food code.

RELATES TO: KRS 217.005-217.205, 217.280-217.390, 217.990-217.992

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.180(1)(c), 217.125

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1), 217.125, 211.090(3), and 211.180(1)(c) authorize the Cabinet for Health and Family Services to regulate food service establishments and retail food stores. This administrative regulation establishes a uniform code for the regulation of all food service establishments and retail food stores for the purpose of protecting the public health.

Section 1. Definitions. (1) "2013 FDA Food Code" means the 2013 edition of the Food Code published by the U.S. Public Health Service and the U.S. Food and Drug Administration.

(2) "Cabinet" is defined by KRS 217.015(3).

(3) "Complex food preparation" means the process of preparing a food item that includes two (2) or more complete trips through the temperature danger zone between forty-one (41) degrees Fahrenheit and 135 degrees Fahrenheit.

(4) "Kentucky State Plumbing Code" is defined by KRS 318.130.

(5) "Person in charge" means the individual present at a food establishment who is responsible for the operation at the time of inspection.

(6) "Restricted concessions" means a food service establishment, whether mobile or stationary, limited to preparing and serving only menu items and ingredients considered to be low-risk in relation to foodborne illness.

(7) "Statewide mobile food unit" means a fully-enclosed, self-contained food service establishment that operates from a vehicle or is otherwise mobile (2) "Temporary food establishment" is defined by KRS 217.015(45)].

Section 2. ~~Revisions~~[Insertions and Modifications] to the 2013[2005] FDA Food Code. ~~The 2013~~[(1) Except as provided by subsection (2) of this section, the 2005] edition of the FDA Food Code shall apply to Kentucky food establishments with the addition of the provisions established in this section[subsection].

(1)[(a)] FDA Food Code Subparagraph 2-102.11(B) shall be replaced with the following sentence:[] Being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program or a local health department class that addresses the food safety issues described in 2-102.11(C) of the 2013[2005] FDA food code.

(2) FDA Food Code Subparagraph 6-501.115 shall be

supplemented with the Kentucky-specific exceptions established in this subsection.

(a) A dog may be allowed in an outdoor dining area if:

1. The outdoor dining area is not fully enclosed; and

2. There is an entrance to the outdoor dining area that is separate from the main entrance and the sole means of entry for a patron with a dog.

(b) Employees shall not permit a dog to come into physical contact with:

1. Food;

2. Serving dishes;

3. Utensils;

4. Tableware;

5. Linens;

6. Unwrapped single-service and single-use articles; or

7. Other food service items that may result in contamination of food or a food-contact surface.

(c) An employee engaged in the preparation or handling of food shall avoid physical contact with a patron dog. If an employee has physical contact with a patron dog, the employee shall wash his or her hands prior to returning to work.

(d) All accidents involving dog vomit, feces, or urination shall be cleaned immediately and the area sanitized with an approved product. A kit with the appropriate materials for this purpose shall be made available for use in the designated outdoor dining area.

(e) Signage shall be posted at each entrance to the outdoor dining area stating:

1. Dogs may be allowed in the area;

2. Dogs shall not be served food or water in wares used for human consumption;

3. Dogs shall not be allowed on chairs, seats, or tables; and

4. Dogs shall be kept on a leash and under the control of an adult at all times.

(f) The food establishment may refuse to serve the patron with a dog if:

1. The patron fails to exercise reasonable control over the dog;

or

2. The dog is behaving in a manner that compromises or threatens to compromise the health or safety of any person present[(b) FDA Food Code Subparagraph 3-301.11(D). Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if the permit holder has a written policy that addresses hand washing while processing, preparing, and serving all ready-to-eat foods; and

(c) FDA Food Code Subparagraph 8-302.11.

1. A mobile food unit shall not operate for more than fourteen (14) consecutive days at one (1) location.

2. After the fourteen (14) consecutive days has expired, a mobile food unit shall not operate at the same location until a period of thirty (30) days has elapsed.

(2) The following provisions of the 2005 FDA Food Code shall not apply to Kentucky food establishments.

(a) FDA Food Code Subparagraph 3-301.11(D)(1).

(b) FDA Food Code Subparagraph 3-301.11(D)(2)(a).

(c) FDA Food Code Subparagraph 3-301.11(6)(e).

(d) FDA Food Code Subparagraph 8-811.10 (B).

(e) FDA Food Code Annex 7: Form 3-A, Food Establishment Inspection Report].

Section 3. Statewide Mobile Food Units. (1) All food products served in a statewide mobile food unit shall be cooked or prepared in:

(a) A statewide mobile food unit permitted by the cabinet; or

(b) A food service establishment permitted by the cabinet.

(2) Complex food preparation shall not be performed in a statewide mobile food unit.

(3) The statewide mobile food unit shall not serve as a catering operation unless it meets additional permitting requirements.

(4) The statewide mobile food unit shall be serviced and cleaned every day of operation.

(5) The statewide mobile food unit shall meet the sanitation and plumbing requirements contained in the 2013 FDA Food Code and the Kentucky State Plumbing Code.

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

(6) Sewage and other liquid wastes shall be removed according to the 2013 FDA Food Code and the Kentucky State Plumbing Code.

Section 4. Restricted concessions. (1) Restricted concessions may include:

- (a) Flavored ice;
- (b) Shaved ice;
- (c) Snow cones with commercially mixed and packaged flavorings;
- (d) Pork rinds;
- (e) Roasted peanuts, almonds, pecans, or walnuts, without the shell;
- (f) Nacho cheese and chips;
- (g) Cotton candy;
- (h) Pre-cooked, commercially processed hotdogs, frankfurters, or similar meats (such as bratwurst or Italian sausage) that are grilled, steamed, or boiled on-site;
- (i) Pre-packaged sandwiches;
- (j) Pre-packaged ice cream or popsicles;
- (k) Prepackaged, commercially processed snack foods (such as pretzels or chips) from an approved manufacturing source;
- (l) Shelf-stable, pre-packaged baked goods; or
- (m) Commercially produced bottled or canned soft drinks, water, ice tea, or lemonade.

(2) Sanitation requirements.

(a) If public water is available, a restricted concession facility shall follow the requirements of the Kentucky State Plumbing Code.

(b) If public water is not available, a restricted concession facility may operate under temporary sanitation if:

- 1. There is an adequate amount of stored potable water available;
- 2. Tubs, buckets, or similar containers for washing, rinsing, and sanitizing equipment large enough to completely immerse the largest item used in operation are available;
- 3. There are adequate hand washing facilities; and
- 4. Permanent or portable toilet facilities are conveniently located and have hand washing facilities available.

(c) The restricted concession facility shall provide adequate cold and hot storage for food products and safe storage areas for the storage of dry food and single service articles.

(d) A restricted concession facility shall be constructed or located in such a way that food and utensils are protected from potential contamination, including from insects, dust, and debris.

Section 5. Bed and Breakfast. (1) A bed and breakfast establishment shall not be subject to this administrative regulation if:

(a) The bed and breakfast establishment is:

- 1. In a one (1) family, privately owned residential dwelling unit that has guest rooms or suites used, rented, or hired out for occupancy; and
- 2. Occupied for sleeping purposes by persons not affiliated by the single-family unit;

(b) The owner or caretaker of the bed and breakfast establishment resides on the premises or property adjacent to the premises during the periods of occupancy;

(c) The number of available guest rooms does not exceed nine (9);

(d) The number of overnight guests does not exceed eighteen (18); and

(e) Breakfast and other meals are served.

(2) Guests shall be informed by placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the regulatory authority.

(3) A bed and breakfast establishment that does not meet all of the requirements established in subsection (1)(a) to (e) of this section shall meet the requirements of this administrative regulation.

Section 6. Inspections and Violations. (1) If an inspection is made of an establishment, the findings shall be recorded on Form

DFS-208, Food Establishment Inspection Report, and shall constitute a written notice to the permit holder.

(2) A copy of the inspection report shall be furnished to the permit holder or person in charge.

(3) The inspection report form shall summarize the requirements of this administrative regulation and shall set forth a point value for each requirement.

(4) The rating score of the establishment shall be the total of the point value for all violations subtracted from 100.

(5) The inspection report form shall specify a period of time for the correction of the violations found pursuant to this subsection.[the following provisions:]

(a) If the rating score of the establishment is eighty-five (85) or more, all violations of one (1) [~~or two (2)~~] point items shall be corrected prior to the next routine inspection.

(b) If the rating score of the establishment is at least seventy (70) but not more than eighty-four (84), all violations of one (1)[~~or two (2)~~] point items shall be corrected within a period not to exceed thirty (30) days.

(c) Regardless of the rating score of the establishment, all violations of priority[~~three (3), four (4), or five (5) point~~] items shall be corrected within a time period[~~specified by the cabinet but~~] not to exceed ten (10) days.

(6) The inspection report shall state that:

(a) Failure to comply with a time limit for correction may result in the suspension of a permit; and

(b) An opportunity for appeal shall be provided if a written request for a hearing is filed in accordance with 902 KAR 1:400.

Section 7. Permit Suspension. (1)[~~(d)~~] If the rating score of the establishment is less than seventy (70), the establishment shall be issued a Form DFS-214, Notice of Enforcement[~~notice~~] of intent to suspend the permit[, using form DFS-214 Enforcement Notice. The permit shall be suspended within ten (10) days after receipt of the notice unless a written request for a hearing is filed] in accordance with 902 KAR 1:400.

(2)[~~(e)~~] A permit shall be suspended immediately upon notice to the permit holder without a hearing if:

(a)[~~4-~~] The cabinet has reason to believe that an imminent public health hazard exists;

(b)[~~2-~~] The permit holder or an authorized agent has interfered with the cabinet in the performance of its duties after its agents have duly and officially identified themselves; or

(c)[~~3-~~] An inspection of an establishment reveals a rating score of less than sixty (60).

(3)[~~(f)~~] A permit holder subject to[the immediate] suspension of a permit may submit a[~~make application on~~] Form DFS-215, Application for Reinstatement, in accordance with 902 KAR 1:400[~~Re-Instatement of Suspended Permit, for the purpose of reinstatement of suspended permit.~~

(g) All violations concerning a temporary food service establishment shall be corrected within twenty-four (24) hours.

1. If violations are not corrected within the required twenty-four (24) hour time period, the permit shall be immediately suspended.

(4)[~~2-~~] The permit holder whose permit has been suspended may request a hearing in accordance with 902 KAR 1:400[~~using form DFS-212~~].

(5)[~~(h)~~] If a food service establishment is required under the provisions of this administrative regulation to cease operations, it shall not resume operations until a reinspection determines that conditions responsible for the requirement to cease operations no longer exist.[~~(j) An opportunity for reinspection shall be offered within seven (7) days of the cabinet's receipt of the form DFS-215.~~

(6) The inspection report shall state that:

(a) Failure to comply with a time limit for correction may result in the suspension of a permit; and

(b) An opportunity for appeal will be provided if a written request for a hearing is filed in accordance with 902 KAR 1:400.]

Section 8[4]. Effective Date. An amendment to this administrative regulation[This Code and the rules, administrative regulations, provisions, requirements, and orders] shall take effect six (6) months[~~one (1) year~~] from the effective date of this

administrative regulation[approval].

Section 9[5]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Food Code", U.S. Public Health Service, FDA, 2013,[2005.]

(b) [~~"DFS-200, Facility Profile", edition 07/01;~~

(c) [~~"DFS-202, Application for a Permit to Operate a Temporary, Fee Exempt or Farmer's Market Temporary Food Service Establishment", edition 04/07;~~

(d) [~~"DFS-208, Food Establishment Inspection Report", edition 10/17;~~

(e) [~~1/09;~~

(f) [~~"DFS-210, Notice to Correct Violations", edition 02/95;~~

(g) [~~"DFS-212, Request for Conference", edition 10/96;~~

(h) [~~"DFS-213, Notice of Conference", edition 08/96;~~

(i) [~~"DFS-214, Notice of Enforcement[Notice to Apply for Permit, Order to Cease Operation, or Permit Suspension and Order to Cease Operation]", edition 3/2018[08/96]; and~~

(j) [~~(i) "DFS-215, Application for Reinstatement[Re-instatement of Suspended Permit]", edition 03/2018[02/95;~~

(k) [~~"DFS-216, Record of Complaint and Investigation", edition 04/95;~~

(l) [~~"DFS-218, Concessionaires Food Sanitation Guidelines", edition 05/94;~~

(m) [~~"DFS-222, Notice and Order of Quarantine", edition 05/94;~~

(n) [~~"DFS-223, Tag Quarantined", edition 10/90;~~

(o) [~~"DFS-224, Label for Sample Collection and Analysis", edition 09/87; and~~

(p) [~~"DFS-232, Permit to Operate Temporary, Fee Exempt Food Service or Farmer's Market Temporary Food Service Establishment", edition 04/07].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Cabinet for Health and Family Services, Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JEFFREY D. HOWARD, JR., M.D., Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: September 12, 2018

FILED WITH LRC: September 13, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 22, 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 October 15, 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 October 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, phone (502) 564-3970, email julied.brooks@ky.gov.; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: Risk factors such as food preparation practices and employee behavior are commonly reported by the Centers for Disease Control and Prevention as contributing factors in foodborne illness outbreaks. This administrative regulation establishes a uniform code for the regulation of all food service establishments and retail food stores for the purpose of protecting the public health.

(b) The necessity of this administrative regulation: KRS 194.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to protect the health of the citizens of the Commonwealth. KRS 217.125 authorizes the cabinet to promulgate administrative regulations for permits to operate food service establishments consistent with the federal act and the Fair Packaging and Labeling Act. This administrative regulation includes the provisions for issuing permits to food service establishments, inspections and violations of the food code, and the provisions for suspension and reinstatement of permits. KRS 211.180(c) authorizes the cabinet to promulgate administrative regulations for the safe handling of food and food products.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation adopts the FDA Food Code except where exclusions may be applicable. This administrative regulation also allows for permitting and inspection of food service establishments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a uniform standard for the permitting and inspection of all food service establishments.

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

(a) How the amendment will change this existing administrative regulation: This amendment adopts the 2013 FDA Food Code except where exclusions are applicable. In addition, this administrative regulation incorporates the provisions for operating a bed and breakfast and requires adherence to the same uniform standard for all food service establishments. The conditions found to be in violation of the food code have been revised to be in line with the 2013 FDA Food Code. This amendment brings the Kentucky Food Code into full compliance with the provisions of KRS Chapter 13A by removing material incorporated by reference but not used as part of the food service establishment process.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to replace the adoption of the 2005 FDA Food Code and to clarify when exclusion to this code may be applicable.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 217.125 requires the cabinet to be consistent with the regulations promulgated under the federal act and Fair Packaging and Labeling Act. By updating the Kentucky Food Code to the 2013 FDA Food Code, the cabinet will be in full compliance with the authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow for uniform inspections of all food service establishments, and will ensure a consistent application of allowed exclusions to the 2013 FDA Food Code adopted by the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All food service establishments, retail food stores, temporary food service establishments, restricted food service establishments, non-permanent facilities of these types, including any and all food service activities that constitute food service to the public. Currently there are approximately 25,000 permitted facilities of these types. All county health departments are affected by this administrative regulation and as agents of the cabinet with respect to enforcement responsibilities and the Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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: Each entity impacted by this administrative regulation will have to conform to changes not consistent with the previous food code. The differences are with the modernization of the code to include the most up to date scientific knowledge. These changes reflect an emphasis on food protection through risk based procedures rather than solely on facility management. The result is improved food safety through a risk based approach backed by science. Their action will be to learn the changes and put them in place as they apply to their operation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): Initially some establishments will have to make minor adjustments in equipment and training for staff. As agreed to with our constituency, Kentucky Restaurant Association, Kentucky Retail Federation, local health and others in meetings planning for this change, there will be a six (6) month period of time after the effective date of this administrative regulation to educate and prepare food service establishments for the changes. It is difficult to quantify this amount for such a wide-ranging group.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional cost will be incurred with this amendment.

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

(a) Initially: There will be no new cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional ongoing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: There will be no increase in fees or funding as a result of changes to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is applied in this administrative regulation as there are separate requirements for food service establishments, statewide mobile food trucks, and bed and breakfast establishments.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local Health Department food inspectors and the Department for Public Health 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 2013 FDA Retail Food Code is incorporated by reference. KRS 217.125 authorizes the cabinet to promulgate administrative regulations for the issuance of permits for food service establishments; and to outline the conditions for suspension and reinstatement of the permit. KRS 194A.050 authorizes the cabinet to promulgate administrative regulations to protect the health of citizens of the Commonwealth. KRS 211.180(1)(c) authorizes the cabinet to promulgate administrative regulations for the safe handling of food and food products.

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

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

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

(c) How much will it cost to administer this program for the first year? Not applicable

(d) How much will it cost to administer this program for subsequent years? Not applicable

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 45:090. Home-based processors and farmers market home-based microprocessors[Farmers markets].

RELATES TO: KRS Chapter 13B, 217.005-217.215, 217.290, 217.992

STATUTORY AUTHORITY: KRS 194A.050, 217.125(1),[217.136,] 217.137, 217.138

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125,[217.136,] 217.137, and 217.138 authorize the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of home-based processors and home-based microprocessors. This administrative regulation establishes a uniform code for the manufacture and marketing of limited based Kentucky grown home microprocessed[precessed] food products at farmers markets, certified roadside stands, or from the microprocessor's[processors] farm and for the manufacture and marketing of limited home-based processor food products from the home, at a market, roadside stand, community event, or online.

Section 1. Definitions. (1)[~~"Adulterated food and food products" means any food or food product adulterated as defined by KRS 217.025.~~

(2)] "Cabinet" is defined by KRS 217.015(3).

(2)[(3)] "Certified roadside stand" means a physical location listed with the Kentucky Farm Bureau for the direct-to-consumer marketing of limited Kentucky grown and produced food products.

(3)[(4)] "Easily cleanable" means that surfaces are readily accessible and made of a material and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

(4)[(5)] "Equipment" means articles used in the preparation and processing of food.

(5) "Farmer" is defined by KRS 217.015(59).

(6) "Farmers market" or "farmers market temporary food service establishment" is defined by KRS 217.015(60)[~~means a physical location for the direct-to-consumer marketing of Kentucky grown whole fruit and vegetables, and limited Kentucky-grown processed food products with the set time and locations that are listed with the Kentucky Department of Agriculture.~~

(7) "Food contact surfaces" means those surfaces with which food may come in contact, and those surfaces that drain onto surfaces that may come in contact with food.

(8)[~~"Hand washing" means the following process:~~

(a) ~~Wetting hands and forearms with warm running water, 101-120° F;~~

(b) ~~Applying antibacterial or antimicrobial soap and thoroughly distributing over hands and forearms;~~

(c) ~~Rubbing hands vigorously for twenty (20) seconds, covering all surfaces of the hands, forearms and fingers, paying special attention to the thumbs, backs of fingers, backs of hands and between the fingers;~~

(d) ~~Rinsing hands and forearms thoroughly to remove residual~~

soap; and

(e) ~~Drying hands and forearms with paper towels dispensed from sanitary dispensers.~~

(9) ~~"Kitchenware" means all multiuse utensils other than tableware used in the storage, preparation, or conveying of food.~~

(40) ~~"Permitted kitchen" means a food service establishment or food processing firm[,] that holds a valid permit to process food, pursuant to the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.215, and issued by the Cabinet for Health and Family Services.~~

(9) [(44)] ~~"Potentially-hazardous food" or "[PHF]" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth and toxin production of Clostridium botulinum, or in raw shell eggs, the growth of Salmonella Enteritidis. "Potentially-hazardous food" includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic-in-oil mixtures that are not modified in a way that makes the product nonpotentially hazardous.~~

(10) [(42)] ~~"Primary ingredients" means an agricultural or horticultural product that:~~

(a) ~~Has been grown, harvested, and processed by the farmer as a predominant ingredient of a food product with the exception of flour, as defined by [in] KRS 217.015(17), for use in:~~

1. ~~Bread as defined by [in] KRS 217.015(2); or~~

2. ~~[, and in] Other acceptable items outlined in KRS 217.015(56); and~~

(b) ~~["Primary ingredients"] Does not include oil, vinegar, sugar, and other seasonings or spices used in the production of home processed or microprocessed foods.~~

(11) [(43)] ~~"Processing authority" means:~~

(a) ~~The Food Science Professionals of the University of Kentucky, Department of Agriculture, who review and approve established scheduled processes, for adequate process times and pressures for the size of jar, style of pack, and kind of food being canned, by home-based microprocessors; or~~

(b) ~~A [Other] qualified entity [entities] in accordance with 21 C.F.R. [Parts] 113.83 and 114.83.~~

(12) [(14)] ~~"Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.~~

(45) ~~"Single-service article" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one (1) time or one (1) person use after which they are intended for discard.~~

(13) [(16)] ~~"Single-use article" means utensils and bulk food containers designed and constructed to be used once and discarded such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number ten (10) cans that [which] do not meet the materials, durability, strength, and clean ability specifications for multiuse utensils.~~

(14) [(17)] ~~"Utensil" means any food-contact implement used in the storage, preparation, transportation, dispensing, or sale of food.~~

(15) [(18)] ~~"Ware-washing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils such as kitchenware. [(19)] "Wholesome" means in sound condition, clean,~~

~~free from adulteration, and otherwise suitable for use as human food.]~~

Section 2. Limitations on Certain Home-based Processed and Home-based Microprocessed Food Products. (1) A home-based food processor shall produce only those foods as listed in KRS 217.015(56).

(2) A home-based microprocessor shall produce only those foods as allowed by KRS 217.015(57).

(3) The following foods shall not be processed or offered for

sale by a home-based processor or home-based microprocessor:

(a) Crème filled pies;

(b) Custard;

(c) Custard pies;

(d) Pies with meringue topping;

(e) Cheesecake;

(f) Cream, custard, or meringue pastries;

(g) Raw seed sprouts;

(h) Garlic-in-oil products; and

(i) Pureed baby foods.

(4) Vacuum packaging of food in a container other than a mason-type jar shall be prohibited.

(5) A jam or jelly processed in less than ten (10) minutes shall be filled into a sterile empty jar. Sterilization shall be accomplished by submerging the jar in boiling water for:

(a) At least ten (10) minutes at an altitude of less than 1,000 feet above sea level; and

(b) One (1) additional minute for each additional 1,000 feet elevation above sea level.

(6) If a boiling-water canner is utilized in the production of food by a home-based processor, the canner shall be deep enough so that at least one (1) inch of briskly boiling water will be over the tops of jars during processing.

(7) If an electric range is used for heating, the boiling-water canner shall have a flat bottom and shall be no more than four (4) inches wider than the element on which it is heated.

Section 3. Standards for Home-based Processing. (1) A home-based processor shall maintain basic hygiene, cleanliness, and sanitation while producing home-based processor products and shall comply with the following standards during production, packaging, and handling of products for sale:

(a) Regularly wash hands with soap and water;

(b) Keep kitchen equipment and utensils used for home-based processing clean and maintained in a good state of repair;

(c) Wash, rinse, and sanitize all food contact surfaces, equipment, and utensils used for food preparation before each use;

(d) Keep children under age twelve (12), and pets or other animals out of the kitchen;

(e) Cease performing any domestic activities in the kitchen, such as family meal preparation, dishwashing, or washing and drying laundry; and

(f) Not produce, package, or handle any home-processed products while infected with a contagious disease or illness.

(2) A home-based processor doing business in the state shall be a resident of Kentucky.

(3) A home-based processor may advertise and accept orders and payments in person, electronically, or via the internet or phone.

(4) A home-based processor shall provide all home-based processed foods direct to the consumer through pick-up or delivery, and at flea markets, farmers market, festivals, county fairs, craft fairs, and non-profit charity events, or a roadside stand.

(5) Home-based processed food products shall:

(a) Be labeled as required by KRS 217.136(3); and

(b) Contain allergen information as specified by federal labeling requirements.

(6) A home-based processor shall not be required to have grown a primary ingredient for each of their products produced.

(7) Inspection of a home-based processor facility shall be made upon complaint, utilizing Form DFS-252, Home-based Processor/Microprocessor Inspection Report.

Section 4. [Home-based Processor Registration. (1) A Kentucky farmer as defined at KRS Chapter 217.015(59) and desiring to grow, harvest, process and market Kentucky grown food products shall make written request for registration on Form DFS-250, incorporate by reference in this administrative regulation and also available at the Web site, <http://chs.ky.gov/publichealth/Food-Program.htm>, at local health departments, and from University of Kentucky Extension Offices.

(2) The application for registration shall include the following information and attachments:

(a) The physical address and acreage of the farmland on which the primary food product ingredients are to be grown; and the name and address of the property owner if not owned by the farmer;

(b) The farmer's name and the address of the primary residence occupied by the farmer.

(c) Type of water source. Sufficient potable water for the needs of the facility shall be provided from a source constructed, maintained, and operated pursuant to applicable requirements of the Natural Resources and Environmental Protection Cabinet (NREPC), 401 KAR Chapter 8. A farmer with a nonmunicipal water source shall submit to the cabinet documentation from NREPC that the water source is approved; and

(d) Type of sewage disposal. Sewage, including liquid waste, shall be disposed of by a public sewage system, or if a public sewer system is not available, sewage disposal shall be made into a private sewage disposal system designed, constructed and operated in accordance with the requirements of the cabinet or the Natural Resources and Environmental Protection Cabinet, 902 KAR Chapter 10 and 401 KAR Chapter 5.

(3) Prior to marketing home-based products, the application for home-based processor, along with the required water source approval, shall be submitted to the cabinet or the local health department. Applications received by local health departments shall be forwarded to the cabinet.

(4) A home-based processor registration shall be valid for one (1) year, unless previously suspended or revoked, and shall be renewable annually. Home-based processor registrations shall expire March 31 of each year.

(5) Home-based processors shall follow current good manufacturing practices as outlined in 21 C.F.R. Part 110.

(6) Home-based processed food products shall be labeled in accordance with KRS 217.005 to 217.215.

(7) Food products shall only be marketed by the registered home-based processor.

(8) Food products processed by a home-based processor shall be nonpotentially hazardous. Crème filled pies, custard, custard pies, pies with meringue topping, cheesecake, cream, custard and meringue pastries, raw seed sprouts and garlic-in-oil products shall not be prepared in a home and marketed for sale by a home-based processor. Vacuum packaging of foods in containers other than mason-type jars, shall be prohibited. Canning of pureed baby foods shall be prohibited.

(9) All jams and jellies processed in less than ten (10) minutes shall be filled into sterile empty jars. Sterilization shall be accomplished by submerging the jars in boiling water for at least ten (10) minutes at altitudes of less than 1,000 feet above sea level. Jars should be boiled for one (1) additional minute for each additional 1,000 feet elevation above sea level.

(10) Home-based processed food products shall be stored separate and apart from residential foods and protected from contamination, insects, rodents, pests, water leaks, dust, dirt and other contaminants.

(11) Products processed by home-based processors shall be packaged in food grade material.

(12) Products processed by home-based processors shall not be used or offered for consumption in a retail food establishment, by internet sales, or sold in interstate commerce.

(13) Pets shall not be permitted in the kitchen and shall be kept out of food preparation areas during home-based processing related activities.

(14) Mop water shall not be disposed of in the dishwashing sink.

(15) Children under age twelve (12) shall not be permitted in the kitchen area during home-based processing related activities.

(16) Inspection of home-based processor facilities shall be made for the purpose of:

(a) Investigating compliance with KRS 217.005 to 217.215 or this administrative regulation; or

(b) Upon complaint.

(17) Vehicles used in transporting home-based processed food products shall be maintained in a safe and sanitary manner in accordance with KRS 217.290. Vehicle compartments used to

transport animals shall not be used for transporting home-based processed foods.

(18) If boiling water canners are utilized in the production of foods by a home-based processor, the canner shall be deep enough so that at least one (1) inch of briskly boiling water will be over the tops of jars during processing. If an electric range is used for heating, the boiling water canner shall have a flat bottom and shall be no more than four (4) inches wider than the element on which it is heated.

(19) The cabinet shall maintain a record of all registered home-based processors and shall provide this information to the University of Kentucky Cooperative Extension Office and Local Health Departments.

Section 3.] Home-based Microprocessor Certification. (1) A Kentucky farmer[, as defined at KRS Chapter 217.015(59), and] desiring to grow, harvest, process, and market Kentucky grown microprocessed food products and participate in the training program shall submit a DFS-251, Application for Home-based Microprocessor, which is available from the Kentucky Food Safety Branch[make written request for certification on Form DFS-252, incorporated by reference in this administrative regulation and also available at the Web site, <http://chs.ky.gov/publichealth/Food-Program.htm>, at local health departments,] or at University of Kentucky Extension Service Office.

(2) The application for certification shall include the following information and attachments:

(a) Name and address, including:

1. The physical address and acreage of the farmland on which the primary food product ingredients are to be grown; and

2. The name and address of the property owner if not owned by the farmer;

(b) The name and address of the primary residence occupied by the farmer;

(c) Type of water source. Sufficient potable water for the needs of the facility shall be provided from a source constructed, maintained, and operated pursuant to applicable requirements established in 401 KAR Chapter 8[as stated in Section 2(2)(c) of this administrative regulation];

(d) Type of sewage disposal. Sewage, including liquid waste, shall be disposed of by a public sewage system, or if a public sewer system is not available, sewage disposal shall be made into a private sewage disposal system designed, constructed, and operated in accordance with the requirements of [the cabinet or the Natural Resources and Environmental Protection Cabinet,] 902 KAR Chapter 10 and 401 KAR Chapter 5;

(e) A listing of the food products to be processed and marketed by the farmer;

(f)[1.] Verification of attendance and successful completion of the Food Processing School including:

1. Verification of attendance and successful completion of the Food Processing School provided by the University of Kentucky Extension Office in compliance with KRS 217.015(58)(a) by the farmer for the manufacture of the microprocessed food products; or

2. Verification of attendance and successful completion of a food processing school approved pursuant to [21 C.F.R. 114.10 or] 21 C.F.R. 114.10[, and complete the filing process as defined in paragraph (g) of this subsection]; and

(g) Documentation from the processing authority for an established scheduled process for each food item that is to be processed by the home-based microprocessor.

1. Any change in the recipe shall constitute a recipe deviation, and a new review and approval shall be required from the processing authority prior to processing.

2. Each additional product shall have a separate written established scheduled process and shall be submitted to the processing authority for review prior to processing.

3. All established scheduled processes shall be maintained and made available upon request by the cabinet.

(3) Prior to marketing home-based products, the application for home-based microprocessor, along with the required water source approval, shall be submitted to the cabinet [or the local health department].

(4) ~~Food products processed by a home-based microprocessor shall be nonpotentially hazardous. Crème filled pies, custard, custard pies, pies with meringue topping, cheese cake, cream, custard and meringue pastries, raw seed sprouts and garlic-in-oil products shall not be prepared in a home and marketed for sale by a home-based microprocessor. Vacuum packaging of foods in containers other than mason-type jars shall be prohibited.~~

(5) Product labels for home-based microprocessed foods shall be labeled in accordance with KRS 217.005 to 217.215. Draft copies of all home-based microprocessed food product labels shall be submitted for review by the cabinet prior to labeling and marketing.

(5) The certification requirements established in this subsection shall apply to a home-based microprocessor.

(a) ~~(6)~~ Each home-based microprocessor certification shall be issued only for the premises and person named in the application and shall be nontransferable.

(b) ~~The certification~~ Certifications shall be posted in a conspicuous place in the processing establishment and a copy shall be posted at the point of sale.

(c) Home-based microprocessed food products shall only be marketed by the certificate holder that processed the food product.

(6) ~~(7)~~ Each home-based microprocessor certification shall be valid for one (1) year, unless previously suspended or revoked. A home-based microprocessor certification ~~certifications~~ shall expire March 31 of each year and shall be renewable annually upon submittal of an application accompanied by an annual fee of fifty (50) dollars.

(7) ~~(8)~~ Products made by home-based microprocessors shall not be used or offered for consumption in a retail food establishment, by internet sales or in interstate commerce.

(9) Attendance ~~at~~ of a food processing school as required by ~~defined in~~ subsection (2)(f) of this section shall be required every three (3) years or upon any change or addition of food products to be processed.

(10) ~~Mop water shall not be disposed of in the dishwashing sink.~~

Section 4. Food Supplies. (1) The primary ingredients used in home-based microprocessed products shall have been grown by the microprocessor. All other ingredients in the products shall be in sound condition, safe for human consumption, shall be obtained from an approved commercially manufactured source, stored and protected separate and apart from personal use food ingredients.

(2) ~~Ice used in the manufacture of food products shall have been commercially produced or made with potable water.]~~

Section 5. Production Standards for Home-based Microprocessors ~~Food Protection~~. (1) At all times, including while being stored, prepared, offered, dispensed, or transported, food ingredients and processed products shall be protected from:

(a) Cross-contamination; and

(b) Potential contamination by:

1. Insects;
2. Insecticides;
3. Rodents;
4. Rodenticides;
5. Unclean equipment or utensils;
6. Unnecessary hand contact;
7. Draining;
8. Overhead leakage or condensation;
9. Dust;
10. Coughs;
11. Sneezes; or
12. Other agents of public health significance.

(2) ~~[Prior to processing, the temperature of potentially-hazardous foods shall be forty-one (41) degrees Fahrenheit or below, or 140 degrees Fahrenheit or above, except during necessary times of preparation.~~

(3) ~~Only food-grade lime shall be used for soaking foods prior to pickling.~~

(4) ~~Jar seals for microprocessed foods shall be inspected within twelve (12) to twenty-four (24) hours after cooling. Containers inspected and found to not be properly sealed shall be~~

~~discarded. Reprocessing of unsealed jars shall be prohibited.~~

(5) ~~For each microprocessed food item, the headspace above the food in a jar and below its lid shall be in compliance with the established scheduled process for that food.~~

(6) ~~Hermetically-sealed packages shall be handled so as to maintain product and container integrity.~~

(7) ~~Pets and other animals shall not be allowed~~ permitted in the kitchen and shall be kept out of food preparation areas during microprocessing related activities.

(3) ~~(8)~~ Children under age twelve (12) shall not be allowed ~~permitted~~ in the kitchen area during microprocessing related activities.

(4) ~~Smoking or use of any form of tobacco shall not be allowed in the kitchen area during microprocessing related activities.~~

(5) ~~(9)~~ Laundry facilities may be present in the residential kitchen, but shall not be used during microprocessing related activities.

(6) ~~(10)~~ Home-based microprocessors shall restrict the use of the food preparation area during any processing activity. Cooking facilities, in the residential kitchen, shall not be available for personal use during home-based microprocessing activities.

(7) ~~(11)~~ Vehicles used in transporting home-based microprocessed food products shall be maintained in a safe and sanitary manner in accordance with KRS 217.290. Vehicle compartments used to transport animals shall not be used for transporting home-based microprocessed foods.

(8) Products made by a home-based microprocessor shall not be used or offered for consumption in a retail food establishment or through interstate commerce.

(9) Food Supplies.

(a) The primary ingredients used in home-based microprocessed products shall have been grown by the microprocessor.

(b) All other ingredients in the products shall be in sound condition, safe for human consumption, obtained from an approved commercially manufactured source, and stored and protected separate and apart from personal use food ingredients.

(c) Prior to processing, the temperature of potentially-hazardous foods shall be forty-one (41) degrees Fahrenheit or below, or 135 degrees Fahrenheit or above, except during necessary times of preparation.

(d) Only food-grade lime shall be used for soaking foods prior to pickling.

(e) Jar seals for microprocessed foods shall be inspected within twelve (12) to twenty-four (24) hours after cooling. A container inspected and found to not be properly sealed shall be discarded. Reprocessing of an unsealed jar shall be prohibited.

(f) For each microprocessed food item, the headspace above the food in a jar and below its lid shall be in compliance with the established scheduled process for that food.

(g) Hermetically-sealed packages shall be handled so as to maintain product and container integrity.

(h) A product processed by a home-based microprocessor shall be packaged in food grade material.

(10) ~~(a)~~ Section 6. Food Preparation. (1) Food shall be prepared:

1. ~~(a)~~ With a minimum of bare hand contact;

2. ~~(b)~~ On a food-contact surface; and

3. ~~(c)~~ With clean utensils that have been sanitized.

(b) ~~(2)~~ Raw fruits and raw vegetables that will be cooked, cut, or combined with other ingredients or that will be otherwise processed into food products by the home-based microprocessor shall first be thoroughly cleaned with potable water.

(11) Equipment and utensils.

(a) Equipment.

1. Equipment shall be deemed adequate by the processing authority for the food being processed. Use of boiling water canners shall be prohibited for processing of low-acid canned foods.

2. Open-kettle canning and the processing of freshly-filled jars in a conventional oven, microwave oven, or dishwasher shall be prohibited.

3. All low-acid food shall be sterilized at temperatures of 240 to

250 degrees Fahrenheit, in pressure canners operated at ten (10) to fifteen (15) PSIG as measured by a dial gauge, or weighted gauge if deemed appropriate by the processing authority. The processing authority shall ensure that each weighted-gauge pressure canner utilized by a microprocessor is operated at the correct pressure for the corresponding altitude.

4. A pressure canner shall not have been manufactured prior to year 2000 and the manufacturer shall currently be in business with the ability to provide canner parts and calibration of temperature dial gauges.

5. A pressure canner utilized in the microprocessing of foods shall, at minimum, be of a sixteen (16) quart capacity, which will contain seven (7) quart jars. Use of pressure saucepans with less than sixteen (16) quart capacities shall be prohibited.

6. Each temperature dial gauge shall be annually verified for accuracy by the manufacturer of the canner or other qualified laboratory. Verification records shall be maintained by the home-based microprocessor and shall be made available to the cabinet upon request.

7. A timing device shall be available and used to verify appropriate processing time as designated in the established scheduled process.

8. Only regular and wide-mouth mason-type, threaded, home-canning jars with self-sealing, two (2) piece canning lids with screw bands shall be used for microprocessed foods. Mayonnaise-type jars, jars with wire bails and glass caps, and one (1) piece zinc porcelain-lined caps shall be prohibited.

(b) Equipment and utensils shall be:

1. Constructed and repaired with safe materials, including finishing materials;

2. Corrosion resistant and nonabsorbent;

3. Maintained in good repair; and

4. Smooth, easily cleanable, and durable under conditions of normal use.

(c) Single-service articles shall be made from clean, sanitary, and safe materials.

(d) Equipment, utensils, and single-service articles shall not impart odors, color, taste, or contaminants to food.

(e) Single-service and single-use articles shall not be reused.

(f) Safe plastic or rubber-like materials that are resistant, under normal conditions of use, to scratching, scoring, decomposition, crazing, chipping, or distortion, and are of sufficient weight and thickness to permit cleaning and sanitizing by normal ware-washing methods shall be permitted for repeated use.

[Section 7. Food Display and Marketing. All food on display shall be protected from contamination.]

Section 6. Sanitation Requirements for Home-based Microprocessors[8. Farmer or Processing Assistants].

(1) A farmer or processing assistant[assistants] shall not process food in a home-based microprocessing facility while there is a likelihood of contaminating food or a food-contact surface, or transmitting a disease to another person, if the individual is:

(a) Infected with a communicable disease that can be passed by food;

(b) A carrier of an organism that causes a communicable disease;

(c) Affected with a boil, infected wound, or acute respiratory infection; or

(d) Has a symptom caused by illness, infection, or other source that is associated with an acute gastrointestinal illness such as diarrhea, fever, vomiting, jaundice, or sore throat with fever.

(2)(a) Each person engaged in a food preparation and ware-washing operation of a home-based microprocessing facility shall wash his or her hands and exposed portions of arms thoroughly, with soap or detergent and warm water[in accordance with Section 4(8) of this administrative regulation]:

1. [(a)] Before starting work;

2. [(b)] After smoking;

3. [(c)] After eating;

4. [(d)] After handling nonwashed fruits and vegetables;

5. [(e)] After using the toilet; and

6. [(f)] As often as is necessary during work to keep hands and

forearms clean.

(b) A hand-washing facility shall be installed pursuant to the requirements of 815 KAR 7:125, and shall be conveniently located.

(c) A hand-washing facility shall be provided with hot and cold potable water.

(d) A supply of hand-cleaning soap or detergent shall be available at each hand-washing facility.

(e) A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each hand-washing facility.

(f) An easily-cleanable waste receptacle shall be conveniently located near the hand-washing facility.

(g) A soap dispenser and disposable towels for use in hand-washing shall be provided at the kitchen sink. This sink shall not be used for hand-washing after toilet use.

(h) Hand-washing facilities, soap, detergent dispensers, hand-drying devices, and all related facilities shall be kept clean and in good repair.

(3) Each worker of a home-based microprocessing facility shall keep his or her fingernails trimmed and clean.

(4) Each worker of a home-based microprocessing facility shall wear clean outer clothing.

(5) Each worker in the food preparation area of a home-based microprocessing facility shall wear a hairnet, hat, scarf, or similar hair covering that effectively restrains head and facial hair.

(6) Each worker of a home-based microprocessing facility shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during working periods.

(7) Each worker of a home-based microprocessing facility shall consume food or use tobacco only in designated areas. A designated area shall not be located in a food preparation area or in an area where the worker's activity may result in contamination of food, water, equipment, or utensils.

(8)[Section 9. Equipment and Utensils. (1) Equipment.

(a) Equipment shall be deemed adequate by the processing authority for the food being processed. Use of boiling water canners is prohibited for processing of low-acid canned foods;

(b) Open-kettle canning and the processing of freshly-filled jars in conventional ovens, microwave ovens, and dishwashers shall be prohibited;

(c) All low-acid food shall be sterilized at temperatures of 240 to 250 degrees Fahrenheit, in pressure canners operated at ten (10) to fifteen (15) PSIG as measured by a dial gauge, or weighted gauge if deemed appropriate by the processing authority. The processing authority shall ensure that weighted-gauge pressure canners utilized by microprocessors are operated at the correct pressure for the corresponding altitude;

(d) Pressure canners shall not have been manufactured later than five (5) years prior to the effective date of this administrative regulation and the manufacturer shall currently be in business with the ability to provide canner parts and calibration of temperature dial gauges;

(e) Pressure canners utilized in the microprocessing of foods shall, at minimum, be of a sixteen (16) quart capacity, which will contain seven (7) quart jars. Use of pressure saucepans with less than sixteen (16) quart capacities shall be prohibited;

(f) Temperature dial gauges shall be annually verified for accuracy by the manufacturer of the canner or other qualified laboratory. Verification records shall be maintained by the home-based microprocessor and shall be made available to the cabinet upon request;

(g) A timing device shall be available and used to verify appropriate processing time as designated in the established scheduled process; and

(h) Only regular and wide-mouth mason-type, threaded, home-canning jars with self-sealing, two (2) piece canning lids with screw bands shall be used for microprocessed foods. Mayonnaise-type jars, jars with wire bails and glass caps, and one (1) piece zinc porcelain-lined caps shall be prohibited.

(2) Equipment and utensils shall be:

(a) Constructed and repaired with safe materials, including finishing materials;

(b) Corrosion resistant and nonabsorbent;

(c) Maintained in good repair; and
(d) Smooth, easily cleanable, and durable under conditions of normal use.

(3) Single-service articles shall be made from clean, sanitary, and safe materials.

(4) Equipment, utensils, and single-service articles shall not impart odors, color, taste, or contaminants to food.

(5) Single-service and single-use articles shall not be reused.

(6) Safe plastic or rubber-like materials that are resistant, under normal conditions of use, to scratching, scoring, decomposition, crazing, chipping, or distortion, and are of sufficient weight and thickness to permit cleaning and sanitizing by normal ware-washing methods shall be permitted for repeated use.

Section 10. Cleaning and Sanitizing of Equipment and Utensils. (a)(1) Food utensils and equipment shall be stored in a manner to avoid contamination.

(b)(2) Food-contact surfaces and sinks shall be smooth and easily cleanable.

(c)(3) Food-contact equipment, surfaces, and utensils shall be cleaned and sanitized prior to microprocessing related activities and after each use.

(d)(4) Sinks, basins or other receptacles used for cleaning of equipment and utensils shall be cleaned and sanitized before use.

(e)(5) Equipment and utensils shall be pre-rinsed or pre-scraped and, if necessary, presoaked to remove food particles and soil.

(f)(6) Manual cleaning and sanitizing shall be conducted as follows:

1.(a) For manual cleaning and sanitizing of cooking equipment, and utensils, three (3) compartments shall be provided and used. A two (2) compartment sink, with an additional portable tub may be used;

2.(b) Each of the following five (5) steps of the ware-washing process shall be completed:

a.1. Pre-rinsing or scraping;

b.2. Washing with hot detergent solution;

c.3. Rinsing to remove abrasives and cleaning chemicals;

d.4. Sanitizing, using a method approved by the applicable provisions of [KRS Chapter 217, Kentucky Food, Drug, and Cosmetic Act, and] 902 KAR 45:005, Section 2[47], the Kentucky[State Retail] Food Code; and

e.5. Air-drying and draining.

3.(e) Washing, rinsing, and sanitizing solutions shall be maintained in a clean condition;

4.(d) The washing solution shall be maintained at a minimum temperature of ninety-five (95) degrees Fahrenheit; and

5.(e) Chemical sanitizer shall not have a concentration higher than the maximum permitted by law. A test kit or other device shall be provided to measure the parts per million concentration of the solution.

(g)(7) Mechanical cleaning and sanitizing shall be conducted as established in this subsection. [follows:] A domestic or home-style dishwasher may be used if the [following] performance criteria established in this subsection are met.

1.-(a) The dishwasher shall effectively remove physical solids from all surfaces of dishes.

2.-(b) The dishwasher shall sanitize dishes by the application of sufficient accumulative heat.

3.-(e) The operator shall provide and use daily a maximum registering thermometer or a heat thermal label to determine that the dishwasher's internal temperature is at least 150 degrees Fahrenheit after the final rinse and drying cycle.[-; and]

4.-(d) The dishwasher shall be installed and operated according to manufacturer's instructions for the highest level possible when sanitizing the kitchen facility's [facilities] utensils and tableware. A copy of the manufacturer's instructions shall be available on the premises.

(h)(8) There shall be sufficient area or facilities, such as portable dish tubs and drain boards, for the proper handling of:

1.-(a) Soiled utensils prior to washing; and

2.-(b) Cleaned utensils after sanitizing.

(i)(9) Manually-cleaned equipment, utensils, and tableware shall be air-dried.

(9)[Section 14.] Toilet Facilities.

(a)(1) Toilet facilities shall be:

1. Installed pursuant to requirements of [the State Plumbing Code, KRS Chapter 318 and] 815 KAR 7:125.[Chapter 20, shall be]

2. Conveniently located.[-; and] [shall be]

3. Accessible to workers at all times.

(b)(2) A bathroom opening to the kitchen or dining area shall have adequate ventilation and a self-closing door. Ventilation may be provided by a window or by mechanical means. A soap dispenser and disposable towels shall be provided for hand washing in a bathroom used by a food handler.

(3) A toilet facility, including toilet fixtures and a related vestibule, shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials.

(10)[Section 12. Hand-washing Facilities for Processors and Processing Assistants. (1) Hand-washing facilities shall be installed pursuant to the requirements of the State Plumbing Code, KRS Chapter 318 and 815 KAR 20:191, and shall be conveniently located.

(2) A hand-washing facility shall be provided with hot and cold potable water.

(3) A supply of hand-cleansing soap or detergent shall be available from a dispensing unit at each hand-washing facility. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each hand-washing facility. Common or cloth towels shall be prohibited. Easily-cleanable waste receptacles shall be conveniently located near the hand-washing facility.

(4) A soap dispenser and disposable towels for use in hand washing shall be provided at the kitchen sink. This sink shall not be used for hand washing after toilet use. After visiting the toilet, hands shall first be washed in an approved hand-washing facility before they are washed in the kitchen sink.

(5) Hand-washing facilities, soap or detergent dispensers, hand-drying devices, and all related facilities shall be kept clean and in good repair.

Section 13. Floors, Walls, Ceilings, and Lighting. The floors, walls, ceilings, and attached equipment in food preparation and storage areas and in workers bathrooms of a home-based microprocessor facility shall be fabricated from easily cleanable material. [shall be] maintained in good repair, and kept clean.

(11) Artificial lighting shall be provided sufficient to facilitate sanitary food handling and cleaning of facilities.

(12) The use and storage of [Section 14. Insect and Rodent Control. (1) Effective measures shall be utilized to minimize the entry, presence, and propagation of rodents, flies, cockroaches, or of pests. The premises shall be maintained in a condition that is pest free and that prevents the harborage or feeding of insects or rodents.

(2) pesticides and rodenticides.

(a) A person shall not apply insecticides or rodenticides except:

1. In accordance with requirements of KRS 217B.500 to 217B.990 and 302 KAR Chapter 29;

2. In accordance with the manufacturer's labeling; and

3. In such a way that food, food-contact surfaces, and the supply of potable water are not contaminated.

(b) Open pesticide or rodenticide bait boxes shall not be used.[-;]

(c) Pesticides, rodenticides, and other toxic materials shall be stored apart from food, equipment, and utensils. Every container of toxic material shall be clearly labeled for easy identification.[-; and]

(d) Pesticides and rodenticides shall be stored separated from other toxic and chemical compounds at all times.

(13)(3) Garbage and refuse shall be disposed of often enough and in a manner to prevent the development of objectionable odors and the attraction of pests. If garbage or refuse is burned on the premises, it shall be done by controlled incineration that prevents the escape of particulate matter pursuant to 401[applicable administrative regulations of the Cabinet for Natural Resources and Environmental Protection, 901] KAR Chapter 63.

Section 7[45]. Microprocessors Utilizing Permitted Kitchens. (1) A microprocessor~~[Microprocessors]~~ may elect to process~~[their]~~ food products utilizing a kitchen that currently holds a valid permit to operate issued by the cabinet.

(2) A microprocessor~~[Microprocessors]~~ utilizing a permitted kitchen shall comply with Sections 2, 4, 5, and 6~~[3 through 14]~~ of this administrative regulation.~~;~~

(a) A microprocessor~~[Microprocessors]~~ utilizing a permitted kitchen shall provide a copy of a signed, written agreement between the facility owner and the farmer that authorizes the use of the permitted kitchen for microprocessing and the name, address, and permit number of the facility.~~;~~

(b) Microprocessed food products shall not be made during periods of time when the permitted facility is in operation.~~;~~

(c) Microprocessed food products shall be stored at the ~~farmer's~~~~[farmers]~~ primary residence and shall be maintained separate and apart from the personal use food supplies.~~;~~ and

(d) Microprocessed food products made in a permitted kitchen shall only be sold at farmers markets, certified roadside stands, or from the microprocessor's farm.

Section 8[46]. Plan Review of Future Construction. If a kitchen or worker bathroom facility of a home-based microprocessor is constructed or extensively remodeled, properly prepared plans and specifications for the construction, remodeling, or alteration, showing layout, construction materials, location, size, and type of fixed equipment facilities, and a plumbing riser diagram shall be submitted to the local health department for approval before the work is begun.

Section 9[47]. Inspections, Notices, Records. (1) Inspections. At least once every ~~four (4)~~~~[two (2)]~~ years, the cabinet shall inspect each home-based microprocessor and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) Inspection records. The cabinet representative inspecting a home-based microprocessor shall record the findings on Form DFS 252, Home-based Processor/Microprocessor Inspection Report, and shall furnish a copy of the inspection report to the certificate holder or his representative in charge.

(3) Issuances of notices. If an inspection reveals a violation of this administrative regulation, the cabinet shall notify the certificate holder or his representative in charge. In the notification, the cabinet shall:

(a) Establish the specific violations found; and

(b) Establish a specific and reasonable period of time for the correction of the violations found pursuant to this paragraph~~[the following provisions]~~. The report of inspection shall state:

1. Failure to comply with a notice from the cabinet or local health department, or with a time limit for correction of a violation, shall result in regulatory action up to and including suspension of the certificate, as provided in KRS 217.126;

2. An opportunity for appeal from an adverse notice or inspection finding shall be provided if a written request is filed with the cabinet within ten (10) days following service of notice, in accordance with 902 KAR 1:400; and

3. Failure to comply with a notice issued in accordance with the provisions of this administrative regulation may result in suspension of the certificate.

(4) Service of notice. A notice provided for under this section shall be properly served if a copy of the DFS-252 inspection report form or other notice has been delivered personally to the certificate holder or person in charge, or the notice has been sent by registered or certified mail, return receipt requested, to the last known address of the certificate holder. A copy of the notice shall be filed with the cabinet.

(5) The cabinet shall maintain a record of all certified home-based microprocessors and shall provide this information to the University of Kentucky Cooperative Extension Service Office and local health departments.

Section 10[48]. Certificate Suspension, Revocation, or Denial.

(1) A home-based microprocessor certificate shall be suspended

immediately, upon notice to the certificate holder, if:

(a) The cabinet has reason to believe that an imminent public health hazard exists; or

(b) The certificate holder has interfered with the cabinet in the performance of its duties.~~;~~

(2) Except as provided in subsection (1) of this section~~[In all other instances]~~, the cabinet shall allow a certificate holder a reasonable opportunity to correct a violation. The cabinet shall notify, in writing, a certificate holder or operator who fails to comply with a written notice issued under the provisions of this administrative regulation~~;~~ that the certificate shall be suspended at the end of ten (10) days following service of the notice, unless a written request~~[for]~~ is filed in accordance with 902 KAR 1:400.

(3) Reinstatement of suspended certificate. A person whose certificate has been suspended may make application for a reinspection in accordance with 902 KAR 1:400~~[for the purpose of reinstatement of the certificate. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that, in his opinion, the conditions causing suspension of the certificate have been corrected, the cabinet shall make a reinspection. If the applicant is in compliance with the requirements of this administrative regulation, the certificate shall be reinstated]~~.

(4) Revocation of certificate. For serious or repeated violations of the requirements of this administrative regulation, or for interference with the cabinet in the performance of its duties, a certificate may be permanently revoked. Before a permanent revocation action is taken, the cabinet shall notify the certificate holder in writing, stating the reasons for which the certificate is subject to revocation and advising that the certificate shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an appeal is filed in accordance with 902 KAR 1:400. A certificate may be suspended for cause pending revocation.

(5) Denial. Any applicant denied the issuance of a certificate by the cabinet within ten (10) days of service of the notice may appeal the certificate denial in accordance with 902 KAR 1:400.

Section 11[49]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "DFS-250, Application for Home-based Processors" (6/03);
- (b) "DFS-251, Application for Home-based Microprocessor", 05/18~~[(6/03)]~~; and
- (c) "DFS-252, Home-based Processor/Microprocessor Inspection Report", 05/18~~[(6/03)]~~;
- (d) "DFS-234, Certificate or Registration to Operate" (4/97);
- (e) "DFS-214, Enforcement Notice" (8/96);
- (f) "DFS-212, Request for Conference" (10/96);
- (g) "DFS-213, Notice for Conference" (8/96); and
- (h) "DFS-215, Application for Reinstatement of Home-based Microprocessor Certification" (2/95).]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JEFFREY D. HOWARD, JR., M.D., Acting Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: September 12, 2018

FILED WITH LRC: September 13, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on October 22, 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 October 15, 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 October 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, phone (502) 564-3970, email julied.brooks@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for all home-based processed foods and distinguishes between a home-based processor and a home-based microprocessor.

(b) The necessity of this administrative regulation: KRS 217.125 authorizes the secretary of the cabinet to promulgate administrative regulations consistent with those promulgated under the federal act and the Fair Packaging and Labeling Act. KRS 217.137 authorizes the secretary to promulgate administrative regulations for the specific circumstances of home-based microprocessors. KRS 217.136 specifically excludes home-based processors from KRS 217.125 when in full compliance with the provisions of the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation ensures home-based processors are in compliance with KRS 217.136. In addition, this administrative regulation establishes the provisions for home-based microprocessors as required by KRS 217.137 and ensures all applicants for home-based microprocessors have completed the courses required by KRS 217.138.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets standards that preserve public health while allowing for economic opportunity for home-based processors and microprocessors to produce and process food in their home kitchens.

(2) If 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 helps to distinguish between a home-based processor and a home-based microprocessor by redefining the requirements for a home-based processor.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address changes in statute as a result of 18 RS HB 263 and is consistent with the governor's Red Tape Reduction initiative.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment removes the requirements for home-based processors to register with the Food Safety Branch, that a home-based processor grow a primary ingredient in the products produced or processed, and revises the locations at which their products may be offered for sale.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will no longer require the Food Safety Branch to register home-based processors. While the cabinet may still inspect a home-based processor if a product is misbranded or adulterated, or if a consumer complaint is filed, a routine inspection will not be required. There are no substantive changes to the Home-based Microprocessor requirements as the existing provisions were reworded and rearranged for clarity and compliance with KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 776 Home-based Processors and 140 Microprocessors currently operating under the Farmers Market administrative regulation. This program is administered by

the Food Safety Branch within the Department for Public Health.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendment to this administrative regulation removes the provision that home-based processors register with the Food Safety Branch, eliminates requirements that they grow a primary ingredient in their food products, and expands locations of where they may offer their products for sale.

(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: Those wishing to be a home-based processor will only have to ensure compliance with KRS 217.136 and Section 2 of this administrative regulation. Those wishing to be a home-based microprocessor will continue to register with the Food Safety Branch and meet all provisions in KRS 217.125, KRS 217.137, and KRS 217.138.

(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 anticipated costs to home-based processors. The Home-based microprocessors will continue to pay the annual certification fee of \$50.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of 18 RS HB 263, home-based processors will be able to offer products for sale online, at community events and roadside stands. There is no substantive changes for Home-based Microprocessors.

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

(a) Initially: There is no anticipated increase in cost as a result of this amendment.

(b) On a continuing basis: There is no anticipated increase in cost as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds generated by the Home-based Microprocessor certification program.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established for Home-based Processors. The Home-based Microprocessors currently have a set certification fee of \$50.

(9) TIERING: Is tiering applied? Yes, tiering has been applied as there are separate requirements for home-based processors and microprocessors. All home-based processors will be required to comply with KRS 217.136 and the applicable provisions of this administrative regulation. The provisions of this administrative regulation will apply equally to all home-based microprocessors.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 program is administered by the Food Safety Branch within the Department for Public Health, with inspection of the home-based microprocessors conducted by state Food Manufacturing Section Inspectors. Local health departments may refer any complaints received to the Food Safety Branch. The only other entity that may be impacted will be the Division of Water to approve the water source for microprocessors without a municipal water supply.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 217.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Home-based processors do not have a fee. Home-based Microprocessors have a \$50 certification fee.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The 140 Home-based Microprocessors will generate certification fees in the amount of \$7,000. (This amount is unchanged from current fees collected from home-based microprocessors.)

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

(d) How much will it cost to administer this program for subsequent years? No change.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amendment)

907 KAR 1:025. Payment for nursing facility services provided by an intermediate care facility for individuals with an intellectual disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

RELATES TO: KRS 142.363, 42 C.F.R. 413.9, 413.17, 413.85, 413.90, 413.94, 413.98, 413.106, 413.153, 435.1010, 447.272, 483.10, 42 U.S.C. 1395x, 1396a, 1396d[Parts 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 U.S.C. 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s]

STATUTORY AUTHORITY: KRS 142.363(3), 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 205.520(3) authorizes the cabinet by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for nursing facility services provided by an intermediate care facility for individuals with an intellectual[mental-retardation-or-a developmental] disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

Section 1. Definitions. (1) "Allowable cost" means that portion of a facility's cost that is[which may be] allowed by the department in establishing the reimbursement rate.

(2) "Calculated rate" means the rate effective July 1, 1999 and each July 1 thereafter for:

(a) An intermediate care facility for individuals with an intellectual[mental-retardation-or-a developmental] disability (ICF-IID); or

(b) A nursing facility certified as:

1. A dually-licensed pediatric facility; or

2. An institution for mental diseases.

(3) "Cost-based facility" means a facility that[which]:

(a) The department reimburses[shall-reimburse] for all allowable costs; and

(b) Is either:

1. A dually-licensed pediatric facility;

2. An intermediate care facility for individuals with an intellectual[mental-retardation-or-a developmental] disability; or

3. An institution for mental diseases.

(4) "Cost report" means Cost-based Facility Reimbursement Cost Report Instructions and Cost-based Facility Reimbursement Cost Report.

(5) "Department" means the Department for Medicaid Services or its designee.

(6) "IHS Markit Index[Global Insight Index]" means an indication of changes in health care costs from year to year developed by IHS Markit, or its successor organization[Global Insights Index].

(7) "Institution for mental diseases" or "IMD" is defined by 42 C.F.R. 435.1010[means an institution for mental diseases, excluding psychiatric hospitals].

(8) "Nursing facility" or "NF" means that:

(a) The state survey agency has:

1. Granted an NF license to the[a] facility; and

2. Recommended the NF to the department for certification as a Medicaid provider; and

(b) The department has granted certification for Medicaid participation to the NF.

(9) "Nursing facility with an all-inclusive rate unit" means:

(a) A nursing facility with a distinct part ventilator unit; or

(b) A nursing facility with a distinct part brain injury unit.

(10) "Occupancy factor" means a percentage representing:

(a) A facility's actual occupancy level; or

(b) A minimum occupancy level assigned to a facility if its occupancy level is below the minimum level established in Section 3(17) of this administrative regulation.

(11)[(10)] "Prospective rate" means a payment rate for routine services based on allowable costs and other factors that[which], except as specified in Section 3 of this administrative regulation, shall not be retroactively adjusted, either in favor of the facility or the department.

(12)[(11)] "Routine services" means services covered by the Medicaid Program pursuant to 42 C.F.R. 483.10(f)(1)(i)[(e)(ii)].

(13)[(12)] "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health[Long-term] Care.

(14)[(13)] "Upper payment limit" means the aggregate payment amount as described in 42 C.F.R. 447.272 for inpatient services furnished by state-owned or operated ICF-IIDs.

Section 2. Certified Bed Requirements. Except for an intermediate care facility for individuals with an intellectual[mental-retardation-or-a developmental] disability or a nursing facility with an all-inclusive rate unit, a facility that[which] desires to participate in the Medicaid Program shall comply with the following requirements:

(1) If the facility has less than ten (10) beds, all of its beds shall participate in the Medicare Program; or

(2) If the facility has ten (10) or more beds, the facility shall[it shall be required to] have the greater of:

(a) Ten (10) of its Medicaid-certified beds participating in the Medicare Program; or

(b) Twenty (20) percent of its Medicaid-certified beds participating in the Medicare Program.

Section 3. Payment System for a Cost-based Facility. The department's reimbursement system shall include the specific policies, components, or principles established in this section.

(1)(a) Except as specified in this section, prospective payment rates for routine services shall:

1. Be set by the department on a facility-specific basis[.]; and

2. shall Not be subject to retroactive adjustment[except as specified in this section of this administrative regulation].

(b) Prospective rates shall be determined on a cost basis annually, and may be revised on an interim basis by the department.

(c) An adjustment to a prospective rate (subject to the maximum payment for that type of facility) shall be considered if:

1. The facility's increased costs are attributable to:

a. A governmentally imposed minimum wage increase, staffing ratio increase, or [a] level of service increase; and

b. The increase was not included in the IHS Markit[Global Insight] Index;

2. A new licensure requirement or new interpretation of an existing requirement by the appropriate governmental agency as issued in an administrative regulation results in changes that affect all facilities within the class; or

3. The facility experiences a governmentally-imposed displacement of residents.

(d)1. The amount of any prospective rate adjustment resulting from a governmentally-imposed minimum wage increase or licensure requirement change or interpretation as cited in paragraph (c)2. [(2)] of this subsection [of this paragraph] shall not exceed the amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into the following two (2) general areas:

a. Salaries; and

b. Other.

2. The effective date of an interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2)(a) The state shall set a uniform rate year for a cost-based facility (July 1 - June 30) by taking the latest available cost data available as of May 16 of each year and trending the facility costs to July 1 of the rate year. If the latest available cost report data has not been audited or desk-reviewed prior to rate setting for the universal year beginning July 1, a prospective rate based on a cost report that[which] has not been audited or desk-reviewed shall be subject to adjustment when the audit or desk review is completed.

(b) Partial year[, or] budget cost data shall be used if a full year's data[date] is unavailable. Unaudited reports shall be subject to an adjustment to the audited amount.

(c) Other factors relating to costs.

1. If the department has made a separate rate adjustment as compensation to a facility for a minimum wage update, the department shall:

a. Not pay the facility twice for the same costs; and

b. Adjust downward the trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment.

2. If the trending and indexing factors include costs related to a minimum wage increase:

a. The department shall not make a separate rate adjustment; and

b. The minimum wage costs shall not be deleted from the trending and indexing factors.

3. The maximum payment amounts for the prospective universal rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

4. For purposes of administrative ease in computations, normal rounding shall be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents.

(3)(a) Except as provided in paragraph (b) of this subsection, interest expense used in setting a prospective rate shall be an allowable cost if permitted pursuant to 42 C.F.R. 413.153 and if the interest expense:

1. Represents interest on:

a. Long term debt existing at the time the provider enters the program; or

b. New long-term debt, if the proceeds are used to purchase fixed assets relating to the provision of the appropriate level of care.

(i) If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable; and

(ii) The form of indebtedness may include mortgages, bonds, notes, and debentures if the principal is to be repaid over a period in excess of one (1) year; or

2. Is for working capital and operating needs that directly relate to providing patient care. The form of indebtedness may include notes, advances, and various types of receivable financing.

(b) Interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(4) The allowable cost for a service or good purchased by a facility from a related organization shall be the cost to the related organization, unless it ~~is~~[~~can be~~] demonstrated that the related organization is equivalent to a second party supplier.

(a) Except as provided in paragraph (b) of this subsection, an organization shall be considered a related organization if an individual possesses five (5) percent or more of ownership or equity in the facility and the supplying business.

(b) An organization shall not be considered a related organization if fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(5)(a) Except as provided in paragraph (b) of this subsection, the amount allowable for leasing costs shall not exceed the amount ~~that~~[~~which~~] would be allowable based on the computation of historical costs.

(b) The department shall determine the allowable costs of an arrangement based on the costs of the original lease agreement if:

1. A cost-based facility entered into a lease arrangement as an intermediate care facility prior to April 22, 1976;

2. An intermediate care facility for individuals with an intellectual[~~mental retardation or a developmental~~] disability entered into a lease arrangement prior to February 23, 1977; or

3. A nursing facility entered into a lease arrangement as a skilled nursing facility prior to December 1, 1979.

(6) A cost shall be allowable and eligible for reimbursement if the cost is:

(a) Reflective of the provider's actual expenses of providing a service; and

(b) Related to Medicaid patient care pursuant to 42 C.F.R. 413.9.

(7) The following costs shall be allowable:

(a) Costs to related organizations pursuant to 42 C.F.R. 413.17;

(b) Costs of educational activities pursuant to 42 C.F.R. 413.85;

(c) Research costs pursuant to 42 C.F.R. 413.90;

(d) Value of services of nonpaid workers pursuant to 42 C.F.R. 413.94;

(e) Purchase discounts and allowances, and refunds of expenses pursuant to 42 C.F.R. 413.98;

(f) Depreciation on buildings and equipment if a cost is:

1. Identifiable and recorded in the provider's accounting records;

2. Based on historical cost of the asset or, if donated, the fair market value; or

3. Prorated over the estimated useful life of the asset using the straight-line method;

(g) Interest on current and capital indebtedness; or

(h) Professional costs of services of full-time or regular part-time employees not to exceed what a prudent buyer would pay for comparable services.

(8) The following shall not be allowable costs:

(a) The value of services provided by nonpaid members of an organization if there is an agreement with the provider to furnish the services at no cost;

(b) Political contributions;

(c) Legal fees for unsuccessful lawsuits against the Cabinet for Health and Family Services;

(d) Travel and associated costs outside the Commonwealth of Kentucky to conventions, meetings, assemblies, conferences, or any related activities that are not related to NF training or educational purposes; or

(e) Costs related to lobbying.

(9) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the ~~following~~ methods established in this subsection shall be used for changes of ownership occurring before July 18, 1984. ~~;~~

(a) ~~1. Determine~~ The actual gain on the sale of the facility shall be determined; and

2. There shall be added~~Add~~ to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis. ~~;~~

(b) Gain shall be the amount in excess of a seller's depreciated basis as computed under program policies at the time of a sale, excluding the value of goodwill included in the purchase price. ~~;~~

(c) A sale shall be any bona fide transfer of legal ownership from an owner to a new owner for reasonable compensation, which shall usually be fair market value. A lease purchase agreement or other similar arrangement ~~that~~which does not result in a transfer of legal ownership from the original owner to the new owner shall not be considered a sale until legal ownership of the property is transferred. ~~;~~ and

(d) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined pursuant to paragraphs (a) through (c) of this subsection.

(10) Valuation of capital assets.

(a) An increase in valuation in relation to depreciation and interest costs shall not be allowed for a change~~changes~~ of ownership occurring after July 18, 1984 and before October 1, 1985.

(b) For a bona fide change~~changes~~ of ownership entered into on or after October 1, 1985, the depreciation and interest costs shall be increased in valuation in accordance with 42 U.S.C. 1395x(v)(1)(O)(i).

(11)(a) A facility shall maintain and make available any records and data necessary to justify and document:

1. Costs to the facility; and
2. Services performed by the facility. ~~;~~ and

(b) The department shall have unlimited on-site access to all of a facility's fiscal and service records for the purpose of:

1. Accounting;
2. Auditing;
3. Medical review;
4. Utilization control; and
5. Program planning.

(12) The requirements established in this subsection~~following~~ shall apply to an annual cost report. ~~;~~

(a) A year-end cost report shall contain information relating to prior year cost, and shall be used in establishing prospective rates and setting ancillary reimbursement amounts. ~~;~~

(b) A new item or expansion representing a departure from current service levels for which the facility requests prior approval by the department shall be so indicated with a description and rationale as a supplement to the cost report. ~~;~~

(c) Department approval or rejection of a projection or expansion shall be made on a prospective basis in the context that, if an expansion and related costs are approved, they shall be considered when actually incurred as an allowable cost. Rejection of an item or costs shall represent notice that the costs shall not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection. ~~;~~ and

(d) If a request for prior approval of a projection or expansion is made, absence of a response by the department shall not be construed as approval of the item or expansion.

(13)(a) The department shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of an audit in relation to routine and ancillary service cost. ~~;~~

(b) If a field audit is not determined to be necessary, the cost report shall be settled without an audit. ~~;~~

(c) A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for

purposes of adjusting prospective rates ~~that~~which have been set based on unaudited data. ~~;~~ and

(d) Audits may be conducted annually or at less frequent intervals.

(14) A year-end adjustment of the prospective rate and a retroactive cost settlement shall be made if:

(a) An incorrect payment has been made due to a computational error (other than an omission of cost data) discovered in the cost basis or establishment of the prospective rate;

(b) An incorrect payment has been made due to a misrepresentation on the part of a facility (whether intentional or unintentional);

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser; or

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(15) A facility shall provide the services mandated in 42 C.F.R. 483.10(f)(11)(i) ~~(e)(8)(ii))~~.

(16) A facility shall submit to the department the data required for determining the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility with the department's concurrence.

(17) Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with a non-state, privately-owned facility's occupancy factor.

(a) An occupancy factor shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates).

(b) A minimum occupancy factor shall be ninety (90) percent of certified bed days for a nonstate, privately-owned facility ~~facilities~~ with less than ninety (90) percent certified bed occupancy.

(c) The department may impose a lower occupancy factor for a newly constructed or newly participating nonstate, privately-owned facility, or for an existing nonstate, privately-owned facility suffering a patient census decline as a result of a newly constructed or opened competing facility serving the same area.

(d) The department may impose a lower occupancy factor during the first two (2) full fiscal years an existing cost-based nonstate, privately-owned facility participates in the program under this payment system.

(18) A provider tax on a cost-based facility shall be considered an allowable cost.

(19) All other costs shall be:

- (a) Other care-related costs;
- (b) Other operating costs;
- (c) Capital costs; or
- (d) Indirect ancillary costs.

(20) Basic per diem costs for each major cost category (nursing services costs and all other costs) shall be the calculated rate arrived at after otherwise allowable costs are trended and adjusted in accordance with the:

- (a) ~~IHS Markit~~Global Insight Index inflation factor; and
- (b) Occupancy factor for a nonstate, privately owned facility.

(21) Maximum allowable costs shall be the maximum amount ~~that~~which may be allowed to a facility as reasonable cost for the provision of a supply or service while complying with limitations expressed in related federal or state administrative regulations.

(22) Nursing services costs shall be the direct costs associated with nursing services.

(23) State-owned or operated ICF-IID reimbursement for noncapital routine services shall be subject to an upper payment limit. The upper payment limit shall:

(a) Be an aggregate limit on ICF-IID reimbursement paid by the department;

(b) Equal 112 percent of the average of aggregate cost for a state fiscal year;

(c) Be revised annually by the ~~IHS Markit~~~~[Global Insight]~~ Index using the most recent full year of Medicaid paid days;

(d) Not be rebased more frequently than every three (3) years; and

(e) Use as its base year the State Fiscal Year 2005.

(24) The department shall retroactively cost settle state-owned or operated ICF-IID reimbursement for non-capital routine services beginning with the cost report period November 1, 2005 through June 30, 2006, as mandated by the Centers for Medicare and Medicaid Services in accordance with 42 U.S.C. 1396a(a)(30). Retroactive settlement shall entail:

(a) Comparing interim payments with the properly apportioned cost of Medicaid services rendered. Cost report data shall be used to determine properly apportioned costs;

(b) A tentative cost report settlement based upon:

1. Eighty (80) percent of any amount due the facility after a preliminary review is performed; or

2. 100 percent settlement of any liability due the department; and

(c) A final cost report settlement after the allowed billing period has elapsed for the dates of service identified within the cost report.

(25) The department, regarding state-owned or operated ICF-IID reimbursement for noncapital routine services, shall:

(a) Use projected data in order to approximate as closely as possible an interim rate expected to correspond to post-settlement cost; and

(b) Adjust interim rates up or down if necessary to approximate a rate corresponding as close as possible to anticipated post-settlement cost.

Section 4. Prospective Rate Computation for a Cost-based Facility. The prospective rate for a cost-based facility shall reflect~~the following~~:

(1) The adjusted allowable cost for the facility; and

(2) Except for a state-owned or operated facility, the facility's occupancy factor. A state-owned or operated facility's occupancy factor shall not be factored into the facility's prospective rate.

Section 5. Ancillary Services. (1) Except for an intermediate care facility for individuals with an intellectual~~mental retardation or a developmental~~ disability, an ancillary service shall be a direct service for which a charge is customarily billed separately from a per diem rate including:

(a) Ancillary services pursuant to 907 KAR 1:023; or

(b) Laboratory procedures or x-rays if ordered by a:

1. Physician;

2. An advanced practice registered nurse (APRN)~~practitioner (ARNP)]~~ if the laboratory test or x-ray is within the scope of the APRN's~~ARNP's~~ practice; or

3. Physician assistant if:

a. Authorized by the supervising physician; and

b. The laboratory test or x-ray is within the scope of the physician assistant's practice.

(2) For an intermediate care facility for individuals with an intellectual~~mental retardation or a developmental~~ disability, an ancillary service shall be a direct service for which a charge is customarily billed separately from a per diem rate including:

(a) Ancillary services ~~pursuant to~~~~identified in~~ 907 KAR 1:023;

(b) Laboratory procedures or x-rays if ordered by a:

1. Physician;

2. An APRN~~ARNP~~ if the laboratory test or x-ray is within the scope of the APRN's~~ARNP's~~ practice; or

3. Physician assistant if:

a. Authorized by the supervising physician; and

b. The laboratory test or x-ray is within the scope of the physician assistant's practice; or

(c) Psychological or psychiatric therapy.

(3) Ancillary service.

(a) Reimbursement shall be subject to a year-end audit, retroactive adjustment, and final settlement.

(b) Costs shall be subject to allowable cost limits pursuant to 42 C.F.R. 413.106.

(4) For ancillary services, the department shall utilize an NF's prior year cost-to-charge ratio, based on the prior year's cost report as of May 31, as the percentage to be used for interim reimbursement purposes for the following year. (For example, if an NF's cost-to-charge ratio for SFY 2001 is seventy-five (75) percent, the department shall reimburse the NF, on an interim basis, seventy-five (75) percent of billed charges for SFY 2002.)

(5) An NF without a prior year cost report may submit to the department a percentage to be used for interim reimbursement purposes for ancillary services.

(6) If an NF has been reimbursed for ancillary services at an interim percentage above its allowable cost-to-charge ratio for a given year, the department shall decrease the interim percentage for the following year by no more than twenty-five (25) percentage points unless:

(a) A retroactive adjustment of an NF's reimbursement for the prior year reveals an overpayment by the department exceeding twenty-five (25) percent of billed charges; or

(b) An evaluation of an NF's current billed charges indicates that the NF's charges exceed, by greater than twenty-five (25) percent, average billed charges for other comparable facilities serving the same area.

Section 6. Reimbursement for a Nursing Facility With a Distinct Part Ventilator Unit. (1)~~(a) Except as provided by paragraph (b) of this subsection, a nursing facility with a distinct part ventilator unit~~~~[recognized as providing distinct part ventilator dependent care]~~ shall be paid at an all-inclusive~~(excluding drugs which shall be reimbursed through the pharmacy program)]~~ fixed rate for services provided in the distinct part ventilator unit.

(b) The all-inclusive fixed rate required by paragraph (a) of this subsection shall not include payment for drugs, which shall be reimbursed through the pharmacy program established in 907 KAR Chapter 23.

(2) A distinct part ventilator unit shall:

(a) Have a minimum of twenty (20) beds;

(b) Maintain a census of fifteen (15) patients; and

(c) Base the patient census upon:

1. The quarter preceding the beginning of the rate year; or

2. The quarter preceding the quarter for which certification is requested if the facility did not qualify for participation as a distinct part ventilator~~care~~ unit at the beginning of the rate year.

(3)(a) The fixed rate for a hospital-based facility shall be \$583.82 per day effective for SFY 2006, and shall be increased or decreased pursuant to subsection (4) of this section.

(b) The department shall reimburse a freestanding facility:

1. A fixed rate of \$317.29 per day effective for SFY 2006, and shall be increased or decreased pursuant to subsection (4) of this section; and

2. An add-on to the fixed rate in accordance with KRS 142.363.

(4) The fixed rates established in subsection (3) of this section shall be increased or decreased based on the ~~IHS Markit Index~~~~[Data Resource Incorporated]~~ rate of inflation indicator for the nursing facility services for each rate year.

(5) Costs of a distinct part ventilator unit in a nursing facility~~units~~ shall be excluded from allowable costs for purposes of rate setting and settlement of cost-based nursing facility cost reports.

Section 7. Reimbursement for a Nursing Facility with a Distinct Part Brain Injury Unit. (1) In order to participate in the Medicaid Program as a brain injury provider, a nursing facility with a distinct part brain injury unit shall:

(a) Be Medicare and Medicaid certified;

(b) Designate as a brain injury unit at least ten (10) certified beds that are physically contiguous and identifiable;

(c) Be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) after the first year of participation; and

(d) Establish written policies regarding administration and operations, the facility's governing authority, quality assurance, and program evaluation.

(2)(a) Except as provided in subsection (3) of this section and

paragraph (b) of this subsection, a nursing facility with a distinct part[Medicaid-certified] brain injury unit providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive[excluding drugs which shall be reimbursed through the pharmacy program] fixed rate, which shall be set at \$530[\$475] per diem for services provided in the brain injury unit.

(b) The all-inclusive fixed rate required by paragraph (a) of this subsection shall not include payment for drugs, which shall be reimbursed through the pharmacy program established in 907 KAR Chapter 23.

(3)(a) Except as provided by paragraph (b) of this subsection, a facility providing preauthorized specialized rehabilitation services for persons with brain injuries with rehabilitation complicated by neurobehavioral sequelae shall be paid an all-inclusive[excluding drugs which shall be reimbursed through the pharmacy program] negotiated rate, which shall not exceed the facility's usual and customary charges.

(b) The all-inclusive fixed rate required by paragraph (a) of this subsection shall not include payment for drugs, which shall be reimbursed through the pharmacy program established in 907 KAR Chapter 23.

(c) The negotiated rate established pursuant to paragraph (a) of this subsection shall be:

1. A minimum of the approved rate for a Medicaid certified brain injury unit;

2. A maximum of the lesser of the average rate paid by all payers for this service; or

3. The facility's usual and customary charges.

Section 8. Appeal Rights. A participating facility may appeal department decisions as to the application of this administrative regulation as it impacts the facility's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 9. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR) for a Nursing Facility With a Distinct Part Ventilator Unit, a Nursing Facility With a Distinct Part Brain Injury Unit, an IMD, or a Dually-licensed Pediatric Facility.

(1) Prior to an admission of an individual, a facility shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse a facility for a covered service delivered to an individual if the facility complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of a facility's participation in the Medicaid Program.

Section 10. Reimbursement Provisions. (1) Each of the following types of facilities participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation:

(a) A nursing facility with a distinct part[certified] brain injury unit;

(b) A nursing facility with a distinct part ventilator unit;

(c) A nursing facility designated as an institution for mental diseases;

(d) A dually-licensed pediatric facility; or

(e) An intermediate care facility for individuals with an intellectual[~~mental retardation or a developmental~~] disability.

(2) A payment made to a facility governed by this administrative regulation shall:

(a) Be made in accordance with the requirements established in 907 KAR 1:022; and

(b) Be subject to the limits established in 42 C.F.R. 447.272.

Section 11. Supplemental Payments to Dually-licensed Pediatric Facilities. (1) Beginning July 1, 2002 and annually thereafter, the department shall establish a pool of \$550,000 to be distributed to facilities qualifying for supplemental payments in accordance with subsection (2) of this section.

(2) Based upon its pro rata share of Medicaid patient days compared to total patient days of all qualifying facilities, a dually-

licensed pediatric facility shall qualify for a supplemental payment if:

(a) Funding is available; and

(b) The facility:

1. Is located within the Commonwealth of Kentucky;

2. Has a Medicaid occupancy rate at or above eighty-five (85) percent;

3. Only provides services to children under age twenty-one (21); and

4. Has forty (40) or more licensed beds.

(3) A supplemental payment to a facility meeting the criteria established in subsection (2) of this section shall:

(a) Apply to services provided on or after July 1, 2002;

(b) Be made on a quarterly basis; and

(c) Not be subject to the cost settlement provisions established in Section 3 of this administrative regulation.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Cost-based Facility Reimbursement Cost Report Instructions", April 2000 Edition; and

(b) "Cost-based Facility Reimbursement Cost Report", April 2000 Edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JILL R. HUNTER, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: August 30, 2018

FILED WITH LRC: September 13, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 22, 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 October 15, 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 October 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHF5regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonanthan.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for nursing facility services provided by an intermediate care facility for individuals with an intellectual disability, a dual licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the Department for Medicaid Services' reimbursement provisions and requirements for institutional facilities that are reimbursed on a cost basis.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing the Department for Medicaid Services' reimbursement provisions and requirements for institutional facilities that are reimbursed on a cost basis.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the Department for Medicaid Services' reimbursement provisions and requirements for institutional facilities that are reimbursed on a cost basis.

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

(a) How the amendment will change this existing administrative regulation: The amendment addresses distinct part brain injury units. The rate for these units has been increased from \$475 to \$530. Additional changes were made throughout the administrative regulation to comply with the drafting and formatting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to update reimbursement rates and procedures for distinct part brain injury units.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing Medicaid reimbursement rates regarding traumatic brain injury treatment provided in distinct part brain injury units.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by establishing Medicaid reimbursement rates regarding traumatic brain injury treatment provided in distinct part brain injury units.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Any facility providing brain injury treatment in distinct part brain injury units. Currently there is 1 facility.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities will need to provide covered services as a distinct part brain injury unit and submit for reimbursement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Distinct part brain injury units will be able to more effectively provide treatment.

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

(a) Initially: The department anticipates an annual cost of about \$300,000 to implement this administrative regulation.

(b) On a continuing basis: The department anticipates an annual cost of about \$300,000 to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment.

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

(9) Tiering: Is tiering applied? Yes, tiering was applied as there are different rates based on the facility type.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30)(A), 42 U.S.C. 1396a(a)(13)(A), and 42 C.F.R. 447.204.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(30)(A) requires a state's Medicaid program to "provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area." 42 U.S.C. 1396a(a)(13)(A) requires "a public process for determination of rates of payment" for nursing facility services and services for intermediate care facilities for individuals with an intellectual disability. 42 C.F.R. 447.204 requires Medicaid programs' reimbursement to be "sufficient to enlist enough providers so that services under the plan are available to beneficiaries at least to the extent that those services are available to the general population."

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 set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS projects no revenue will initially be generated by the amendment 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? DMS projects no revenue will be generated in subsequent years by the amendment to this administrative regulation.

(c) How much will it cost to administer this program for the first year? The department anticipates an annual cost of about \$300,000 to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The department anticipates an annual cost of about \$300,000 to implement this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:010. Independent non-relative adoptions.

RELATES TO: KRS 199.011, 199.470-~~199.472,~~ 199.473, 199.480, 199.490(3), 199.492, 199.493, 199.500, 199.510, 199.520, 199.540, 199.570, 199.572, 199.590, 199.990, 615.030, Chapter 625[;]

STATUTORY AUTHORITY: KRS 194A.050(1)~~[194A.050(1)],~~ 199.472, 199.473(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate, administer, and enforce administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.472 requires the cabinet to promulgate administrative regulations that establish criteria to be followed for adoption of children. KRS 199.473(3) requires a home study to be made in accordance with administrative regulations promulgated by cabinet. This administrative regulation establishes the procedure for~~in~~ an independent non-relative adoption.

Section 1. Definitions. (1) "Adoption worker" is defined by KRS 199.011(1)~~[(8)].~~

(2) "Assessment" means completion of the DPP-199, Independent Non-Relative Adoption Assessment.

(3)~~[(2)]~~ "Child" is defined by KRS 199.011(4).

(4)~~[(3)]~~ "Child-placing agency" is defined by KRS 199.011(6)~~[(7)].~~

~~[(4)]~~ "Foster family home" is defined by KRS 199.011(9).~~]~~

(5) "[Interstate] Compact administrator" means the individual appointed pursuant to the terms of the Interstate Compact on the Placement of Children (ICPC) who is responsible for the administration and management of the ICPC within the Commonwealth of Kentucky~~is defined by KRS 615.030, Article VII].~~

(6) "Independent non-relative adoption" means an adoption that is not exempted from secretary approval by KRS 199.470(4)~~["Placement services" is defined by KRS 199.011(13)].~~

(7) "Prospective Adoptive Parent" is defined by 922 KAR 1:100(1)~~["Voluntary and informed consent" is defined by KRS 199.011(14)].~~

Section 2. Eligibility. (1) An attorney, child-placing agency, or prospective adoptive parent shall determine if a prospective adoptive parent qualifies for the cabinet to complete the assessment, in accordance with KRS 199.473(3).

(2) If the prospective adoptive family is over the income limit to qualify for the cabinet to complete the family's assessment in accordance with KRS 199.473(3), an assessment shall be:

(a) Completed by a child-placing agency; and

(b) Forwarded to the cabinet along with documentation required in accordance with Section 3 of this administrative regulation.

(3) The cabinet shall:

(a)~~[(4)]~~ Process an application for an independent non-relative adoption in accordance with Section 3 of this administrative regulation; and

(b) Cause an assessment to be completed in accordance with Section 6 of this administrative regulation~~[(2) Assure a home study is conducted according to federal poverty level guidelines in accordance with KRS 199.473(3)].~~

Section 3. Application for Permission to Proceed with an Independent Non-Relative Adoption~~[Place or Receive a Child]~~. (1) To apply for permission to proceed with the filing of a petition~~[place or receive a child]~~ for an independent non-relative adoption, an applicant shall complete and file the "[DPP-187, Independent Non-Relative Adoption Application,]" in accordance with subsections

(2) through (8) of this section.

(2) The DPP-187 shall be:

(a) Signed by:

1. Each prospective~~The proposed~~ adoptive parent~~[or-parents]~~ wishing to receive a child;

2. Each~~The~~ parent~~[or-parents]~~ wishing to place a child; or

3. Both parties involved;

(b) Filed~~in duplicate and~~ in writing with the secretary, in care of the~~Commissioner of the~~ Department for Community Based Services, attention: Adoption Services Branch, 275 E. Main Street, 3C-E, Frankfort, Kentucky 40621;

(c)~~[Filed by means of certified or registered mail;~~

(d)~~]~~ Accompanied by the forms and information listed in subsection (3) of this section; and

(d)~~[(e)]~~ Accompanied by a nonrefundable fee of \$200, required by KRS 199.473(13), which shall be:

1. Sent per submission and not per child;

2. In the form of a certified or cashier's check; and

3.~~2.~~ Payable to the Kentucky State Treasurer.

(3) The following forms and documents shall be filed with the completed DPP-187:

(a) The "[DPP-105, Medical Information on Child's Birth]" or a copy of the child's hospital newborn medical record;

(b) The DPP-108A, Health Information Required for Prospective Adoptive Parent(s) regarding Dependent Children;

(c) A copy of the custody order showing that~~if~~ the child's custody has been awarded to the prospective~~proposed~~ adoptive parent~~];~~

1. A copy of the custody order; and

2. Copies of background checks conducted in accordance with KRS 199.473(8);

(d)~~[(e)]~~ The "[DPP-190, Information to be Obtained from Prospective~~Proposed~~ Adoptive Parent(s)]";~~[(d) The "DPP-190A, Supplemental Information to be Obtained from the Proposed Adoptive Parent(s)";]~~

(e) Verification of current marriage, prior divorce, or death of a prior spouse of the prospective~~proposed~~ adoptive parent;

(f) Most recent tax return or written verification of income from the income source for each prospective~~the proposed~~ adoptive parent;

(g) The "[DPP-108A, Health Information Required for Prospective~~Proposed~~ Adoptive Parent(s) Regarding Dependent Children]" for each child residing in a prospective adoptive parent's home; and

(h) Documentation~~The "DPP-107, Health Information Required for Resource Home Applicants or Adult Household Members", incorporated by reference]~~ in accordance with 922 KAR 1:350, Section 2(8), completed by each prospective~~the proposed~~ adoptive parent and all adult household members.

(4)~~The DPP-187 may be obtained at:~~

(a) ~~Local Department for Community Based Services offices; or]~~

(b) ~~The central office in Frankfort, Kentucky~~

(5)~~The DPP-187 shall be considered officially filed:~~

(a) ~~When received by the Adoption Services Branch~~~~in the office of the Commissioner]~~ of the Department for Community Based Services; and

(b) ~~If it meets the requirements of this section.~~

(5)~~[(6) The DPP-187 shall not be processed if, prior to the receipt of the application, the child was committed to the cabinet by order of the district or circuit court.~~

(7) The cabinet shall return to sender an application that does not meet the requirements of this section~~];~~

(a) ~~An incomplete application; or~~

(b) ~~An application for an unborn child submitted more than thirty (30) days in advance of the child's expected due date.~~

(8) ~~The returned receipt of certified or registered mail shall be proof of the filing of the application].~~

Section 4. Limitations to Filing. (1) In the case of twins who are available and suitable for adoption, the DPP-187 shall not be accepted unless the prospective~~proposed~~ adoptive parent applies to receive both children.

(2) If the DPP-187 for a child has been filed, subsequent applications for the same child shall not be accepted unless the previous DPP-187 has been withdrawn by a written request to the cabinet by one (1) of the parties involved.

(3) If one or both of the placing parents reside outside of Kentucky, the DPP-187 shall not be accepted unless an interstate compact adoption packet is received from the state placing the child in Kentucky.

(4) The DPP-187 shall not be processed if, prior to the receipt of the application, the child was committed to the cabinet by order of the district or circuit court.

Section 5. Interstate Adoptions. (1) An interstate adoption shall be in accordance with KRS 199.473(12).

(2) A prospective adoptive parent who resides in a state other than Kentucky shall:

(a) Meet application requirements of Section 3 of this administrative regulation; and

(b) Submit the DPP-187, but may substitute other forms required in Section 3 of this administrative regulation with comparable forms from the prospective adoptive parent's state of residence.

Section 6. Preadoptive Placement. (1)(a) The child shall not be in the physical care, control, or custody of a prospective adoptive parent, unless a circuit court grants temporary custody in accordance with KRS 199.473(7) and (8).

(b) If the child is found in the physical care of a prospective adoptive parent without a circuit court order of temporary custody, the cabinet shall take action in accordance with KRS 199.473(11) until the written approval of the secretary or designee is received by a prospective adoptive parent.

(2)(a) If either the child's custodial parent or a prospective adoptive parent reside out-of-state, the written approval of the interstate compact administrator shall be given before the child's preadoptive placement with a prospective adoptive parent can occur.

(b) If the child's custodial parent resides out-of-state and the child is found in Kentucky without the approval of the interstate compact administrator, the child shall be removed from Kentucky and a neutral setting arrangement made within the state of the custodial parent's residence.

(3) If the disposition of the DPP-187 is pending, the cabinet may cooperate with the custodial parent of the child in finding suitable temporary placement for the child.

(4)(a) During the time between filing the DPP-187 and the decision of the cabinet granting or denying the application, the responsibility for providing for the care of the child shall not rest with the cabinet unless a court has placed the child with the cabinet, with the agreement of the cabinet, after the filing of the DPP-187.

(b) The responsibility shall remain with the custodial parent of the child during this time.

Section 6. Assessment Home Study Requirements. (1) If When the DPP-187 has been filed with the Commissioner of the Department for Community-Based Services, the department shall cause an assessment a home study of the prospective adoptive home to be completed, in accordance with the provisions of KRS 199.473(2), (3), and (4) for applicants who meet the requirements of Section 2(1) of this administrative regulation.

(2) The home study for an out-of-state proposed adoptive home shall be accepted if conducted by the:

(a) Out-of-state public agency; or

(b) Licensed child-placing agency in the respective receiving state if the public agency is unable or unwilling to provide the service.

(3)(a) Prior to filing a DPP-187, a prospective adoptive parent may contract with a licensed child-placing agency to complete a home study and background checks of each prospective adoptive parent and household.

(b) The assessment home study of a prospective adoptive parent shall include:

1. A minimum of three (3) personal references, including one (1) from a relative of a prospective adoptive parent;

2. A minimum of two (2) financial references;

3. Criminal background check conducted in accordance with:

a. KRS 199.473(2); or

b. The policy and laws of the receiving state's child welfare agency, if the proposed adoptive parent resides in a state other than Kentucky; and

4. A Child abuse and neglect check conducted:

a. in accordance with 922 KAR 1:490; or

b. Conducted by the receiving state's child welfare agency, if one is available and the proposed adoptive parent resides in a state other than Kentucky;

5. Documentation by the adoption worker of:

a. A minimum of one (1) home visit and face-to-face interview with each prospective adoptive parent and members of the parent's household; and

b. Contact with the prospective adoptive parent's adult child on the ["DPP-197, Adult Child Interview"], if the cabinet is able to locate the adult child; and

6.a. Sections I, II, III & V of the ["DPP-199, Independent Non-Relative Adoption Assessment Home Study Outline"], completed by the adoption worker in regard to the prospective adoptive parent's home and family background; and

b. Section IV of the DPP-199 if the same agency is completing the birth parent interviews; and

c. A determination by the adoption worker of the prospective adoptive parent's suitability to proceed with an independent adoption.

(3)(4) If an adoption worker for a licensed child-placing agency determines, at the completion of background checks in accordance with KRS 199.473(8), that a prospective adoptive parent does not appear suitable to proceed with an independent non-relative adoption, the worker shall provide written notification to the Department for Community-Based Services, Adoption Services Branch, 275 East Main Street, 3C-E, Frankfort, Kentucky 40621.

(4)(5) The adoption worker shall discuss the child's background and potential placement with each prospective adoptive parent and make a determination of each prospective adoptive parent's ability to meet the needs of the specific child and provide the child with a suitable home.

(5)(6) The adoption worker shall complete the DPP-199 for review and:

(a) Processing with the Interstate Compact, if applicable; and

(b) Consideration in the secretary's or designee's decision about the application for an independent adoption.

Section 7. Interviewing the Biological Parents. (1) Any party to the court case may request a search of the putative father registry in accordance with KRS 199.505 and 922 KAR 1:560.

(2) If the biological or placing parents, legal father, or putative father reside in Kentucky, the adoption worker shall make a diligent effort to interview the custodial biological or each placing parent of the child to be placed and the non-custodial biological parent, legal father, or putative father to:

(a) Determine whether or not the biological parents are aware and accepting of the ethnic and religious background of each prospective adoptive parent the receiving parents;

(b) Determine whether or not they agree to the placement of the child with each prospective adoptive parent the proposed receiving parents;

(c) Obtain health history and sociological information on the child's family with a ["DPP-191, Information to be Obtained From the Placing Parent"];

(d) Document the placing parent's knowledge of the independent adoption with the ["DPP-191A, Information to be Obtained from the Placing Parent for Independent Adoptions"];

(e) Determine the biological parents' feelings about possible future contact with the adopted person on a ["DPP-192, Biological

Parent Consent Form[~~]~~, in accordance with KRS 199.572.

(3)[(2)] If ~~a[the]~~ child's placing parent refuses to be interviewed by the cabinet representative or the appropriate Kentucky or out-of-state adoption worker, the cabinet may deny the application.

(4)[(3)](a) If a child's placing ~~parent lives[parents live]~~ out-of-state, efforts shall be made to have the biological or placing parents, and legal, or putative father, if different than the biological father, interviewed for the purposes specified in subsection (2)[(4)] of this section.

(b) The interviews with out-of-state biological or placing parents ~~or[.]~~ legal[.] or putative father shall be accepted if conducted by ~~a[.]~~:

1. An out-of-state public agency; or

2. A licensed private adoption agency in the respective state; ~~if the public agency is unable or unwilling to provide the service[.]~~.

(5)[(4)] If after diligent efforts of the out-of-state public or private agency, the biological or placing parents, legal[.] or putative father, or legal custodian of the child cannot be interviewed, or if the information and material cannot be obtained, the secretary or designee may approve the placement provided the other conditions of KRS 615.030, the Interstate Compact on the Placement of Children, have been met.

Section 8[9]. Final Decision Regarding Prospective Adoptive Home. (1) Upon completion of the ~~assessment[home study of the proposed adoptive home]~~, each prospective[proposed] adoptive parent shall be notified by[registered or] certified mail of the decision of the secretary or designee, either granting or denying permission for the placement or receiving of the child.

(2) The ~~petition for adoption may be filed in accordance with Section 9[child shall be placed in the home of the proposed adoptive parent immediately.]~~ if:

(a) the cabinet grants permission for the child's placement[; and

(b) The child is available for placement[.]

(3) If the permission is denied, a prospective[the proposed] adoptive parent [or parents] or ~~a[the]~~ placing parent[or parents] may appeal the decision. If appealing, a prospective[the proposed] adoptive[parent or parents] or a placing parent[or parents] shall, within ten (10) days after notice of denial, appeal the decision to the circuit court of the county in which the adoption is proposed in accordance with KRS 199.473(9).

Section 9[40]. Filing of the Petition to Adopt. (1) If a child has been placed in a ~~prospective[proposed]~~ adoptive home with the permission of the secretary or designee, a prospective[the proposed] adoptive parent[or parents] may file the petition for adoption in the circuit court in the county of their residence with the secretary's or designee's written approval in accordance with KRS 199.470(3) and 199.473.

(2) Subsequent to the filing of a petition in Kentucky to finalize an independent ~~non-relative~~ adoption made with the written approval of the secretary, the agency ~~that[which]~~ completed the ~~assessment[independent adoption placement home study]~~ shall prepare the confidential report to the court in accordance with KRS 199.510(2) and KRS 199.590(6).

Section 10[11]. Service Appeals. A person aggrieved by a cabinet action with regard to an independent adoption may request an administrative hearing in accordance with 922 KAR 1:320.

Section 12[.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-105, Medical Information on Child's Birth", [edition] 11/05[~~]~~];

(b) "DPP-108A, Health Information Required for Prospective[Proposed] Adoptive Parent(s) Regarding Dependent Children", 1/19[edition 11/05~~]~~];

(c) "DPP-187, Independent Non-Relative Adoption Application", 1/19[edition 3/15~~]~~];

(d) "DPP-190, Information to be Obtained from Prospective[Proposed] Adoptive Parent(s)", 1/19[edition 11/05~~]~~];

(e) [DPP-190A, Supplemental Information to be Obtained from

the Proposed Adoptive Parent(s), edition 11/05~~]~~];

(f) "DPP-191, Information to be Obtained from the Placing Parent", [edition] 11/05[~~]~~];

(f)[(g)] "DPP-191A, Information to be Obtained from the Placing Parent for Independent Adoptions", [edition] 11/05[~~]~~];

(g)[(h)] "DPP-192, Biological Parent Consent Form", [edition] 11/05[~~]~~];

(h)[(i)] "DPP-197, Adult Child Interview", [edition] 11/05[~~]~~]; and

(i)[(j)] "DPP-199, Independent Non-Relative Adoption Assessment"[Home Study Outline], 1/19[edition 11/05~~]~~].

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

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: September 6, 2018

FILED WITH LRC: September 13, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on October 22, 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 October 15, 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 October 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for the completion of independent non-relative adoptions in accordance with KRS 199.470 and KRS 199.473.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for an independent non-relative adoption.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by establishing procedures for independent non-relative adoptions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes through its establishment of procedures for an independent non-relative adoption.

(2) If 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 the administrative regulation updates content for congruency with House Bill 1 from the 2018 Regular Session and emphasis on permanency in child welfare transformation efforts underway within the Commonwealth of

Kentucky. The amendments to this administrative regulation will ensure a less cumbersome and time-consuming path to adoption for prospective adoptive parents who require approval from the secretary or designee in order to proceed with an adoption. In addition, the amendment makes updates and technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure a timelier path to non-relative adoption, thereby improving the experience of adopting for prospective adoptive parents by removing burdensome documentation previously required for these types of adoptions. The amendment is necessary to improve timely permanency for children involved in these adoptions and congruency with statutes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by aligning policy with more efficient operations, promoting more timely adoptions, and better facilitating permanency.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through a more streamlined process for independent non-relative adoptions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In the past five years, there have been approximately 197 Independent non-relative adoptions completed annually. This administrative regulation will affect prospective adoptive families who wish to independently adopt non-relative children and licensed private child-placing agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Effective with this administrative regulation, adoption agencies, prospective adoptive parents, and cabinet staff will have fewer forms, updated forms, and less cumbersome forms and processes to obtain approval through the secretary or designee. This amendment removes time-consuming processes that are unnecessary for obtaining approval. It also provides an updated assessment tool that focuses on the safety and well-being of the placement.

(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 create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the policies that are more timely and proficient in completing independent non-relative adoptions.

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

(a) Initially: The amendment to this administrative regulation will not result in any new costs to the administering agency.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new ongoing costs to the administering agency.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The 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: The amendment to this administrative regulation reinforces a fee prescribed by KRS 199.473(13).

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.470, 199.472, 199.473

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 independent non-relative adoption process has been in place for a number of years. It has generated a revenue of approximately \$39,400.00 per year over the last five years. The amendment to this administrative regulation does not alter the \$200 fee for the filing of an independent non-relative adoption. Despite this, House Bill 1 from the 2018 Regular Session has broadened the category of entities who are excluded from this process to include cousins, fictive kin, and others. As a result of House Bill 1, the number of filings and fees generated are expected to decrease dramatically.

(b) How 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 continue to generate a small amount of new revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? The implementation of this administrative regulation is projected to fall within available state appropriations.

(d) How much will it cost to administer this program for subsequent years? The implementation of this administrative regulation amendment is projected to fall within available state appropriations.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

922 KAR 1:100. Public agency adoptions.

RELATES TO: KRS 194A.060(1), 199.011(4), (10)(9), 199.430(3), 199.520, 199.525, [199.565,] 199.570, 199.572, 199.575, 202B.010(12), 600.020 (30), (52), (63)(26), (47), (56)], 605.090, 615.030, 620.050, 620.360, 625.045, 625.108, Chapter 625, 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620b-622(b)(9), 629-629i, 670-679b, 1996, 1996b

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to establish policies and operate programs to protect, develop, and maintain the welfare of the citizens of the Commonwealth. KRS 199.472 requires the cabinet to establish criteria for the public agency adoption of children in the custody of the cabinet. This administrative regulation establishes the procedures for public agency adoptions.

Section 1. Definitions. (1) "Approved adoptive parent" means a family approved in accordance with:

(a) 922 KAR 1:310;

(b) 922 KAR 1:350; or

(c) Section 6 of this administrative regulation.

(2) "Child-focused recruitment model" or "CFRM" means a program for the recruitment of an adoptive family in accordance with Section 2 of this administrative regulation by cabinet staff for a child in the custody of the cabinet whose adoptive placement has not been identified.

(3) "Foster family home" is defined by KRS 199.011(10)(9) and 600.020(30)(26).

(4)(3) "Home study" means an evaluation conducted in accordance with the requirements of the state where the home is located, to determine the preparation and suitability of a prospective[proposed] adoptive parent, including the home environment, to receive a child for the purpose of adoption.

(5)(4) "Open adoption" means an agreement between an adoptive parent and an adopted child's biological or legal parent regarding communication or contact with the child.

(6)(5) "Pre-adoptive placement" means a home, approved by the cabinet, where a child legally free for adoption is placed prior to adoption finalization.

(7)(6) "Pre-placement conference" means a meeting conducted by cabinet staff with a prospective adoptive parent that fulfills requirements specified in Section 4 of this administrative regulation.

(8)(7) "Prospective adoptive parent" means an individual who has applied with a Kentucky or an out-of-state public or licensed private child welfare agency to be approved as an adoptive parent.

(9)(8) "Qualified mental health professional" or "QMHP" is defined by KRS 600.020(52)(48).

(10) "Qualified professional in the area of intellectual disabilities" [(9) "Qualified mental retardation professional" or "QMRP"] is defined by KRS 202B.010(12).

(11)(10) "Social service worker":

(a) Is defined by KRS 600.020(63)(56); or

(b) Means a social or human service worker with an out-of-state public or licensed private child welfare agency who meets the requirements of that state to conduct a home study. [(11) "Special Needs Adoption Program" or "SNAP" means a program for the recruitment of an adoptive family by cabinet staff for a child in the custody of the cabinet whose adoptive placement has not been identified within thirty (30) days following the termination of parental rights, in accordance with KRS Chapter 625.]

Section 2. Eligibility and Referral to the Child-Focused Recruitment Model. A child may be referred to CFRM if the child:

(1) Is determined eligible, as special needs, in accordance with 42 U.S.C. sec. 673;

(2) Has a goal of planned permanent living arrangement or long-term foster care;

(3) Is on extended commitment and has had parental rights terminated; or

(4) Has adoption as the child's case plan goal and does not have an adoptive resource identified.

Section 3[2]. Preparation of the Child for Adoptive Placement.

(1) A child prepared for adoptive placement by cabinet staff shall receive information regarding the following, with consideration given to the child's maturity and developmental stage:

(a) Relationship to the biological or legal parent;

(b) Entitlement to a parent;

(c) If applicable, relationship with the foster family home;

(d) Reason the foster placement may not become the adoptive placement;

(e) Role of the social service worker, other pertinent cabinet staff, and the child in the placement planning process;

(f) Meaning of adoption;

(g) Process of recruitment of a parent and how the child may be involved;

(h) Impending placement;

(i) Visitation process;

(j) Placement decision; and

(k) Cabinet staff responsible for the placement decision.

(2) Cabinet staff shall:

(a) Request the biological or legal parent to either consent or

refuse to consent to the inspection of the adoption records by the adult adopted person when the child reaches twenty-one (21) years of age; and

(b) File with the circuit or family court in the county where the adoption was finalized the consent or refusal to consent to the inspection of the adoption records by the adult adopted person.

(3) If a child's permanency goal includes adoption and reunification with a sibling separated during foster care, the cabinet shall plan for the transition[reunion] and coordinate increased visitation between siblings.

(4) If cabinet staff agree by consensus during a planning conference, a sibling may be separated from another sibling in adoption upon consideration of:

(a) If age appropriate, each sibling's understanding of the facts of the relationship, feelings, wishes, and ideas regarding options for placement;

(b) The perception of the relationship of each child with the sibling; and

(c) The recommendation of a:

1. QMHP; or

2. If applicable, a qualified professional in the area of intellectual disabilities[QMRP].

(5) A planning committee shall convene annually for siblings who remain separated in out-of-home care to:

(a) Determine if reunification is possible; and

(b) Develop a plan for maintaining sibling connections.

(6) A QMHP, qualified professional in the area of intellectual disabilities[QMRP], relative, social service worker, other pertinent cabinet staff, nonadoptive foster parent, or another individual approved by cabinet staff may assist with preparing the child for adoption.

(7)(6) If the child's goal is changed to adoption, a child in the custody of the cabinet may be placed with an approved adoptive parent prior to the termination of parental rights to the child.

(8)(7) If a prospective adoptive parent has not been identified for a child after the child's permanency goal has been changed to adoption in accordance with 922 KAR 1:140, the cabinet:

(a) Shall convene an adoption review committee[comply with the Swift adoption procedures in accordance with KRS 199.565] to meet and discuss child-specific recruitment and the potential strengths and barriers of placement with an identified[of a] prospective adoptive parent;

(b) May invite an individual specified in subsection (6)(5) of this section to a meeting in which the child's permanency plan is discussed; and]

(c) Shall refer the child to the CFRM in accordance with Section 2 of this administrative regulation; and

(d)(e) Shall refer[register] the child to the Adoption Services Branch[with SNAP] in accordance with Section 7(1)(6(4)) of this administrative regulation.

Section 4[3]. Selection of an Adoptive Family. (1) Priority consideration for an adoptive placement shall be given to:

(a) A relative; or

(b) The current foster family home.

(2) The process of recruiting a prospective adoptive parent shall begin if:

(a) Parental rights of the child are terminated;

(b) A relative has not made a commitment to adopt the child;

(c) The child's foster family home has not made a commitment to adopt through a statement of intent;

(d) Both biological or legal parents of the child are deceased, and the[designated] cabinet has[staff have] been granted custody through the court; or

(e) The child's pre-adoptive placement is disrupted.

(3) Prior to placement, cabinet staff shall consider the prospective adoptive parent's acceptance of the child's behavior and characteristics.

(4) (a) The cabinet shall take the following into consideration regarding the number of children to be placed in an adoptive home:

1. The prospective adoptive parent's parental capacity and resources to meet the needs of all children in the home; and

2. The impact of all children involved, including the potential

adoptive child.

(b) A prospective adoptive parent may request review of a denial based upon the number of children in the home in accordance with 922 KAR 1:350, Section 8(2).~~[Unless an exception has been approved as described in 922 KAR 1:350, Section 2(2), or by the completion of the DPP-112C, Adoption Placement Exception Request, the following requirements shall apply to a prospective adoptive parent:~~

~~(a) No more than five (5) children, including prospective adoptive parent's own children, shall live in the prospective adoptive parent's home; and~~

~~(b) No more than two (2) children under age two (2), including the prospective adoptive parent's own children, shall live in the prospective adoptive parent's home.]~~

(5) The cabinet shall:

(a) Review and obtain the prospective adoptive parent's signature on the DPP-171, Notice of Confidentiality Requirements Acknowledgement Cover Sheet; and

(b) Inform the prospective adoptive parent of:

1. Visitation and supervision requirements in accordance with KRS 605.090(1)(b); and

2. Detailed information about the child's history and services provided to the child, excluding any identifying information of the biological parent, including:

a. Health, background, and placement history;

b. Behavior, including behaviors in accordance with KRS 605.090(1); and

c. Personal characteristics.

Section 5[4]. Preparation of the Prospective Adoptive Parent.

(1) Cabinet staff shall conduct a preplacement conference for a child available for adoption with the child's:

(a) Foster parent;

(b) Prospective adoptive parent;

(c) If applicable, a QMHP or qualified professional in the area of intellectual disabilities[QMRP]; and

(d) ~~A representative~~[If applicable, social service worker] from the cabinet or child-placing agency where the child is placed.

(2) During the pre-placement conference, cabinet staff shall:

(a) Discuss the information provided in accordance with Section 4(5)(b)[3(5)(b)] of this administrative regulation with the prospective[approved] adoptive parent;

(b) Assist the prospective[approved] adoptive parent in reaching a decision regarding acceptance of placement;

(c) Determine the method of presenting the prospective[approved] adoptive parent to the child; and

(d) Discuss with the prospective adoptive parent acceptance of the child's plan for visitation and placement.

(3) If there is a planned foster parent adoption, the preplacement conference may occur at the same time the adoptive placement agreement is signed in accordance with KRS 199.555.

Section 6[5]. Adoptive Placement. (1) Planned visitation between a child older than one (1) month and a prospective adoptive parent shall occur at least two (2) times prior to placement.

(2) After parental rights to the child are terminated, final placement with a prospective adoptive parent shall occur as quickly as possible upon concurrence of:

(a) Cabinet staff;

(b) The prospective adoptive parent;~~and~~

(c) The recommendation of a qualified professional in the area of intellectual disabilities, if applicable; and

(d) The child, to the extent the child's age and maturity permit the child's participation.

(3) Adoption assistance shall be provided in accordance with 922 KAR 1:050 or 922 KAR 1:060.

Section 7[6]. Out-of-State Adoptive Placement. (1) If a prospective adoptive parent has not been identified after the child has been referred to the CFRM[by the time the child becomes available for adoption], cabinet staff shall:

(a) Consider an out-of-state placement; and

(b) Refer the child to the Adoption Services Branch for referral on the adoption website[SNAP] if:

1. Termination of parental rights has been granted; and

2. No adoptive placement has been identified through the CFRM program[within thirty (30) days following the termination of parental rights].

(2) Placement of a Kentucky child with an out-of-state prospective adoptive parent may occur if:

(a) The prospective adoptive parent is seeking a child through:

1. An out-of-state public child welfare agency; or

2. A licensed private child welfare agency; and

(b) A home study has been completed or updated within one (1) year by the out-of-state public child welfare agency or licensed private child welfare agency, in accordance with the requirements of the out-of-state agency.

(3) If a prospective adoptive parent who resides out-of-state cannot pay the expense to attend a pre-placement conference or visit the child, the cabinet may pay travel expenses for the prospective adoptive parent, to the extent funds are available.

(4) If the Kentucky and out-of-state deputy compact administrators agree to the child's visit in accordance with KRS 615.030, a child may visit and be placed with a prospective adoptive parent who resides in another state, in accordance with KRS 615.030.

(5) Upon approval of the commissioner or designee, cabinet staff or another adult whom the child knows shall accompany a Kentucky child available for adoption on an out-of-state visit or placement with a prospective out-of-state adoptive parent.

Section 8[7]. Open Adoption. The cabinet shall not prohibit an open adoption.

Section 9[8]. Postplacement Service. (1) The goal of a postplacement service shall be to:

(a) Ensure the success of the placement; and

(b) Prevent disruption of the placement.

(2) The cabinet shall coordinate support services for a child and a prospective adoptive parent prior to the legal adoption and through finalization of the adoption.

(3) Until the adoption judgment has been granted by a court of competent jurisdiction, the cabinet shall conduct an annual permanency review of a child placed with a prospective adoptive parent.

(4) Post-Adoption Placement Stabilization Services (PAPSS) shall be offered in accordance with 922 KAR 1:530.

Section 10[9]. Closure of An Approved Adoptive Home. Unless an extension is approved by the commissioner, closure of an approved adoptive home shall occur in accordance with:

(1) 922 KAR 1:310; or

(2) 922 KAR 1:350.

Section 11[40]. Service Appeals. A service appeal may be requested in accordance with 922 KAR 1:320.

Section 12[14]. Confidentiality of Records. (1) A child's records shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, as described by KRS 194A.060(1), 199.430(3), 199.520, 199.525, 199.570, 199.572, 199.575, 620.050, 625.045, 625.108, and 922 KAR 1:510.

(2) If the child is not adopted, the prospective adoptive parent shall return all documentation pertaining to the child to the cabinet within ten (10) working days of the decision not to adopt.

Section 13[42]. Request for Information from Adoption Records. (1) Identifying information from the cabinet's record may be released only upon written order by the court upon application to the circuit court that granted the adoption by an adoptee, twenty-one (21) years of age or older.

(2) If the birth parent has not previously filed consent for release of identifying information with the circuit court, the judge may:

(a) Issue a court order requiring the cabinet to conduct a search for each birth parent as identified on the original birth certificate; and

(b) Determine the parent's desire concerning the release of identifying information from the record.

(3) Upon receipt of written request by the adult adoptee or the adoptive family, nonidentifying health and background information may be released by the cabinet from a closed adoption record.

(4) If a request is received from an adoptee, eighteen (18) years of age or older, for contact with an adult preadoptive birth sibling separated during finalization of a closed adoption, cabinet staff shall:

(a) Review the adoption record; and

(b) Release identifying information if a mutual request for contact is contained within the record.

(5) If a request is received from a birth relative seeking an adoptee, either adult or minor, information may be given that adoption did occur and reassurance of the well-being of the adoptee at last contact may be confirmed, but cabinet staff shall not contact an adoptee or adoptive family at the request of the birth family.

(6) If an adult adoptee seeks contact with the birth family, cabinet staff shall inform the adult adoptee of a birth relative's interest.

Section 14[13]. Incorporation by Reference. (1)[The following material is incorporated by reference:

(a)] "DPP-171, Notice of Confidentiality Requirements Acknowledgement Cover Sheet", 9/18, is incorporated by reference[edition 9/08; and

(b) "DPP-112C, Adoption Placement Exception Request", edition 9/08].

(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: September 6, 2018

FILED WITH LRC: September 13, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 22, 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 October 15, 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 October 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@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 policy and procedures for

public agency adoptions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish policy and procedures related to public agency adoptions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the policy and procedures for public agency adoptions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes through its establishment of policy and procedures for public agency adoptions.

(2) If 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 the definition related to the Special Needs Adoption Program due to its negative implication that the children waiting to be adopted fall into a "special needs" criteria. Additionally, the amendment adds language regarding the child-specific recruitment employed by Kentucky in order to ensure permanency for children. Additional changes were made to better ensure sibling connections are maintained and remove arbitrary restrictions on the number of children who can be placed in a home. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to realize changes in practice that have occurred as a result of the state's child welfare transformation efforts and House Bill 1 of the 2018 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by updating public agency adoptions' policy and procedures in accordance with House Bill 1 of the 2018 Regular Session and child welfare transformation efforts.

(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 improving policy and procedures applicable to public agency adoptions in accordance with House Bill 1 of the 2018 Regular Session and child welfare transformation efforts.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There were 1,065 adoption finalizations in Kentucky in 2017.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Foster children awaiting adoption will have improved connection with siblings and permanency services provided by the cabinet in accordance with House Bill 1 of the 2018 Regular Session and the state's child welfare transformation efforts.

(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 create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children in foster care will benefit from improved sibling connections, child-focused recruitment efforts, and enhanced considerations of prospective adoptive parents resources verses an arbitrary cap on the number of children in a prospective adoptive home.

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

(a) Initially: This amendment to this administrative regulation will be implemented within available federal and state appropriations for the department.

(b) On a continuing basis: The amendment to this administrative regulation will be implemented within available federal and state appropriations for the department.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding to be used for implementation and enforcement of this administrative regulation are the federal Title IV-E and Title IV-B funds made available under the Social Security Act and general funds.

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

(9) TIERING: Is tiering applied? Tiering is not applied. Public agency adoptions are implemented in a like manner statewide for children in foster care.

subsequent years? The administration of this program is projected to fall within available federal and state appropriations 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.

45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629-629i, 670-679b, 1996, 1996b

2. State compliance standards. KRS 194A.050(1), 199.472

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629-629i, 670-679b, 1996, 1996b

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.472, 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629-629i, 670-679b, 1996, 1996b

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

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

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

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

(d) How much will it cost to administer this program for

NEW ADMINISTRATIVE REGULATIONS

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(Repealer)

103 KAR 16:381. Repeal of 103 KAR 16:380.

RELATES TO: KRS 141.040, 141.120, 141.900

STATUTORY AUTHORITY: KRS 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. KRS 141.900(12)(h) excludes the "safe harbor lease" or finance lease provisions of IRC §168(f)(8), which was repealed effective January 1, 1987, in determining Kentucky corporate net income for property placed in service after 1980, and before 1987. This administrative regulation provides a detailed explanation of transactions that are excluded when computing Kentucky taxable net income for corporation income tax purposes, but refers to a repealed section of the Internal Revenue Code. Therefore, this administrative regulation is no longer needed.

Section 1. 103 KAR 16:380, Finance lease property, safe harbor lease property, or qualified lease property, is hereby repealed.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: September 14, 2018

FILED WITH LRC: September 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 24, 2018 at 10:00 a.m. in Room 8A, State Office Building, 501 High Street, 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 will be accepted through October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Revenue 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 16:380 regarding the exclusion of certain lease property from corporate taxable income. The Internal Revenue Code section referenced in this regulation has been repealed, and "safe harbor leases" no longer exist.

(b) The necessity of this administrative regulation: This regulation is necessary to remove outdated or repealed guidance to avoid taxpayer confusion. Also, KRS Chapter 13A requires a regulation that will no longer be updated or considered effective by the promulgating agency to be repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 13A requires a regulation that will no longer be updated or considered effective by the promulgating agency to be repealed.

(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 the repeal of this regulation. This regulation repeals 103 KAR 16:380 because it is obsolete.

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 an agency repeal administrative regulations that they do not foresee updating in the future. 103 KAR 16:380 provides guidance for excluding items from corporate income tax that are no longer identified in the Internal Revenue Code, and therefore outdated.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 18:081. Repeal of 103 KAR 18:080 and 103 KAR 18:160.

RELATES TO: KRS 141.206, 141.315

STATUTORY AUTHORITY: KRS 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 18:080 provides guidance regarding withholding where an employee works for two (2) or more unrelated employers. The department revised Form K-4 to eliminate exemptions from the withholding calculation due to the passage of HB 487 in the 2018 General Assembly, making the regulation redundant. 103 KAR 18:160 only applied to 2004 and 2005 to assist general partnerships with withholding on net distributive share income and the filing of a composite return, and is now obsolete. As a result, these administrative regulations are no longer needed and will not be amended in the future.

Section 1. The following regulations are hereby repealed:

(1) 103 KAR 18:080, Two (2) or more employers; and

(2) 103 KAR 18:160, Partnership income, credits, and payments subject to withholding.

DANIEL BORK, COMMISSIONER

APPROVED BY AGENCY: September 14, 2018

FILED WITH LRC: September 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 24, 2018 at 10:00 a.m. in Room 8A, State Office Building, 501 High Street, Frankfort KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 will be accepted through October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Revenue 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 18:080 and 103 KAR

18:160. 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 required to take the steps necessary to repeal these regulations.

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 (+/-): \$0

Expenditures (+/-): \$0

Other Explanation:

**PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Repealer)**

804 KAR 5:021. Repeal of 804 KAR 5:020.

RELATES TO: KRS 244.090, 244.240, 244.600

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations regarding matters over which it has jurisdiction. This administrative regulation repeals 804 KAR 5:020 allowing alcoholic beverage industry employees to obtain employment with more than one (1) licensee. 804 KAR 5:020 is rooted in the flawed presumption that an employee working at a producer or wholesaler in addition to working for another licensee creates an interest in the retail premise. For example, currently, an employee who tends bar at a restaurant cannot work on the bottling line at a distillery or brewery. Thus, 804 KAR 5:020 serves only to prohibit those desiring additional employment in the alcoholic beverage industry from earning a living and should be repealed.

Section 1. 804 KAR 5:020, Unemployable Persons, is hereby repealed.

CHRISTINE TROUT VAN TATENHOVE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: September 12, 2018

FILED WITH LRC: September 13, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2018 at 10:00 a.m. Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing 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. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen Lee Walters, Legal Counsel, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 278-1034, fax (502) 564-

7479, email lee.walters@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen Lee Walters

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 804 KAR 5:020, which prohibits an employee working in one of the three tiers of the alcoholic beverage industry (producer, wholesaler, or retailer) from simultaneously working in a different tier.

(b) The necessity of this administrative regulation: The stated purpose of 804 KAR 5:020 is to prevent producers and wholesalers from unfairly having interests in retail premises, but the regulation is not necessary to accomplish that purpose. KRS 244.240, KRS 244.570, and KRS 244.600 already provide adequate means for the department to address any abusive trade practices, corruption or attempts at unfair competition by a producer or wholesaler. Repealing 804 KAR 5:020 is necessary to remove artificial boundaries to employment in the alcoholic beverage industry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. 804 KAR 5:020 does not accomplish its stated purpose in KRS 244.240 since producers and wholesalers do not have interests in retail premises simply because employees work there. 804 KAR 5:020 does not further any purpose of KRS 244.090 since cross-employment is not prohibited. Cross employment does not constitute commercial bribery or other unlawful inducement under KRS 244.600.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: 804 KAR 5:020 does not assist the department in the administration of the statutes, and should be repealed.

(2) If 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: The department is impacted by the repeal of this administrative regulation. Additionally, all holders of the 16,000 plus licenses issued and regulated by the department, as well as prospective licensees, will be affected by the repeal of this administrative regulation. The Department of Revenue is likely impacted 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 take to comply with this administrative regulation or amendment: The department will not be required to take any additional action to implement this repealer. Current and prospective licensees will benefit from the expanded potential applicant pool as a result of repealing 804 KAR 5:020. No action on the part of licensees will be required.

(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 in repealing this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees of the department will find it beneficial to hire individuals with a current and ongoing experience and knowledge in the alcoholic beverage industry. Kentucky citizens will benefit from being able to obtain gainful employment free of antiquated and arbitrary restrictions. The Department of Revenue will likely see an increase in tax collected.

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

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

(a) Initially: There are no anticipated costs associated with the implementation of this repealer.

(b) On a continuing basis: There are no anticipated costs associated with the implementation of this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed to implement and enforce the repeal of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No tiering is applied as although the regulation addressed restrictions within the three tiers this repealer sets to remove said restrictions entirely.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control and likely the Department of Revenue are 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 241.060(1) authorizes the board to promulgate administrative regulations related to alcoholic beverages.

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

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

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

(c) How much will it cost to administer this program for the first year? No costs are expected for the first year with the repeal of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are expected for subsequent years with the repeal of this administrative regulation.

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

Revenues (+/-): Potential Increase.

Expenditures (+/-): Neutral.

Other Explanation: Tax revenue may increase as more citizens are able to accept gainful employment across the alcoholic beverage industry with the repeal of 804 KAR 5:020.

PUBLIC PROTECTION CABINET Kentucky Real Estate Authority Kentucky Board of Home Inspectors (Repealer)

815 KAR 6:101. Repeal of 815 KAR 6:020, 815 KAR 6:080, 815 KAR 6:090, and 815 KAR 6:100.

RELATES TO: 198B.706

STATUTORY AUTHORITY: 198B.706(15)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.706(1) requires the Kentucky Board of Home Inspectors, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.700 to 198B.738. This administrative regulation repeals 815 KAR 6:020, 815 KAR 6:080, and 815 KAR 6:090 because the necessary substantive provisions of those administrative regulations have been incorporated into other existing administrative regulations concerning the same subject matter for improved efficiency and ease of use. This administrative regulation repeals 815 KAR 6:100 because it is duplicative of statute.

Section 1. The following administrative regulations are hereby repealed:

- (1) 815 KAR 6:020, Advertising by home inspectors;
- (2) 815 KAR 6:080, Continuing education provider;
- (3) 815 KAR 6:090, Procedures for complaints and administrative hearings; and
- (4) 815 KAR 6:100, Compensation.

MITCHELL BUCHANAN, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: September 12, 2018

FILED WITH LRC: September 13, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2018 at 10:00 a.m. Eastern Time at the Kentucky Board of Home Inspectors, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this Department 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. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538, email Heather.Becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals four current administrative regulations governing home inspectors to facilitate compliance for licensees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to facilitate compliance for licensees by repealing duplicative and complicated regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.706 requires the board to promulgate administrative regulations concerning the licensing and regulation of home inspectors.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes more efficiency by locating all relevant and necessary information in fewer, easy to use administrative regulations that are being concurrently amended.

(2) If 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 question is not applicable because this is a

repealer.

(b) The necessity of the amendment to this administrative regulation: This question is not applicable because this is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This question is not applicable because this is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This question is not applicable because this is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board currently regulates roughly 550 home inspectors, and they will be impacted by this administrative regulation repealer. Additionally, the board currently approves roughly a dozen entities to provide prelicensing and continuing education to the board's applicants and licensees, and those approved education providers will be impacted.

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

(a) List 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 of the regulated entities identified in question (3) will be required to take any new action to comply with this administrative regulation. The necessary substantive provisions are being relocated to other existing administrative regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the regulated entities identified in question (3) as a result of this administrative regulation repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this administrative regulation repealer, compliance will be easier because the simplified regulatory scheme.

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

(a) Initially: There will be no initial cost to implement this administrative regulation repealer.

(b) On a continuing basis: There will be no continuing costs associated with implementing this administrative regulation repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement and enforce this administrative regulation repealer.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This administrative regulation repealer does not establish any fees, and it does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation repealer applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Kentucky Board of Home Inspectors 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 198B.706 authorizes the board to promulgate administrative regulations.

(3) Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or 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 repealer will not generate 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 administrative regulation repealer will not generate revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering 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: This administrative regulation repealer is not expected to have a fiscal impact.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Repealer)

900 KAR 2:021. Repeal of 900 KAR 2:020.

RELATES TO: KRS Chapter 13B, 216.537 - 216.590

STATUTORY AUTHORITY: KRS 216.567

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.567 requires that the manner in which appeals are presented from any decision on citations or civil penalties pursuant to KRS 216.537 to 216.590 be held in accordance with KRS Chapter 13B. In accordance with KRS 13A.310(3)(a), this administrative regulation repeals 900 KAR 2:020 because the process for appealing citations or civil penalties is established in the amendment of 900 KAR 2:040, filed concurrently with this administrative regulation.

Section 1. 900 KAR 2:020, Appeals, is hereby repealed.

STEVEN D. DAVIS, Inspector General

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: September 6, 2018

FILED WITH LRC: September 13, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 22, 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 October 15, 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 October 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

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 CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes, email stephanie.brammer@ky.gov, phone 502-564-2888; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 900 KAR 2:020.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 900 KAR 2:020 as the process for appealing citations or civil penalties is established in the amendment of 900 KAR 2:040, filed concurrently with this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This repealer is filed in accordance with KRS 13A.310.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by repealing 900 KAR 2:020 as the process for appealing citations or civil penalties is established in the amendment of 900 KAR 2:040, filed concurrently with this 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 not an amendment to an existing administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This repealer does not impact long-term care facilities subject to the provisions of KRS 216.555 – 216.567.

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

(a) List 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 repealer does not impact long-term care facilities subject to the provisions of KRS 216.555 – 216.567.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation repeals 900 KAR 2:020.

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

(a) Initially: This administrative regulation imposes no costs on the administrative body.

(b) On a continuing basis: This administrative regulation imposes no costs on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement this repealer.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as this administrative regulation repeals 900 KAR 2:020.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 repealer does not impact long-term care facilities subject to the provisions of KRS 216.555 – 216.567.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310(3)(a)

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

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

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

(c) How much will it cost to administer this program for the first year? This repealer imposes no costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This repealer imposes no costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety

(Repealer)

902 KAR 45:007. Repeal of 902 KAR 45:006 and 902 KAR 45:140.

RELATES TO: KRS 217.005, 217.127

STATUTORY AUTHORITY: KRS 194A.050(1), 217.125

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. KRS 217.125 requires the secretary to adopt rules and administrative regulations necessary to regulate and control all matters related to the federal act and the Fair Packaging and Labeling Act. All entities operating a bed and breakfast and all retail food establishments are required to comply with the Kentucky Food Code, which is established in 902 KAR 45:005. This administrative regulation repeals 902 KAR 45:006 and 902 KAR 45:140.

Section 1. The following administrative regulations are hereby repealed:

(1) 902 KAR 45:006, Kentucky bed and breakfast; and

(2) 902 KAR 45:140, Retail food programs evaluation and standardization procedures.

JEFFREY D. HOWARD, JR., M.D., Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: September 12, 2018

FILED WITH LRC: September 13, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 22, 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 October 15, 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 October 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, JulieD.Brooks@ky.gov, 502-564-3970; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 902 KAR 45:006 and 902 KAR 45:140.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 902 KAR 45:006 and 902 KAR 45:140, as the provisions for operating a bed and breakfast in Kentucky and for retail food program evaluations are included in the Kentucky Food Code, 902 KAR 45:005.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 13A.310 by repealing two (2) administrative regulations. The provisions for operating a bed and breakfast and for evaluating a retail food program are included in the Kentucky Food Code, 902 KAR 45:005.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of 902 KAR 45:006 and 902 KAR 45:140 is consistent with Governor Bevin's Red Tape Reduction initiative to repeal duplicative administrative regulations. This administrative regulation is in accordance with KRS 13A.310(3)(a).

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of 902 KAR 45:006 impacts 159 permitted bed and breakfast establishments. The repeal of 902 KAR 45:140 will have no impact on regulated entities as the provisions for evaluation of a retail food program are covered under 902 KAR 45:005 and the 2013 FDA Food Code.

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

amendment, including:

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: No action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will result in the repeal of two (2) obsolete administrative regulations.

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

(a) Initially: There are no costs to the administrative body associated with this administrative regulation.

(b) On a continuing basis: There are no costs to the administrative body associated with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no costs to the administrative body associated with this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering is not applicable as this administrative regulation repeals 902 KAR 45:006 and 902 KAR 45:140.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The repeal of 902 KAR 45:006 and 902 KAR 45:140 shifts the provisions for operating a bed and breakfast and for evaluating a retail food program to the Kentucky Food Code, 902 KAR 45:005. Current local health department inspectors and the Department for Public Health, Food Safety Branch will be affected by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 217.125.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no costs to the administrative body associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs to the administrative body associated with this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Repealer)

922 KAR 1:411. Repeal of 922 KAR 1:410.

RELATES TO: KRS 200.575

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 200.575 requires the cabinet to provide standards for family preservation services programs. The cabinet currently contracts with agencies to provide these services, and KRS 200.575 allows for the provisions to be included in the contract language. This administrative regulation repeals 922 KAR 1:410, because it is duplicative of statutory requirements and contractual arrangements.

Section 1. 922 KAR 1:410, Family Preservation Program, is hereby repealed.

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: September 6, 2018

FILED WITH LRC: September 13, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 22, 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 October 15, 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, October 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 922 KAR 1:410.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 922 KAR 1:410. KRS 200.575 requires the cabinet to provide standards for family preservation services and allows DCBS to place these provisions in contracts with agencies providing the services. An administrative regulation is unnecessary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This repealer is filed in accordance with KRS 13A.310. Its only purpose is to repeal 922 KAR 1:410.

(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 repealing 922 KAR 1:410. KRS 200.575 is specific enough to negate the need for an 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 not an amendment to an existing administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect agencies who contract with the Cabinet for Health and Family Services, Department for Community Based Services (DCBS) to provide family preservation services.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Each agency contracted to provide family preservation services will be required to agree to contractual requirements related to eligibility, referral, caseload size requirements, service provision, training, and evaluation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): No additional costs will be incurred to comply with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This repealer will benefit the cabinet, the cabinet's clientele, and agencies who provide family preservation services by allowing more flexibility for programmatic standards and requirements that are relevant to the needs of families and children, as provided by House Bill 1 of the 2018 Regular Session.

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

(a) Initially: This administrative regulation imposes no new costs on the administrative body.

(b) On a continuing basis: This administrative regulation imposes no new costs on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement this repealer.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 200.575

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of September 11, 2018

Call to Order and Roll Call

The September meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, September 11, 2018, at 1:00 p.m. In Room 149 of the Capitol Annex. Senator Harris, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the August 2018 meeting were approved.

Present were:

Members: Senators Ernie Harris, Perry Clark, and Alice Forgy Kerr; and Representatives David Hale, Mary Lou Marzian, Jason Petrie, and Tommy Turner.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Guests: Kathryn Gabhart, Michael Board, Executive Branch Ethics Commission; Kristen Green, Alan Harrison, Darrell Johnson, UK Division of Regulatory Services; Travis Powell, Council on Postsecondary Education; Kevin Winstead, Attorney General's Office of Consumer Protection; David Trimble, Department of Professional Licensing; Julie Campbell, Board of Cosmetology; Beth Gamble, Pamela Hagan, Megan LaFollette, Board of Nursing; Louis Kelly, Board of Physical Therapy; Amber Arnett, Ron Brooks, Department for Fish and Wildlife; Lesly Davis, Michael Mullins, Bruce Scott, Energy and Environment Cabinet; Pete Goodman, Tony Hatton, Division of Water Todd Allen, Amanda Ellis, Wayne Lewis, Department of Education; Steve Humphress, Marc Manley, Alcoholic Beverage Control; Patrick O'Connor, Department of Insurance; Erica Brakefield, Julie Brooks, Department of Public Health; Stephanie Brammer Barnes, Steve Davis, Office Inspector General; Jennifer Burt, Pam Hendren, Anita Travis, Division of Public Health Protection and Safety.

The Administrative Regulation Review Subcommittee met on Tuesday, September 11, 2018, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Executive Branch Ethics Commission

[009 KAR 001:015 & E](#). Pre-administrative proceedings. Michael Board, general counsel, and Katie Gabhart, executive director, represented the commission.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[009 KAR 001:030 & E](#). Administrative hearings.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 4, 6, 7, and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

AGRICULTURAL EXPERIMENT STATION: Commercial Feeds

[012 KAR 002:006](#). Definitions for 12 KAR Chapter 2. Kristen Green, registration specialist, University of Kentucky; Alan Harrison, feed director; and Darrell Johnson, executive director, represented the experiment station.

[012 KAR 002:011](#). Label format.

[012 KAR 002:016](#). Brand and product names.

In response to a question by Co-Chair Harris, Mr. Harrison stated that 12 KAR 2:016 and 2:031 were amended to clarify that raw milk may be used as an ingredient in pet food.

A motion was made and seconded to approve the following amendment: to amend Section 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

[012 KAR 002:017](#). Product purpose statement.

[012 KAR 002:018](#). Guaranteed analysis.

A motion was made and seconded to approve the following amendments: to amend Sections 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.

[012 KAR 002:021](#). Expression of guarantees.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[012 KAR 002:026](#). Ingredients.

In response to a question by Co-Chair Harris, Mr. Harrison stated that mineral percentages were based on national standards.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[012 KAR 002:031](#). Directions for use and precautionary statements.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

[012 KAR 002:036](#). Non-protein.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[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.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[012 KAR 002:061](#). Registration.

[012 KAR 002:066](#). Suitability.

A motion was made and seconded to approve the following amendments: to amend Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

COUNCIL ON POSTSECONDARY EDUCATION: Public Educational Institutions

[013 KAR 002:020](#). Guidelines for admission to the state-supported postsecondary education institutions. Travis Powell, general counsel and associate vice president, represented the council.

In response to questions by Senator Kerr, Mr. Powell stated that, prior to these amendments, achievement requirements, with some exceptions, consisted of the minimum graduation requirements and a passing score on the examination. This administrative regulation established a minimum GPA requirement to increase student success rates. As GPA increased, the rate of retention increased distinctly and substantially. Students who entered college with less than a 2.0 GPA had only a thirty-three (33) percent retention rate. Students who entered college with a GPA of 2.0 to 2.49 had a forty-four and seven tenths (44.7) percent retention rate. Students who entered college with a GPA of 2.5 to 2.9 had a fifty-five (55) percent retention rate, and students who entered college with a GPA of 3.0 to 3.5 had a sixty-eight (68) percent retention rate. Students who entered college with more than a 3.5 GPA had an eighty-six (86) percent retention rate. Students who did not meet the minimum GPA requirements could be placed in KCTCS programs and transfer on to traditional four (4) year institutions after completing remedial work. Remediation continued to be emphasized at traditional four (4) year institutions. This administrative regulation established placement provisions, based on the co-requisite model for developmental education, for students not yet ready for traditional four (4) year institutions. This program placed students in credit-bearing courses in applicable degree pathways and with outside support systems, such as tutoring or mentoring, to foster student success.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

OFFICE OF THE ATTORNEY GENERAL: Office of Consumer Protection

[40 KAR 002:345 & E](#). Visual aid glasses seller annual registration requirements. Kevin Winstead, staff attorney, represented the office.

In response to questions by Co-Chair Harris, Mr. Winstead stated that ten (10) to twenty (20) registrants were estimated to be affected annually. That estimate was developed based on the current registration of out-of-state contact sellers. The authorizing statute applied to sellers outside of Kentucky that sold contacts and glasses to Kentucky patients.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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. David Trimble, general counsel, represented the division.

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. Julie Campbell, director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[201 KAR 012:280](#). Esthetic practices restrictions.

A motion was made and seconded to approve the following

amendments: (1) to amend the STATUTORY AUTHORITY paragraph and Sections 1, 3, 4, 6, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to: (a) clarify the definition for “cosmetic resurfacing exfoliating procedures; and (b) add definitions for “direct supervision; (3) to amend Section 2 to clarify that: (a) medical procedures shall not be performed by an esthetics or cosmetology licensee; and (b) services allowed under the direct supervision of a licensed health care practitioner shall fall within the category of cosmetic resurfacing exfoliating procedures; (4) to amend Section 4 to clarify that “direct supervision” shall be required; and (5) to amend Section 6 to clarify when the benefits and risks of all procedures shall be disclosed. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing

[201 KAR 020:490](#). Licensed practical nurse infusion therapy scope of practice. Pamela Hagan, acting executive director, represented the board.

Amends the STATUTORY AUTHORITY paragraph and Sections 1, 2, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Physical Therapy

[201 KAR 022:020](#). Eligibility and credentialing procedure. Louis Kelly, general counsel, represented the board.

[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.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife: Fish

[301 KAR 001:201](#). Taking of fish by traditional fishing methods. Amber Arnett, staff attorney, and Ron Brooks, fisheries director, represented the department.

In response to questions by Co-Chair Hale, Mr. Brooks stated that the statewide creel limit for walleye and sauger was six (6), with a size limit of fourteen (14) inches. The limits were agreed to by the Ohio River Fish Management Team. The muskie size limit at Buckhorn Lake was previously thirty-six (36) inches and was being revised to forty (40) inches. Fishermen were not seeing many large sunfish, which could be the result of overharvesting. The public had not submitted feedback regarding changes to carnico limits.

In response to a question by Co-Chair Harris, Mr. Brooks stated that it usually took a matter of years after overharvesting to return populations to previous levels. Sunfish typically reached a harvestable size within three (3) to four (4) years.

A motion was made and seconded to approve the following amendment: to amend Section 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

[301 KAR 001:410](#). Taking of fish by nontraditional fishing methods.

In response to a question by Co-Chair Harris, Mr. Brooks stated that hand grabbing of catfish was synonymous with “noodling.”

A motion was made and seconded to approve the following amendment: to amend the agency heading to make a technical correction. Without objection, and with agreement of the agency, the amendment was approved.

ENERGY AND ENVIRONMENT CABINET: Office of the Secretary: Administration

[400 KAR 001:001 & E](#). Definitions for 400 KAR Chapter 1. Lesly Davis, executive director; Michael Mullins, regulation coordinator;

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

and Bruce Scott, deputy secretary, represented the office.

400 KAR 001:040 & E. Administrative discovery.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

400 KAR 001:090 & E. Administrative hearings practice provisions.

A motion was made and seconded to approve the following amendments: to amend Sections 5 and 24 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

400 KAR 001:100 & E. General administrative hearing practice provisions relating to matters brought under KRS Chapters 146, 149, 151, 223, 224, and 353.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 6, 9, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

400 KAR 001:110 & E. Administrative hearings relating to matters brought under KRS Chapter 350.310 through 351.375.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 through 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Environmental Protection: Division of Water: Water Quality

401 KAR 005:002. Definitions for 401 KAR Chapter 5. Pete Goodman, director, and Tony Hatton, commissioner, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 005:005. Permits to construct, modify, or operate a facility.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 4, 7, 9, 11, 18, 20, 22, 24, and 25 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 25(1) to correct a conjunction. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 005:006. Wastewater planning requirements for regional planning agencies.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 005:015. Releases to be reported to the division.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 005:037. Groundwater protection plans.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 005:039. Repeal of 401 KAR 5:035, 5:057, 5:070, and 5:300.

401 KAR 005:045. Treatment requirements; compliance; biochemically degradable wastes.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 005:050. General provisions of KPDES permitting program.

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).

401 KAR 005:055. Scope of applicability of the KPDES program and pretreatment requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 005:060. KPDES application requirements.

401 KAR 005:065. KPDES permit conditions.

401 KAR 005:075. Cabinet review procedures for KPDES permits and permit timetables for 401 KAR Chapter 5.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 14, 15, and 17 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 005:080. Criteria and standards for the Kentucky Pollutant Discharge Elimination System.

401 KAR 005:320. Wastewater Laboratory Certification Program.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 6, 7, 10, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to delete Section 12, which was a one-time requirement that had already been implemented. Without objection, and with agreement of the agency, the amendments were approved.

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. Todd Allen, deputy general counsel; Amanda Ellis, associate commissioner, Office of Teaching and Learning; and Dr. Wayne Lewis, interim commissioner of education, represented the office.

In response to a question by Co-Chair Harris, Dr. Lewis stated that this administrative regulation removed a deficiency from Kentucky's program. Approximately five (5) years ago, Kentucky was awarded a forty-four (44) million dollar Race to the Top Early Learning Challenge Grant. The grant was awarded to establish a unified rating system for Kentucky's early childhood learning programs, such as preschool, headstart, and childcare. The program included incentives to increase the quality of early learning settings.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 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.

[704 KAR 003:306](#). Kentucky Academic Standards for Historical and Cultural Influences of the Bible Elective Social Studies Course.

In response to questions by Co-Chair Hale, Dr. Lewis stated that the minimum standards established in this administrative regulation applied to all listed courses. These standards were established by administrative regulation, in contrast to curriculum, which was established at the local school level by the applicable School-based Decision-making Council. The elective social studies course on the Hebrew Scriptures, the Old Testament of the Bible, and the New Testament of the Bible, were high school level elective courses.

In response to a question by Senator Clark, Ms. Ellis stated that elective courses in Comparative Religions were also available. Senator Clark stated that it was necessary to be cautious with Bible-related courses, especially regarding consideration of which Bible would be used (the Vulgate, Jerusalem, King James Version, etc.)

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Conduct of Business; Employees

[804 KAR 005:080](#). Vintage distilled spirits. Steve Humphress, general counsel, and Marc Manley, counsel, represented the department.

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. Lesly Davis, executive director; Michael Mullins, regulation coordinator; and Bruce Scott, deputy secretary, represented the office.

Department of Insurance: Health Insurance Contracts

[806 KAR 017:020](#). Disclosure of other coverage in application. Patrick O'Connor, deputy commissioner, represented the department.

[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.

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 through 4 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[806 KAR 017:360](#). Prompt payment of claims.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 7 and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Professional Licensing – Kentucky Athlete Agent Registry: Division of Occupations and Professions, Athlete Agents: Registry

[830 KAR 002:001](#). Definitions. David Trimble, general counsel, represented the division.

[830 KAR 002:010](#). Registration and fees.

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.

[830 KAR 002:020](#). Complaints.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 2 to establish that failure to meet the filing deadline for a response to a complaint alleging a violation may be treated as a default of the obligation to file a response and an admission of the alleged violation, unless good cause is shown. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Public Health Protection and Safety: Sanitation

[902 KAR 010:051](#). Repeal of 902 KAR 10:050. Julie Brooks, regulation coordinator; Erica Brakefield, section supervisor; and Jennifer Burt, branch manager, represented the division.

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

[902 KAR 020:008 & E](#). License procedures and fee schedule. Stephanie Brammer – Barnes, regulation coordinator, and Steve Davis, inspector general, represented the division.

In response to a question by Representative Marzian, Mr. Davis stated that these administrative regulations did not pertain to abortion facilities.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[902 KAR 020:251](#). Repeal of 902 KAR 020:250.

[902 KAR 020:260](#). Hospital-owned pain management clinics.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[902 KAR 020:275](#). Freestanding or mobile technology.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2, 3, 5 through 7, 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.

[902 KAR 020:401E](#). Repeal of 902 KAR 020:058, 902 KAR 020:145, 902 KAR 020:190, and 902 KAR 020:400.

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. Julie Brooks, regulation coordinator; Pam Hendren, branch manager; and Anita Travis, program manager, represented the division.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 10, 11, 15, and 17 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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. Julie Brooks, regulation coordinator; Erica Brakefield, section supervisor; and Jennifer Burt, branch manager, represented the division.

In response to a question by Senator Clark, Ms. Brakefield

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

stated that these substances were regulated by the Consumer Product Safety Commission and related inspections were within the federal jurisdiction.

Controlled Substances

[902 KAR 055:011E](#). Repeal of 902 KAR 055:010. Stephanie Brammer – Barnes, regulation coordinator, and Steve Davis, inspector general, represented the division.

Office of Inspector General: Inspector General

[906 KAR 1:071E](#). Repeal of 906 KAR 001:050, 906 KAR 001:060, and 906 KAR 001:070. Stephanie Brammer – Barnes, regulation coordinator, and Steve Davis, inspector general, represented the division.

The following administrative regulations were deferred or removed from the September 11, 2018, subcommittee agenda:

STATE BOARD OF ELECTIONS: Forms and Procedures

[31 KAR 004:100 & E](#). Evaluation of precinct election officers.

[31 KAR 004:120 & E](#). Additional and emergency precinct officers.

BOARDS AND COMMISSIONS: Board of Nursing

[201 KAR 020:057](#). Scope and standards of practice of advanced practice registered nurses.

Board of Podiatry

[201 KAR 025:090](#). Prescribing and dispensing controlled substances.

JUSTICE AND PUBLIC SAFETY CABINET: Kentucky Law Enforcement Council

[503 KAR 001:110 & E](#). Department of Criminal justice Training basic training graduation requirements; records.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Administration

[601 KAR 002:030 & E](#). Ignition interlock.

LABOR CABINET: Department of Workers' Claims

[803 KAR 025:089 & E](#). Workers' Compensation Medical Fee Schedule for Physicians.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

[806 KAR 017:570](#). Minimum standards for Medicare supplement insurance policies and certificates.

Department of Charitable Gaming

[820 KAR 001:001](#). Definitions.

[820 KAR 001:005](#). Charitable gaming licenses and exemptions.

[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.

[820 KAR 001:025](#). Reports.

[820 KAR 001:032](#). Pulltabs.

[820 KAR 001:042](#). Bingo.

[820 KAR 001:050](#). Raffles.

[820 KAR 001:055](#). Charity fundraising event standards.

[820 KAR 001:057](#). Recordkeeping.

[820 KAR 001:060](#). Prohibited conduct.

[820 KAR 001:125](#). Gaming inspections.

[820 KAR 001:130](#). Administrative actions.

[820 KAR 001:135](#). Disposal of gaming supplies.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Division of Policy and Operations

[895 KAR 001:001](#). Definitions for 895 KAR Chapter 001.

[895 KAR 001:010](#). Eligibility for Kentucky HEALTH program.

[895 KAR 001:015](#). Premium payments within the Kentucky HEALTH programs.

[895 KAR 001:020](#). PATH requirement for the Kentucky HEALTH program.

[895 KAR 001:025](#). Beneficiary premiums.

[895 KAR 001:030](#). Establishment and use of the MyRewards program.

[895 KAR 001:035](#). Covered services within the Kentucky HEALTH program.

[895 KAR 001:040](#). Deductible accounts within the Kentucky HEALTH program.

[895 KAR 001:045](#). Accommodation, modifications, and appeals for beneficiaries participating in the Kentucky HEALTH program.

[895 KAR 001:050](#). Enrollment and reimbursement for providers in the Kentucky HEALTH program.

[895 KAR 001:055](#). Designation or determination of medically frail status or accommodation due to temporary vulnerability in the Kentucky HEALTH program.

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

[900 KAR 005:020](#) & E. State Health Plan for facilities and services.

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 byproduct 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

[906 KAR 001:190](#). Kentucky National Background Check Program (NBCP).

Department for Medicaid Services

[907 KAR 001:642](#). Adult group 07-2018 benefit plan and copayments.

VOLUME 45, NUMBER 4 – OCTOBER 1, 2018

Department for Community Based Services: Division of Family
Support: Supplemental Nutrition Assistance Program
[921 KAR 003:025](#). Technical requirements.

[921 KAR 003:035](#). Certification process.

Division of Protection and Permanency: Child Welfare
[922 KAR 001:560](#) & E. Putative father registry and operating
procedures.

The subcommittee adjourned at 1:50 p.m. The next meeting of the
subcommittee is tentatively scheduled for October 9, 2018, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT
Meeting of August 22, 2018**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Local Government for its meeting of August 22, 2018, having been referred to the Committee on August 1, 2018, pursuant to KRS 13A.290(6):

815 KAR 007:110
815 KAR 007:120
815 KAR 007:125
815 KAR 008:011
815 KAR 008:070
815 KAR 008:080
815 KAR 008:100

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

**INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
AND FAMILY SERVICES
Meeting of September 19, 2018**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare and Family Services for its meeting of September 19, 2018, having been referred to the Committee on September 5, 2018, pursuant to KRS 13A.290(6):

201 KAR 2:015
910 KAR 1:090
910 KAR 2:030
910 KAR 2:052
921 KAR 1:380
921 KAR 3:030

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 19, 2018 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

D - 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

D - 10

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

D - 19

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

D - 26

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

D - 27

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 Register</i> Service was published.					
SYMBOL KEY:					
* Statement of Consideration not filed by deadline			Repealed	2703	8-31-2018
** Withdrawn, not in effect within 1 year of publication			201 KAR 3:006(r)	2703	8-31-2018
*** Withdrawn before being printed in Register			201 KAR 3:025		
‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			Repealed	2703	8-31-2018
IJC Interim Joint Committee			201 KAR 3:035		
(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.			Repealed	2703	8-31-2018
			201 KAR 3:045	2703	8-31-2018
			Amended	2544	See 45 Ky.R.
			201 KAR 3:055		
			Repealed	2703	8-31-2018
			201 KAR 3:065		
			Repealed	2703	8-31-2018
			201 KAR 3:090		
			Amended	2546	8-24-2018
			201 KAR 3:100	2705	8-31-2018
			201 KAR 5:090		
			Amended	2548	See 45 Ky.R.
201 KAR 12:082E	2303	4-13-2018	201 KAR 5:130		
Replaced	2364	8-6-2018	Amended	2549	8-31-2018
201 KAR 22:020E	2180	3-14-2018	201 KAR 6:020		
Replaced	2486	6-20-2018	Amended	2552	8-31-2018
201 KAR 22:040E	2182	3-14-2018	201 KAR 6:050		
Replaced	2487	6-20-2018	Amended	2554	See 45 Ky.R.
201 KAR 22:070E	2184	3-14-2018	201 KAR 9:021		
Replaced	2487	6-20-2018	Amended	2361	7-18-2018
921 KAR 2:015E	1799	12-28-2017	201 KAR 9:031		
Replaced	1899	6-20-2018	Amended	2363	
922 KAR 2:090E	1916	2-14-2018	As Amended		See 45 Ky.R.
Replaced	2513	7-18-2018	201 KAR 9:310		
922 KAR 2:100E	1925	2-14-2018	Amended	1871	5-4-2018
Replaced	2522	7-18-2018	201 KAR 9:480	1725	
922 KAR 2:111E	1936	2-14-2018	As Amended	1970	3-15-2018
Expires		8-13-2018	201 KAR 12:010		
922 KAR 2:120E	1937	2-14-2018	Amended	2556	See 45 Ky.R.
Replaced	2533	7-18-2018	201 KAR 12:030		
922 KAR 2:171E(r)	2306	4-13-2018	Amended	2557	See 45 Ky.R.
Expires	2308	10-10-2018	201 KAR 12:082		
922 KAR 2:180E	1946	2-14-2018	Amended	2364	
Replaced	2138	7-18-2018	As Amended		See 45 Ky.R.
922 KAR 2:190E	1952	2-14-2018	201 KAR 12:140		
Replaced	2144	7-18-2018	Amended	2561	See 44 Ky.R.
922 KAR 2:270E	2308	4-13-2018	201 KAR 12:190		
Replaced	2459	7-18-2018	Amended	2563	See 44 Ky.R.
			201 KAR 12:230		
			Amended	2565	See 44 Ky.R.
			201 KAR 12:260		
			Amended	2368	
			As Amended		See 45 Ky.R.
13 KAR 3:060	2702	8-31-2018	201 KAR 14:180		
16 KAR 2:010			Amended	2566	8-24-2018
Amended	1584		201 KAR 20:056		
Am Comments	2033	See 44 Ky.R.	Amended	2237	
16 KAR 5:030			As Amended	2473	6-20-2018
Amended	1589		201 KAR 20:070		
Am Comments	2039	See 44 Ky.R.	Amended	2239	
101 KAR 1:325			As Amended	2475	6-20-2018
Amended	2542	8-31-2018	201 KAR 20:110		
103 KAR 16:360			Amended	2241	
Amended	1094		As Amended	2476	6-20-2018
Withdrawn by agency		12-8-2017	201 KAR 20:225		
103 KAR 26:120			Amended	2244	
As Amended	1494	2-2-2018	As Amended	2477	6-20-2018
103 KAR 41:120			201 KAR 20:370		
Amended	1112		Amended	2246	
Withdrawn by agency		12-8-2017	As Amended	2478	6-20-2018
201 KAR 3:005					

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	44 Ky.R. Page No.	Effective Date	Regulation Number	44 Ky.R. Page No.	Effective Date
201 KAR 20:411			401 KAR 5:075		
Amended	2247		Amended	2625	See 45 Ky.R.
As Amended	2479	6-20-2018	401 KAR 5:080		
201 KAR 20:470			Amended	2628	
Amended	2250		401 KAR 5:320		
As Amended	2481	6-20-2018	Amended	2631	See 45 Ky.R.
201 KAR 22:020			401 KAR 51:240	2284	
Amended	2255		AmComments	2505	
As Amended	2486	6-20-2018	401 KAR 51:250	2286	
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	7-6-2018
301 KAR 1:130			501 KAR 6:270		
Amended	2574	8-6-2018	Amended	2097	
301 KAR 2:049			As Amended	2494	7-6-2018
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	7-6-2018
As Amended		See 45 Ky.R.	501 KAR 16:300		
301 KAR 2:176			Amended	1887	
Amended	2576	10-5-2018	Am Comments	2339	
301 KAR 2:221			As Amended	2496	7-6-2018
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	7-6-2018
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	7-6-2018
Amended	2265		501 KAR 16:340		
As Amended	2492	7-6-2018	Amended	1897	
302 KAR 16:081(r)	2283	7-6-2018	Am Comments	2349	7-6-2018
302 KAR 16:091			503 KAR 5:090		
Amended	2267		Amended	2637	10-5-2018
As Amended	2493	7-6-2018	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	See 45 Ky.R.	Amended	2386	See 45 Ky.R.
401 KAR 5:005			600 KAR 4:010		
Amended	2585	See 45 Ky.R.	Amended	2272	
401 KAR 5:006			As Amended	2501	7-6-2018
Amended	2598	See 45 Ky.R.	601 KAR 2:030		
401 KAR 5:015			Amended	1651	
Amended	2602	See 45 Ky.R.	Withdrawn		6-13-2018
401 KAR 5:037			603 KAR 2:015		
Amended	2604	See 45 Ky.R.	Amended	2640	
401 KAR 5:039(r)	2707		Withdrawn		7-24-2018
401 KAR 5:045			703 KAR 5:190		
Amended	2610	See 45 Ky.R.	Repealed	2157	8-6-2018
401 KAR 5:050			703 KAR 5:191(r)	2157	8-6-2018
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	See 45 Ky.R.	Repealed	2157	6-17-2018
401 KAR 5:060			703 KAR 5:280	2158	
Amended	2620		Am Comments	2351	
401 KAR 5:065			As Amended		See 45 Ky.R.
Amended	2623		704 KAR 7:090		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	44 Ky.R. Page No.	Effective Date	Regulation Number	44 Ky.R. Page No.	Effective Date
Amended	1658		820 KAR 1:055		
As Amended	2015	4-6-2018	Amended	2681	
735 KAR 1:010			820 KAR 1:057		
Amended	2388		Amended	2683	
As Amended		See 45 Ky.R.	820 KAR 1:060		
735 KAR 1:020			Amended	2690	
Amended	2391		820 KAR 1:125		
As Amended		See 45 Ky.R.	Amended	2691	
735 KAR 2:010			820 KAR 1:130		
Amended	2394		Amended	2693	
As Amended		See 45 Ky.R.	820 KAR 1:135	2721	
735 KAR 2:020			902 KAR 2:055		
Amended	2396		Amended	2695	See 44 Ky.R.
As Amended		See 45 Ky.R.	902 KAR 10:040		
735 KAR 2:030			Amended	2277	See 44 Ky.R.
Amended	2398		902 KAR 20:016		
As Amended		See 45 Ky.R.	Amended	1415	
735 KAR 2:040			Am Comments	2054	See 44 Ky.R.
Amended	2399		902 KAR 20:058		
As Amended		See 45 Ky.R.	Amended	1714	5-4-2018
735 KAR 2:050			906 KAR 1:200		
Amended	2401		Amended	2454	
As Amended		See 45 Ky.R.	As Amended		See 45 Ky.R.
735 KAR 2:060			910 KAR 2:030		
Amended	2403		Amended	2698	
As Amended		See 45 Ky.R.	As Amended		See 45 Ky.R.
804 KAR 9:051(r)	1774		910 KAR 2:050	2723	9-19-2018
807 KAR 5:022			910 KAR 2:052(r)	2723	9-19-2018
Amended	2405	See 45 Ky.R.	921 KAR 2:015		
807 KAR 5:026			Amended	1899	6-20-2018
Amended	2436	See 45 Ky.R.	922 KAR 2:090		
810 KAR 1:111(r)	2711		Amended	2109	
Withdrawn		7-18-2018	AmComments	2513	7-18-2018
810 KAR 8:040	2712		922 KAR 2:100		
Withdrawn		7-18-2018	Amended	2118	
811 KAR 1:241(r)	2717		AmComments	2522	7-18-2018
Withdrawn		7-18-2018	922 KAR 2:110		
811 KAR 2:151(r)	2718		Repealed	2306	7-18-2018
Withdrawn		7-18-2018	922 KAR 2:120		
815 KAR 7:110			Amended	2129	
Amended	2439	See 44 Ky.R.	AmComments	2533	
815 KAR 7:120			As Amended		See 45 Ky.R.
Amended	2442	8-22-2018	922 KAR 2:170		
815 KAR 7:125			Repealed	2308	7-18-2018
Amended	2445	8-22-2018	922 KAR 2:180		
815 KAR 8:007			Amended	2138	
Repealed	2458	8-22-2018	As Amended		See 45 Ky.R.
815 KAR 8:011(r)	2458	8-22-2018	922 KAR 2:190		
815 KAR 8:045			Amended	2144	
Repealed	2458	8-22-2018	As Amended		See 45 Ky.R.
815 KAR 8:070			922 KAR 2:210		
Amended	2446	See 44 Ky.R.	Repealed	2308	7-18-2018
815 KAR 8:080			922 KAR 2:270	2459	
Amended	2449	See 44 Ky.R.	As Amended		See 45 Ky.R.
815 KAR 8:100					
Amended	2451	See 44 Ky.R.			
820 KAR 1:001					
Amended	2646				
820 KAR 1:005					
Amended	2650				
820 KAR 1:011(r)	2720				
820 KAR 1:025					
Amended	2654				
820 KAR 1:032					
Amended	2656				
820 KAR 1:042					
Amended	2670				
820 KAR 1:050					
Amended	2678				

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			9 KAR 1:030		
(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	377	
			As Amended	933	
9 KAR 1:015E	234	7-11-2018	11 KAR 5:145		
9 KAR 1:030E	235	7-11-2018	Amended	105	
31 KAR 3:010E	7	5-22-2018	As Amended	626	10-5-2018
31 KAR 4:100E	236	6-21-2018	11 KAR 15:010		
31 KAR 4:120E	239	6-21-2018	Amended	106	
32 KAR 1:030E	906	8-31-2018	As Amended	626	10-5-2018
40 KAR 2:345E	241	7-2-2018	11 KAR 15:110	207	
101 KAR 2:210E	908	9-14-2018	As Amended	627	10-5-2018
103 KAR 18:050E	910	9-10-2018	12 KAR 2:006		
301 KAR 2:169E	912	8-24-2018	Amended	380	10-11-2018
Withdrawn		10-5-2018	12 KAR 2:011		
301 KAR 2:225E	614	7-20-2018	Amended	381	10-11-2018
400 KAR 1:001E	243	7-13-2018	As Amended	382	10-11-2018
400 KAR 1:040E	245	7-13-2018	As Amended	935	
400 KAR 1:090E	251	7-13-2018	12 KAR 2:017		
400 KAR 1:100E	260	7-13-2018	Amended	384	10-11-2018
400 KAR 1:110E	265	7-13-2018	12 KAR 2:018		
501 KAR 5:020E	617	7-19-2018	Amended	385	10-11-2018
503 KAR 1:110E	274	6-27-2018	As Amended	935	
601 KAR 2:030E	9	6-13-2018	12 KAR 2:021		
787 KAR 1:010E	915	9-13-2018	Amended	389	10-11-2018
803 KAR 25:089E	15	6-11-2018	As Amended	938	
805 KAR 1:210E	277	7-13-2018	12 KAR 2:026		
895 KAR 1:001E	279	6-29-2018	Amended	391	10-11-2018
895 KAR 1:010E	282	6-29-2018	As Amended	940	
Withdrawn		7-2-2018	12 KAR 2:031		
895 KAR 1:015E	285	6-29-2018	Amended	392	10-11-2018
Withdrawn		7-2-2018	As Amended	940	
895 KAR 1:020E	288	6-29-2018	12 KAR 2:036		
Withdrawn		7-2-2018	Amended	394	10-11-2018
895 KAR 1:025E	290	6-29-2018	As Amended	941	
Withdrawn		7-2-2018	12 KAR 2:041		
895 KAR 1:030E	292	6-29-2018	Amended	395	10-11-2018
Withdrawn		7-2-2018	12 KAR 2:046		
895 KAR 1:035E	295	6-29-2018	Amended	396	10-11-2018
Withdrawn		7-2-2018	12 KAR 2:051		
895 KAR 1:040E	297	6-29-2018	Amended	398	10-11-2018
Withdrawn		7-2-2018	12 KAR 2:056		
895 KAR 1:045E	299	6-29-2018	Amended	399	10-11-2018
Withdrawn		7-2-2018	As Amended	941	
895 KAR 1:050E	301	6-29-2018	12 KAR 2:061		
Withdrawn		7-2-2018	Amended	400	10-11-2018
895 KAR 1:055E	303	6-29-2018	12 KAR 2:066		
Withdrawn		7-2-2018	Amended	401	10-11-2018
900 KAR 11:010E	917	9-13-2018	As Amended	942	
900 KAR 5:020E	305	7-13-2018	12 KAR 3:007		
902 KAR 20:008E	307	7-13-2018	Amended	108	
902 KAR 20:401E(r)	312	7-13-2018	As Amended	628	9-28-2018
902 KAR 55:011E(r)	313	7-13-2018	12 KAR 3:012		
906 KAR 1:071E(r)	315	7-13-2018	Amended	109	
907 KAR 1:025E	922	9-13-2018	As Amended	628	9-28-2018
907 KAR 1:642E	316	7-2-2018	12 KAR 3:017		
Withdrawn	619	7-27-2018	Amended	112	
922 KAR 1:100E	928	9-13-2018	As Amended	630	9-28-2018
922 KAR 1:360E		8-1-2018	12 KAR 3:022		
922 KAR 1:560E	318	7-13-2018	Amended	114	
-----			As Amended	631	9-28-2018
ORDINARY ADMINISTRATIVE REGULATIONS			12 KAR 3:027		
9 KAR 1:015			Amended	116	
Amended	376		As Amended	633	9-28-2018
As Amended	933		12 KAR 3:028	208	
			As Amended	634	9-28-2018
			12 KAR 3:032		
			Amended	118	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
As Amended	635	9-28-2018	103 KAR 17:020		
12 KAR 3:037			Amended	1068	
Amended	119		103 LAR 17:042(r)	861	
As Amended	635	9-28-2018	103 KAR 17:060		
12 KAR 3:039	210		Amended	1069	
As Amended	636	9-28-2018	103 KAR 17:100		
12 KAR 3:042			Amended	734	
Amended	120		103 KAR 17:130		
As Amended	637	9-28-2018	Amended	735	
13 KAR 2:020			103 KAR 17:140		
Amended	403		Amended	736	
As Amended	942		103 KAR 18:050		
16 KAR 2:010		See 44 Ky.R.	Amended	1070	
As Amended	321	8-31-2018	103 KAR 18:081(r)	1153	
16 KAR 5:030		See 44 Ky.R.	103 KAR 18:110		
As Amended	326	8-31-2018	Amended	1073	
31 KAR 3:010			103 KAR 18:120		
Amended	122		Amended	1074	
As Amended	638		103 KAR 18:150		
31 KAR 4:100			Amended	1075	
Amended	124		103 KAR 18:180		
Amended	408		Amended	738	
31 KAR 4:120			103 LAR 18:191(r)	862	
Amended	125		103 KAR 19:010		
Amended	409		Amended	1077	
32 KAR 1:030			200 KAR 30:011(r)	558	
Amended	1052		201 KAR 2:015		
40 KAR 2:345	557		Amended	146	
As Amended	946		As Amended	650	9-19-2018
45 KAR 1:050			201 KAR 2:370		
Withdrawn		8-23-2018	Amended	740	
Amended	1053		201 KAR 3:045		See 44 Ky.R.
101 KAR 2:020			As Amended	327	8-31-2018
Amended	127		Recodified as 831 KAR 1:020		10-12-2018
101 KAR 2:034			201 KAR 3:090		See 44 Ky.R.
Amended	139		As Amended	327	
As Amended	639		Recodified as 831 KAR 1:010		10-12-2018
101 KAR 2:076			201 KAR 3:100		See 44 Ky.R.
Amended	133		As Amended	328	8-31-2018
101 KAR 2:095			Recodified as 831 KAR 1:030		10-12-2018
Amended	135		201 KAR 5:090		See 44 Ky.R.
As Amended	643		As Amended	330	8-31-2018
101 KAR 2:210			201 KAR 6:050		See 44 Ky.R.
Amended	1055		As Amended	330	8-31-2018
101 KAR 3:045			201 KAR 9:031		See 44 Ky.R.
Amended	139		As Amended	17	7-18-2018
As Amended	646		201 KAR 9:260		
101 KAR 3:050			Amended	743	
Amended	144		201 KAR 12:010		See 44 Ky.R.
103 LAR 15:041(r)	859		As Amended	330	8-31-2018
103 KAR 15:050			201 KAR 12:030		See 44 Ky.R.
Amended	1057		As Amended	331	8-31-2018
103 KAR 15:060			201 KAR 12:082		See 44 Ky.R.
Amended	1059		As Amended	17	8-6-2018
103 KAR 15:110			201 KAR 12:140		See 44 Ky.R.
Amended	727		As Amended	334	8-31-2018
103 KAR 15:120			201 KAR 12:190		See 44 Ky.R.
Amended	728		As Amended	335	8-31-2018
103 KAR 15:140			201 KAR 12:230		See 44 Ky.R.
Amended	730		As Amended	337	8-31-2018
103 KAR 15:180			201 KAR 12:251(r)	212	
Amended	1060		As Amended	947	
103 KAR 15:195			201 KAR 12:260		See 44 Ky.R.
Amended	1062		As Amended	20	8-6-2018
103 LAR 16:011(r)	860		201 KAR 12:280	213	
103 KAR 16:352			As Amended	947	
Amended	732		201 KAR 20:057		
103 KAR 16:381(r)	1152		Amended	411	
103 KAR 17:010			Am Comments	1044	
Amended	1066		201 KAR 20:490		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
Amended	415		400 KAR 1:100		
As Amended	948		Amended	448	
201 KAR 21:015			As Amended	970	
Amended	1079		400 KAR 1:110		
201 KAR 21:045			Amended	453	
Amended	1080		As Amended	974	
201 KAR 22:020			401 KAR 5:002		See 45 Ky.R.
Amended	4148		Am Comments	667	
201 KAR 22:040			As Amended	982	
Amended	420		401 KAR 5:005		See 45 Ky.R.
201 KAR 22:170			Am Comments	675	
Amended	422		As Amended	989	
As Amended	951		401 KAR 5:006		See 45 Ky.R.
201 KAR 34:060		See 44 Ky.R.	As Amended	1000	
As Amended	337	8-31-2018	401 KAR 5:015		See 45 Ky.R.
201 KAR 41:100		See 44 Ky.R.	Am Comments	687	
As Amended	340	8-24-2018	As Amended	1002	
301 KAR 1:015			401 KAR 5:037		See 45 Ky.R.
Amended	748		Am Comments	690	
301 KAR 1:115			As Amended	1003	
Amended	148		401 KAR 5:045		See 45 Ky.R.
As Amended	651	9-6-2018	As Amended	1008	
301 KAR 1:132			401 KAR 5:055		See 45 Ky.R.
Amended	750		As Amended	1009	
301 KAR 1:201			401 KAR 5:075		See 45 Ky.R.
Amended	423		As Amended	1011	
As Amended	951		401 KAR 5:320		See 45 Ky.R.
301 KAR 1:410			Am Comments	696	
Amended	428		As Amended	1012	
As Amended	955		401 KAR 52:050		
301 KAR 2:095			Amended	759	
Amended	1081		401 KAR 52:070		
301 KAR 2:172		See 44 Ky.R.	Amended	761	
As Amended	652	10-5-2018	501 KAR 6:020		
301 KAR 2:221		See 44 Ky.R.	Amended	764	
As Amended	21		501 KAR 6:070		See 44 Ky.R.
301 KAR 2:222		See 44 Ky.R.	As Amended	342	8-31-2018
As Amended	22		503 KAR 1:110		
301 KAR 2:225			Amended	462	
Amended	752		Am Comments	1047	
301 KAR 2:228		See 44 Ky.R.	505 KAR 1:120		See 44 Ky.R.
As Amended	341	8-6-2018	Am Comments	368	
301 KAR 3:022			As Amended	656	10-5-2018
Amended	755		505 KAR 1:140		See 44 Ky.R.
301 KAR 3:100			Am Comments	369	10-5-2018
Amended	1083		601 KAR 2:030		
301 KAR 4:090			Amended	152	
Amended	758		701 KAR 5:140		
302 KAR 20:211(r)	863		Amended	766	
302 KAR 20:221(r)	864		702 KAR 7:065		
302 KAR 20:231(r)	865		Amended	770	
302 KAR 20:541(r)	866		703 KAR 5:225		See 44 Ky.R.
302 KAR 20:561(r)	867		As Amended	26	8-6-2018
302 KAR 20:571(r)	868		703 KAR 5:280		See 44 Ky.R.
302 KAR 20:581(r)	869		As Amended	29	8-6-2018
302 KAR 29:020			704 KAR 3:015	215	
Amended	150		As Amended	1016	
As Amended	655	10-5-2018	704 KAR 3:306	217	
302 KAR 50:080			Am Comments	700	
Amended	1085		As Amended	1017	
302 KAR 100:011(r)	870		735 KAR 1:010		See 44 Ky.R.
302 KAR 100:021(r)	827		As Amended	34	8-6-2018
400 KAR 1:001			735 KAR 1:020		See 44 Ky.R.
Amended	431		As Amended	36	8-6-2018
400 KAR 1:040			735 KAR 2:010		See 44 Ky.R.
Amended	433		As Amended	38	8-6-2018
As Amended	958		735 KAR 2:020		See 44 Ky.R.
400 KAR 1:090			As Amended	39	8-6-2018
Amended	439		735 KAR 2:030		See 44 Ky.R.
As Amended	963		As Amended	39	8-6-2018

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
735 KAR 2:040		See 44 Ky.R.	As Amended	348	8-22-2018
As Amended	40	8-6-2018	815 KAR 15:080		
735 KAR 2:050		See 44 Ky.R.	Amended	805	
As Amended	40	8-6-2018	815 KAR 20:030		
735 KAR 2:060		See 44 Ky.R.	Amended	808	
As Amended	41	8-6-2018	815 KAR 20:041(r)	885	
787 KAR 1:010			815 KAR 22:011(r)	886	
Amended	1087		815 KAR 25:001		
803 KAR 25:089			815 KAR 25:020		
Amended	158		Amended	813	
803 KAR 30:010			815 KAR 25:040		
Amended	774		Amended	821	
803 KAR 30:021(r)	873		815 KAR 25:050		
803 KAR 50:010			Amended	822	
Amended	780		815 KAR 25:060		
804 KAR 5:021(r)	1154		Amended	827	
804 KAR 5:080	219		815 KAR 25:081(r)	889	
804 KAR 8:050			815 KAR 25:090		
Amended	1088		Amended	832	
805 KAR 1:210	560		815 KAR 25:100		
806 KAR 9:360			Amended	835	
Amended	159		815 KAR 35:015		
As Amended	656	10-5-2018	Amended	837	
806 KAR 17:020			815 KAR 35:020		
Amended	446		Amended	841	
806 KAR 17:091(r)	561		815 KAR 35:060		
806 KAR 17:300			Amended	845	
Amended	437		815 KAR 35:080		
806 KAR 17:360			Amended	849	
Amended	470		815 KAR 35:090		
806 KAR 17:570			Amended	850	
Amended	161		815 KAR 35:101(r)	890	
807 KAR 5:022			820 KAR 1:032		
AmComments	62	8-6-2018	Am Comments	702	
807 KAR 5:026			820 KAR 1:050		
AmComments	92	8-31-2018	Am Comments	715	
815 KAR 2:010	874		820 KAR 1:057		
815 KAR 2:020	876		Am Comments	718	
815 KAR 2:030	879		820 KAR 1:060		
815 KAR 2:040	881		Am Comments	724	
815 KAR 4:030			830 KAR 1:010		
Amended	790		Amended	180	10-5-2018
815 KAR 4:071(r)	882		830 KAR 2:001	563	
815 KAR 6:001			830 KAR 2:010	564	
Amended	1090		As Amended	1021	
815 KAR 6:010			830 KAR 2:020	566	
Amended	1091		As Amended	1022	
815 KAR 6:030			831 KAR 1:010		
Amended	1096		Recodified from 201 KAR 3:090		10-12-2018
815 KAR 6:040			831 KAR 1:020		
Amended	1099		Recodified from 201 KAR 3:045		10-12-2018
815 KAR 6:101(r)	1155		831 KAR 1:030		
815 KAR 7:070			Recodified from 201 KAR 3:100		10-12-2018
Amended	794		895 KAR 1:001	567	
815 KAR 7:110		See 44 Ky.R.	895 KAR 1:010	570	
As Amended	343	8-22-2018	895 KAR 1:015	573	
815 KAR 7:120			895 KAR 1:020	576	
AmComments	96	8-22-2018	895 KAR 1:025	579	
815 KAR 7:125			895 KAR 1:030	581	
AmComments	98	8-22-2018	895 KAR 1:035	583	
815 KAR 8:010			895 KAR 1:040	585	
Amended	800		895 KAR 1:045	587	
815 KAR 8:030			895 KAR 1:050	589	
Amended	804		895 KAR 1:055	591	
815 KAR 8:070		See 44 Ky.R.	900 KAR 1:091(r)	891	
As Amended	345	8-22-2018	900 KAR 2:021(r)	1156	
815 KAR 8:080		See 44 Ky.R.	900 KAR 2:040		
As Amended	347	8-22-2018	Amended	1103	
815 KAR 8:091(r)	883		900 KAR 5:020		
815 KAR 8:100		See 44 Ky.R.	Amended	472	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
900 KAR 6:020			922 KAR 2:120		See 44 Ky.R.
Amended	1110		As Amended	43	7-18-2018
902 KAR 2:055		See 44 Ky.R.	922 KAR 2:180		See 44 Ky.R.
As Amended	350	8-31-2018	As Amended	51	7-18-2018
902 KAR 10:040			922 KAR 2:190		See 44 Ky.R.
Am Comments	100		As Amended	56	7-18-2018
As Amended	351	8-31-2018	922 KAR 2:270		See 44 Ky.R.
902 KAR 10:051(r)	593		As Amended	57	7-18-2018
902 KAR 20:008					
Amended	474				
As Amended	1022				
902 KAR 20:016		See 44 Ky.R.			
As Amended	355	8-31-2018			
902 KAR 20:251(r)	595				
902 KAR 20:260					
Amended	479				
As Amended	1026				
902 KAR 20:275					
Amended	485				
As Amended	1031				
902 KAR 45:007(r)	1157				
902 KAR 45:160					
Amended	495				
As Amended	1040				
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 1:025					
Amended	1138				
907 KAR 1:121(r)	892				
907 KAR 1:642	598				
Withdrawn		9-21-2018			
910 KAR 1:090					
Amended	187				
As Amended	657	9-19-2018			
910 KAR 2:030		See 44 Ky.R.			
Am Comments	371				
As Amended	662	9-19-2018			
921 KAR 1:380					
Amended	193	9-19-2018			
921 KAR 3:025					
Amended	196				
921 KAR 3:030					
Amended	200				
As Amended	664	9-19-2018			
921 KAR 3:035					
Amended	202				
922 KAR 1:010					
Amended	1142				
922 KAR 1:100					
Amended	1147				
922 KAR 1:360					
Amended	853				
922 KAR 1:411(r)	1159				
922 KAR 1:560	600				

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	136.340	103 KAR 15:180
	9 KAR 1:030	136.350	103 KAR 15:180
11A.100	9 KAR 1:030	136.370	103 KAR 15:180
12.040	101 KAR 3:050	136.390	103 KAR 15:180
12.050	101 KAR 3:050	141.010	103 KAR 15:110
13B	900 KAR 2:021		103 KAR 15:120
	902 KAR 45:090		103 KAR 15:140
	902 KAR 45:160		103 KAR 16:011
	906 KAR 1:190		103 KAR 16:352
	910 KAR 1:090		103 KAR 17:010
	922 KAR 1:360		103 KAR 17:020
13B.040	900 KAR 2:040		103 KAR 17:060
13B.050	900 KAR 2:040		103 KAR 19:010
13B.080	900 KAR 2:040	141.017	103 KAR 17:060
13B.090	900 KAR 2:040	141.019	103 KAR 17:060
13B.110	900 KAR 2:040		103 KAR 19:010
13B.130	900 KAR 2:040	141.020	103 KAR 15:110
15.330	503 KAR 1:110		103 KAR 15:120
15.386	503 KAR 1:110		103 KAR 15:140
15.404	503 KAR 1:110		103 KAR 15:180
15.440	503 KAR 1:110		103 KAR 17:010
18A.005	101 KAR 2:020		103 KAR 17:060
	101 KAR 2:076		103 KAR 17:100
18A.030	101 KAR 2:020		103 KAR 17:130
	101 KAR 2:034		103 KAR 19:010
	101 KAR 2:095	141.030	103 KAR 15:110
	101 KAR 2:210		103 KAR 15:120
18A.032	101 KAR 2:020		103 KAR 15:140
18A.110	101 KAR 2:020		103 KAR 19:010
	101 KAR 2:034	141.040	103 KAR 15:110
	101 KAR 2:076		103 KAR 15:120
	101 KAR 2:095		103 KAR 15:140
	101 KAR 3:045		103 KAR 15:180
	101 KAR 3:050		103 KAR 16:352
18A.115	101 KAR 2:076		103 KAR 16:381
	101 KAR 3:050	141.042	103 KAR 15:050
18A.120	101 KAR 2:076		103 KAR 15:060
18A.155	101 KAR 3:045	141.044	103 KAR 15:060
	101 KAR 3:050	141.050	103 KAR 15:180
18A.165	101 KAR 2:034		103 KAR 17:020
18A.202	101 KAR 3:045	141.070	103 KAR 17:140
18A.225	101 KAR 2:210	141.081	103 KAR 19:010
18A.2254	101 KAR 2:210	141.120	103 KAR 15:195
43.070	45 KAR 1:050		103 KAR 16:352
43.075	45 KAR 1:050		103 KAR 16:381
45A	601 KAR 2:030	141.160	103 KAR 15:050
49.220	803 KAR 30:010		103 KAR 16:352
61.805 - 61.850	702 KAR 7:065	141.170	103 KAR 15:050
64.810	45 KAR 1:050		103 KAR 16:352
68.210	45 KAR 1:050	141.180	103 KAR 17:020
116.048	921 KAR 3:030	141.190	103 KAR 19:010
116.085	31 KAR 3:010	141.200	103 KAR 16:352
116.155	31 KAR 3:010	141.206	103 KAR 16:352
117.015	31 KAR 4:120		103 KAR 18:081
117.025	31 KAR 3:010	141.210	103 KAR 15:041
117.045	31 KAR 4:100		103 KAR 16:352
	31 KAR 4:120	141.215	103 KAR 17:042
117.225	31 KAR 3:010	141.235	103 KAR 15:041
121.180	32 KAR 1:030	141.300	103 KAR 15:050
131.081	103 KAR 15:050		103 KAR 15:060
131.130	103 KAR 16:352		103 KAR 17:100
	103 KAR 17:020	141.305	103 KAR 15:060
131.131	103 KAR 15:180		103 KAR 17:100
131.155	103 KAR 18:150	141.310	103 KAR 18:110
131.170	103 KAR 15:050		103 KAR 18:120
131.183	103 KAR 15:041	141.315	103 KAR 18:081
131.250	103 KAR 18:050	141.330	103 KAR 18:050
134.580	103 KAR 15:041		103 KAR 18:150
136.100	103 KAR 15:050	141.335	103 KAR 18:050
136.320	103 KAR 15:180	141.347	103 KAR 18:180
136.330	103 KAR 15:180		103 KAR 18:191

KRS SECTION	REGULATION	KRS SECTION	REGULATION
141.370	103 KAR 18:110		301 KAR 3:022
141.400	103 KAR 18:180		301 KAR 4:090
	103 KAR 18:191	150.183	301 KAR 3:022
141.401	103 KAR 18:180		301 KAR 4:090
	103 KAR 18:191	150.235	301 KAR 1:410
141.402	103 KAR 18:180	150.240	301 KAR 3:022
141.403	103 KAR 18:180	150.275	301 KAR 3:022
141.407	103 KAR 18:180	150.280	301 KAR 1:132
	103 KAR 18:191		301 KAR 2:095
141.415	103 KAR 18:180		301 KAR 3:022
141.422	103 KAR 15:110	150.290	301 KAR 1:115
	103 KAR 15:120		301 KAR 2:095
	103 KAR 15:140		301 KAR 3:022
141.423	103 KAR 15:140	150.305	301 KAR 4:090
141.424	103 KAR 15:140	150.330	301 KAR 2:225
141.432	103 KAR 15:180		301 KAR 4:090
141.433	103 KAR 15:180	150.340	301 KAR 1:201
141.434	103 KAR 15:180		301 KAR 2:225
141.438	103 KAR 15:195	150.370	301 KAR 4:090
141.990	103 KAR 15:060	150.411	301 KAR 2:169
	103 KAR 16:352		301 KAR 4:090
	103 KAR 17:042	150.445	301 KAR 1:410
141.0401	103 KAR 15:110	150.450	301 KAR 1:132
	103 KAR 15:120		301 KAR 3:022
	103 KAR 15:140	150.485	301 KAR 1:115
	103 KAR 15:180		301 KAR 1:132
141.4242	103 KAR 15:110		301 KAR 3:022
	103 KAR 15:120	150.520	301 KAR 3:022
141.4246	103 KAR 15:110	150.525	301 KAR 3:022
	103 KAR 15:120	150.600	301 KAR 3:022
141.4248	103 KAR 15:110	150.603	301 KAR 2:225
	103 KAR 15:120		301 KAR 3:022
141.900	103 KAR 16:381	150.620	301 KAR 1:201
142.363	907 KAR 1:025		301 KAR 1:410
146.200 - 146.360	400 KAR 1:001	150.625	301 KAR 1:015
	400 KAR 1:040	150.660	301 KAR 3:022
	400 KAR 1:090	150.720	301 KAR 3:022
	400 KAR 1:100	150.990	301 KAR 1:015
146.450	400 KAR 1:001		301 KAR 1:201
	400 KAR 1:090		301 KAR 1:410
146.530	400 KAR 1:001		301 KAR 2:169
	400 KAR 1:090		301 KAR 4:090
146.990	400 KAR 1:001	151.125	400 KAR 1:001
	400 KAR 1:040		400 KAR 1:090
	400 KAR 1:090	151.182	400 KAR 1:001
	400 KAR 1:100		400 KAR 1:040
147A.310	103 KAR 15:195		400 KAR 1:090
149.344	400 KAR 1:001		400 KAR 1:100
	400 KAR 1:090	151.184	400 KAR 1:001
	400 KAR 1:100		400 KAR 1:040
149.346	400 KAR 1:001		400 KAR 1:090
	400 KAR 1:090		400 KAR 1:100
	400 KAR 1:100	151.297	400 KAR 1:001
149.348	400 KAR 1:001		400 KAR 1:040
	400 KAR 1:090		400 KAR 1:090
	400 KAR 1:100		400 KAR 1:100
150.010	301 KAR 1:201	151.990	400 KAR 1:001
	301 KAR 1:410		400 KAR 1:040
	301 KAR 2:169		400 KAR 1:090
	301 KAR 4:090		400 KAR 1:100
150.025	301 KAR 3:022	154.22-010	103 KAR 18:180
150.090	301 KAR 1:015		103 KAR 18:191
150.170	301 KAR 1:201	154.22-070	103 KAR 18:180
	301 KAR 1:410		103 KAR 18:191
	301 KAR 3:100	154.23-010	103 KAR 18:180
150.175	301 KAR 1:132		103 KAR 18:191
	301 KAR 1:201	154.23-055	103 KAR 18:180
	301 KAR 1:410		103 KAR 18:191
	301 KAR 3:100	154.24-010	103 KAR 18:180
	301 KAR 4:090		103 KAR 18:191
150.177	301 KAR 2:169	154.24-110	103 KAR 18:180
150.180	301 KAR 1:132		103 KAR 18:191
	301 KAR 2:095	154.25-010	103 KAR 18:180
	301 KAR 2:169	154.25-040	103 KAR 18:180

KRS SECTION	REGULATION	KRS SECTION	REGULATION
154.26-010	103 KAR 18:180		922 KAR 1:560
154.26-100	103 KAR 18:180	196	501 KAR 6:020
154.28-010	103 KAR 18:180	197	501 KAR 6:020
	103 KAR 18:191	198B.010	815 KAR 7:070
154.28-110	103 KAR 18:180	198B.040	815 KAR 7:070
	103 KAR 18:191	198B.050	815 KAR 7:070
154.32-010	103 KAR 18:180		815 KAR 35:020
154.32-090	103 KAR 18:180	198B.060	815 KAR 7:070
156.070	702 KAR 7:065		815 KAR 35:015
	704 KAR 3:306	198B.090	815 KAR 2:010
156.108	701 KAR 5:140		815 KAR 2:020
156.160	13 KAR 2:020		815 KAR 7:070
	701 KAR 5:140		815 KAR 35:015
	704 KAR 3:306	198B.095	815 KAR 2:010
156.162	704 KAR 3:306		815 KAR 2:020
157.3175	704 KAR 3:015		815 KAR 7:070
158.197	704 KAR 3:306	198B.260	902 KAR 20:260
158.6451	13 KAR 2:020	198B.4003	815 KAR 4:030
	704 KAR 3:306	198B.4009	815 KAR 2:010
158.6453	13 KAR 2:020		815 KAR 2:020
160.107	701 KAR 5:140		815 KAR 4:030
160.290	704 KAR 3:306		815 KAR 4:071
160.380	702 KAR 7:065	198B.4011	815 KAR 2:010
160.445	702 KAR 7:065		815 KAR 4:030
164.001	13 KAR 2:020	198B.4013	815 KAR 2:010
164.020	13 KAR 2:020		815 KAR 4:030
164.030	13 KAR 2:020	198B.4023	815 KAR 2:010
164.744	11 KAR 5:145		815 KAR 2:020
164.753	11 KAR 5:145		815 KAR 4:030
164.772	201 KAR 22:020	198B.4025	815 KAR 2:010
	201 KAR 22:040		815 KAR 2:020
	815 KAR 35:060		815 KAR 4:030
164.6901 - 164.6935	200 KAR 30:011	198B.4027	815 KAR 4:030
	830 KAR 2:001	198B.4033	815 KAR 4:030
164.6907	830 KAR 2:010	198B.4037	815 KAR 2:040
164.6909	830 KAR 2:010	198B.615	815 KAR 2:040
164.6911	830 KAR 2:010	198B.6405	815 KAR 2:010
164.6913 - 164.6933	830 KAR 2:020	198B.6409	815 KAR 2:010
164.6915	830 KAR 2:010		815 KAR 2:020
164.7535	11 KAR 5:145		815 KAR 22:011
164.7871 - 164.7885	11 KAR 15:010		815 KAR 25:081
	11 KAR 15:110	198B.645	815 KAR 2:010
164.7889	11 KAR 5:145	198B.650	815 KAR 8:010
165A	815 KAR 6:040	198B.654	815 KAR 2:010
186.010	601 KAR 2:030		815 KAR 2:020
186.440	601 KAR 2:030		815 KAR 8:010
186.442	601 KAR 2:030		815 KAR 8:091
186.480	601 KAR 2:030	198B.656	815 KAR 8:010
186.531	601 KAR 2:030		815 KAR 8:030
186.560	601 KAR 2:030	198B.658	815 KAR 2:010
186.570	601 KAR 2:030		815 KAR 8:010
189A.005	601 KAR 2:030		815 KAR 8:030
189A.010	601 KAR 2:030		815 KAR 8:091
189A.040	601 KAR 2:030	198B.659	815 KAR 8:010
189A.070	601 KAR 2:030	198B.6504	815 KAR 2:020
189A.085	601 KAR 2:030	198B.660	815 KAR 2:010
189A.090	601 KAR 2:030		815 KAR 8:010
189A.103	601 KAR 2:030		815 KAR 8:030
189A.105	601 KAR 2:030	198B.662	815 KAR 8:030
189A.107	601 KAR 2:030	198B.664	815 KAR 2:010
189A.200	601 KAR 2:030		815 KAR 2:020
189A.240	601 KAR 2:030		815 KAR 8:010
189A.250	601 KAR 2:030		815 KAR 8:030
189A.340	601 KAR 2:030	198B.668	815 KAR 8:010
189A.345	601 KAR 2:030	198B.670	815 KAR 2:030
189A.400	601 KAR 2:030	198B.672	815 KAR 2:010
189A.410	601 KAR 2:030		815 KAR 8:010
189A.420	601 KAR 2:030	198B.676	815 KAR 2:040
189A.440	601 KAR 2:030		815 KAR 8:010
189A.500	601 KAR 2:030	198B.684	815 KAR 2:020
194A.005	902 KAR 100:022	198B.700	815 KAR 6:001
	902 KAR 100:070		815 KAR 6:010
	902 KAR 100:142	198B.706	815 KAR 6:001
194A.060	922 KAR 1:100		815 KAR 6:010

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	815 KAR 6:030	211.025	902 KAR 10:051
	815 KAR 6:040	211.090	902 KAR 10:051
	815 KAR 6:101		902 KAR 47:071
198B.712	815 KAR 6:010	211.180	902 KAR 10:051
	815 KAR 6:030		902 KAR 47:071
	815 KAR 6:040		902 KAR 100:022
198B.714	815 KAR 6:010		902 KAR 100:070
198B.716	815 KAR 6:010		902 KAR 100:100
198B.722	815 KAR 6:010		902 KAR 100:142
	815 KAR 6:030	211.350	815 KAR 35:015
	815 KAR 6:040		815 KAR 35:020
198B.724	815 KAR 6:010	211.842 - 211.852	902 KAR 20:275
	815 KAR 6:040		902 KAR 100:018
198B.728	815 KAR 6:030		902 KAR 100:022
198B.730	815 KAR 6:030		902 KAR 100:052
198B.738	815 KAR 6:010		902 KAR 100:070
199.011	922 KAR 1:010		902 KAR 100:072
	922 KAR 1:100		902 KAR 100:100
	922 KAR 1:360		902 KAR 100:142
	922 KAR 1:560	211.990	902 KAR 100:018
199.430	922 KAR 1:100		902 KAR 100:022
199.470	922 KAR 1:010		902 KAR 100:052
199.473	922 KAR 1:010		902 KAR 100:070
199.480	922 KAR 1:010		902 KAR 100:072
	922 KAR 1:560		902 KAR 100:100
199.490	922 KAR 1:010		902 KAR 100:142
199.492	922 KAR 1:010	213.046	921 KAR 1:380
199.493	922 KAR 1:010	216.510 - 216.525	900 KAR 2:040
199.500	922 KAR 1:010		902 KAR 20:300
199.505	922 KAR 1:560	216.530	902 KAR 20:008
199.510	922 KAR 1:010	216.532	902 KAR 20:300
199.520	922 KAR 1:010	216.535	902 KAR 20:300
	922 KAR 1:100	216.537 - 216.590	900 KAR 2:021
199.525	922 KAR 1:100	216.540	902 KAR 20:300
199.540	922 KAR 1:010	216.543	902 KAR 20:300
199.555	101 KAR 3:045	216.545	902 KAR 20:300
199.570	922 KAR 1:010	216.547	902 KAR 20:300
	922 KAR 1:100	216.555 - 216.567	900 KAR 2:040
199.572	922 KAR 1:010	216.577	900 KAR 2:040
	922 KAR 1:100	216.785 - 216.793	902 KAR 20:300
199.575	922 KAR 1:100	216.860	906 KAR 1:071
199.590	922 KAR 1:010	216.865	906 KAR 1:071
199.640 - 199.680	922 KAR 1:360	216.900 - 216.915	906 KAR 1:071
199.801	922 KAR 1:360	216.930	906 KAR 1:071
199.8943	704 KAR 3:015	216.2925	902 KAR 20:008
199.990	922 KAR 1:010	216A.010	900 KAR 2:040
	922 KAR 1:560	216B.010	902 KAR 20:008
200.575	922 KAR 1:411	216B.010 - 216B.130	900 KAR 5:020
202B.010	922 KAR 1:100	216B.010 - 216B.131	902 KAR 20:260
205.455	910 KAR 1:090	216B.010 - 216B.170	902 KAR 20:275
205.520	895 KAR 1:001	216B.015	902 KAR 20:008
	895 KAR 1:010	216B.020	902 KAR 20:008
	895 KAR 1:015		902 KAR 20:251
	895 KAR 1:020	216B.040	900 KAR 6:020
	895 KAR 1:025		902 KAR 20:008
	895 KAR 1:030	216B.042	902 KAR 20:008
	895 KAR 1:035	216B.045 - 216B.055	902 KAR 20:008
	895 KAR 1:040	216B.075	902 KAR 20:008
	895 KAR 1:045	216B.105 - 216B.131	902 KAR 20:008
	895 KAR 1:050	216B.176	902 KAR 20:401
	895 KAR 1:055	216B.177	902 KAR 20:401
	907 KAR 1:121	216B.185	902 KAR 20:008
205.560	907 KAR 1:121	216B.990	902 KAR 20:008
205.622	895 KAR 1:035		902 KAR 20:260
205.705	921 KAR 1:380		902 KAR 20:275
205.712	601 KAR 2:030	216C.010	900 KAR 11:010
205.710 - 205.800	921 KAR 1:380	216C.030	900 KAR 11:010
205.900 - 205.925	910 KAR 1:090	216C.040	900 KAR 11:010
205.992	921 KAR 1:380	216C.050	900 KAR 11:010
205.2005	921 KAR 3:025	216C.060	900 KAR 11:010
205.6328	900 KAR 1:091	216C.070	900 KAR 11:010
205.8451	895 KAR 1:001	216C.080	900 KAR 11:010
209.030	902 KAR 20:300	216C.090	900 KAR 11:010
209.032	902 KAR 20:300	216C.100	900 KAR 11:010

KRS SECTION	REGULATION	KRS SECTION	REGULATION
216C.110	900 KAR 11:010		815 KAR 25:060
216C.120	900 KAR 11:010		815 KAR 25:090
216C.160	900 KAR 11:010	227.580	815 KAR 25:050
216C.170	900 KAR 11:010		815 KAR 25:060
216C.180	900 KAR 11:010	227.590	815 KAR 2:010
216C.200	900 KAR 11:010		815 KAR 2:020
216C.210	900 KAR 11:010		815 KAR 25:040
216C.220	900 KAR 11:010		815 KAR 25:050
216C.230	900 KAR 11:010		815 KAR 25:060
217.005	902 KAR 45:007		815 KAR 25:090
217.005 - 217.205	902 KAR 45:005	227.600	815 KAR 25:050
	902 KAR 45:160		815 KAR 25:060
217.005 - 217.215	902 KAR 45:090	227.610	815 KAR 25:060
217.127	902 KAR 45:007	227.620	815 KAR 25:060
217.280 - 217.390	902 KAR 45:005	227.630	815 KAR 25:060
217.290 - 217.390	902 KAR 45:160	227.640	815 KAR 25:100
217.801	902 KAR 47:071	227.660	815 KAR 25:090
217.290	902 KAR 45:090	227.990	815 KAR 25:050
217.990 - 217.992	902 KAR 45:005		815 KAR 25:060
	902 KAR 45:160		815 KAR 25:090
217.992	902 KAR 45:090	227.992	815 KAR 25:050
217B	302 KAR 29:020	227A.010	815 KAR 35:060
218A.160	902 KAR 55:011	227A.020	815 KAR 2:030
218A.172	201 KAR 9:260	227A.040	815 KAR 2:010
	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	237.110	301 KAR 2:169
224.1-400	401 KAR 5:002	241.010	804 KAR 5:080
224.10-100	401 KAR 52:050	243.020	804 KAR 8:050
	401 KAR 52:070	243.232	804 KAR 5:080
224.10-410	400 KAR 1:110	244.090	804 KAR 5:021
224.20-100	401 KAR 52:050	244.240	804 KAR 5:021
	401 KAR 52:070	244.600	804 KAR 5:021
224.20-110	401 KAR 52:050	246.210	302 KAR 20:221
	401 KAR 52:070	250.491 - 250.631	12 KAR 2:006
224.20-120	401 KAR 52:050		12 KAR 2:011
	401 KAR 52:070		12 KAR 2:016
224.70-100	401 KAR 5:002		12 KAR 2:017
224.70-120	401 KAR 5:002		12 KAR 2:018
224.99-010	401 KAR 5:002		12 KAR 2:021
227.450	815 KAR 35:015		12 KAR 2:026
227.460	815 KAR 35:020		12 KAR 2:036
227.480	815 KAR 35:015		12 KAR 2:056
	815 KAR 35:020		12 KAR 3:007
227.487	815 KAR 35:020		12 KAR 3:032
227.489	815 KAR 35:015	250.501	12 KAR 2:031
227.491	815 KAR 35:015		12 KAR 2:041
	815 KAR 35:020		12 KAR 2:046
227.492	815 KAR 35:015		12 KAR 2:051
227.495	815 KAR 35:015		12 KAR 2:061
227.550	815 KAR 25:050		12 KAR 3:012
	815 KAR 25:060		12 KAR 3:017
	815 KAR 25:090		12 KAR 3:022
	815 KAR 25:100		12 KAR 3:027
227.550 - 227.660	815 KAR 25:020		12 KAR 3:028
227.550 - 227.665	815 KAR 25:001		12 KAR 3:037
227.555	815 KAR 25:050		12 KAR 3:039
227.560	815 KAR 25:060		12 KAR 3:042
227.570	815 KAR 2:010	250.511	12 KAR 2:041
	815 KAR 2:020		12 KAR 2:051
	815 KAR 25:050		12 KAR 2:061

KRS SECTION	REGULATION	KRS SECTION	REGULATION
250.521	12 KAR 3:037	304.17 - 310	806 KAR 17:091
	12 KAR 2:061	304.17 - 311	806 KAR 17:570
	12 KAR 3:012	304.17 -313	806 KAR 17:091
	12 KAR 3:017	304.17 - 319	806 KAR 17:091
	12 KAR 3:022	304.17 - 415	806 KAR 17:091
	12 KAR 3:027	304.17-3165	806 KAR 17:091
	12 KAR 3:028	304.17A.005	806 KAR 17:091
	12 KAR 3:039		806 KAR 17:360
	12 KAR 3:042		806 KAR 17:570
250.531	12 KAR 2:031	304.17A-095 - 304.17A-0954	806 KAR 17:091
	12 KAR 3:017	304.17A-096 - 304.17A-132	806 KAR 17:091
250.541	12 KAR 2:041	304.17A.132	806 KAR 17:091
	12 KAR 2:051	304.17A.134	806 KAR 17:091
	12 KAR 2:046	304.17A-135 - 304.17A-145	806 KAR 17:091
	12 KAR 2:066	304.17A.139	806 KAR 17:091
	12 KAR 3:037	304.17A.140	806 KAR 17:091
250.551	12 KAR 2:031	304.17A.142	806 KAR 17:091
	12 KAR 2:046	304.17A-148 - 304.17A-149	806 KAR 17:091
	12 KAR 2:051	304.17A.149	806 KAR 17:091
250.561	12 KAR 2:061	304.17A-150	806 KAR 17:300
250.581	12 KAR 2:051	304.17A.155	806 KAR 17:091
257	302 KAR 20:211	304.17A.171	806 KAR 17:091
	302 KAR	304.17A.200	806 KAR 17:091
20:231		304.17A.230	806 KAR 17:091
	302 KAR 20:541	304.17A.243	806 KAR 17:091
	302 KAR 20:581	304.17A.245	806 KAR 17:091
257.020	302 KAR 20:561	304.17A.250	806 KAR 17:091
	302 KAR 20:571	304.17A.258	806 KAR 17:091
257.030	302 KAR 20:561	304.17A-500	806 KAR 17:300
	302 KAR 20:571	304.17A.520	806 KAR 17:091
257.040	302 KAR 20:571	304.17A-527	806 KAR 17:300
257.050	302 KAR 20:221	304.17A-530	806 KAR 17:300
	302 KAR 20:571	304.17A-532	806 KAR 17:300
257.080	302 KAR 20:221	304.17A.540	806 KAR 17:091
257.110	302 KAR 20:561	304.17A.545	806 KAR 17:091
257.120	302 KAR 20:561	304.17A-560	806 KAR 17:300
257.110 - 257.170	302 KAR 20:221	304.17A-575	806 KAR 17:300
257.140	302 KAR 20:561	304.17A-577	806 KAR 17:300
257.480	302 KAR 20:221	304.17A-578	806 KAR 17:300
260.850 - 260.869	302 KAR 50:080	304.17A.647	806 KAR 17:091
262.902	302 KAR 100:011	304.17A-700	806 KAR 17:360
	302 KAR 100:021	304.17A-702	806 KAR 17:360
262.904	302 KAR 100:011	304.17A-704	806 KAR 17:360
	302 KAR 100:021	304.17A-706	806 KAR 17:360
262.908	302 KAR 100:011	304.17A-708	806 KAR 17:360
	302 KAR 100:021	304.17A-720	806 KAR 17:360
304.1 - 050	806 KAR 9:360	304.17A-728	806 KAR 17:300
	806 KAR 17:091	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 17:570	304.17C-060	806 KAR 17:091
304.3 - 240	806 KAR 17:570		806 KAR 17:300
304.3 - 270	103 KAR 15:180	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

KRS SECTION	REGULATION	KRS SECTION	REGULATION
312.019	201 KAR 21:015		400 KAR 1:090
	201 KAR 21:045	350.060	400 KAR 1:090
312.021	201 KAR 21:045	350.070	400 KAR 1:001
314	902 KAR 20:260		400 KAR 1:040
314.011	201 KAR 20:057		400 KAR 1:090
	201 KAR 20:490		400 KAR 1:110
314.042	201 KAR 20:057	350.085	400 KAR 1:001
314.193	201 KAR 20:057		400 KAR 1:040
314.195	201 KAR 20:057		400 KAR 1:090
314.196	201 KAR 20:057	350.090	400 KAR 1:001
315.010	201 KAR 2:370		400 KAR 1:090
315.020	201 KAR 2:370		400 KAR 1:110
315.030	201 KAR 2:370	350.093	400 KAR 1:001
315.036	902 KAR 55:011		400 KAR 1:040
315.065	201 KAR 2:015		400 KAR 1:090
315.120	201 KAR 2:015		400 KAR 1:110
315.121	201 KAR 2:370	350.130	400 KAR 1:001
315.191	902 KAR 55:011		400 KAR 1:040
315.402	902 KAR 55:011		400 KAR 1:090
315.406	902 KAR 55:011		400 KAR 1:110
317A.060	201 KAR 12:251	350.240	400 KAR 1:090
317A.130	201 KAR 12:280	350.255	400 KAR 1:001
318.010	815 KAR 20:030		400 KAR 1:090
318.020	815 KAR 20:030		400 KAR 1:110
318.030	815 KAR 20:030	350.300	400 KAR 1:090
318.040	815 KAR 20:030	350.305	400 KAR 1:090
318.050	815 KAR 2:040	350.465	400 KAR 1:001
	815 KAR 20:030		400 KAR 1:040
318.054	815 KAR 2:010		400 KAR 1:090
	815 KAR 2:020		400 KAR 1:110
	815 KAR 2:040	350.610	400 KAR 1:001
	815 KAR 20:030		400 KAR 1:090
318.060	815 KAR 20:030	350.990	400 KAR 1:001
318.080	815 KAR 20:030		400 KAR 1:040
318.100	815 KAR 2:030		400 KAR 1:090
318.130	815 KAR 2:010		400 KAR 1:110
	815 KAR 2:020	350.0301	400 KAR 1:001
	902 KAR 45:160		400 KAR 1:090
318.134	815 KAR 2:040		400 KAR 1:110
318.170	815 KAR 2:030	350.0305	400 KAR 1:001
	815 KAR 20:041		400 KAR 1:090
327.010	201 KAR 22:020	351.315	400 KAR 1:001
327.050	201 KAR 22:020		400 KAR 1:040
	201 KAR 22:040		400 KAR 1:090
327.060	201 KAR 22:020		400 KAR 1:110
327.070	201 KAR 22:040	351.345	400 KAR 1:001
327.075	201 KAR 22:020		400 KAR 1:040
327.080	201 KAR 22:020		400 KAR 1:090
327.300	201 KAR 22:170		400 KAR 1:110
327.310	201 KAR 22:020	351.350	400 KAR 1:001
338	803 KAR 50:010		400 KAR 1:040
339.230	815 KAR 35:060		400 KAR 1:090
341.190	787 KAR 1:010		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

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	805 KAR 1:210		900 KAR 2:040
353.700	400 KAR 1:001		902 KAR 20:300
	400 KAR 1:040		907 KAR 1:025
	400 KAR 1:090	45 C.F.R.	806 KAR 9:360
353.5901	400 KAR 1:001		806 KAR 17:570
	400 KAR 1:040		900 KAR 2:040
	400 KAR 1:090		902 KAR 20:260
367.680	40 KAR 2:345		902 KAR 20:275
367.686	40 KAR 2:345		902 KAR 100:072
367.688	40 KAR 2:345		921 KAR 1:380
367.689	40 KAR 2:345		921 KAR 3:025
367.690	40 KAR 2:345		922 KAR 1:100
369.101 - 369.120	895 KAR 1:035	49 C.F.R.	902 KAR 100:070
403.211	921 KAR 1:380	74 C.F.R.	806 KAR 17:570
405.430	921 KAR 1:380	7 U.S.C.	302 KAR 29:020
405.467	921 KAR 1:380		302 KAR 50:080
405.520	921 KAR 1:380		921 KAR 3:025
406.021	921 KAR 1:380		921 KAR 3:030
406.025	921 KAR 1:380		921 KAR 3:035
407.5101 - 407.5903	921 KAR 1:380	15 U.S.C.	12 KAR 3:012
433.900 - 433.906	830 KAR 1:010		12 KAR 3:028
439	501 KAR 6:020		12 KAR 3:039
600.020	922 KAR 1:100		401 KAR 5:002
	922 KAR 1:360	18 U.S.C.	601 KAR 2:030
605.090	922 KAR 1:100	20 U.S.C.	11 KAR 15:010
	922 KAR 1:360		702 KAR 7:065
610.110	922 KAR 1:360	21 U.S.C.	12 KAR 2:041
610.170	921 KAR 1:380		12 KAR 3:037
615.030	922 KAR 1:010		902 KAR 20:260
	922 KAR 1:100		902 KAR 45:160
620.020	922 KAR 1:560	25 U.S.C.	922 KAR 1:100
620.050	922 KAR 1:100	26 U.S.C.	101 KAR 2:095
620.360	922 KAR 1:100		103 KAR 15:180
625	922 KAR 1:010		301 KAR 3:100
	922 KAR 1:100	29 U.S.C.	806 KAR 17:091
625.045	922 KAR 1:100		806 KAR 17:570
625.065	922 KAR 1:560		895 KAR 1:001
625.108	922 KAR 1:100	30 U.S.C.	400 KAR 1:001
7 C.F.R.	921 KAR 3:025		400 KAR 1:040
	921 KAR 3:030		400 KAR 1:090
	921 KAR 3:035		400 KAR 1:110
10 C.F.R.	902 KAR 100:022		803 KAR 30:010
	902 KAR 100:052	31 U.S.C.	45 KAR 1:050
	902 KAR 100:070	33 U.S.C.	401 KAR 5:002
	902 KAR 100:072		803 KAR 30:010
	902 KAR 100:100	42 U.S.C.	401 KAR 5:002
	902 KAR 100:142		401 KAR 52:050
20 C.F.R.	895 KAR 1:001		806 KAR 17:091
21 C.F.R.	12 KAR 2:031		806 KAR 17:570
	12 KAR 2:041		815 KAR 25:050
	12 KAR 2:051		895 KAR 1:001
	12 KAR 3:037		895 KAR 1:010
	902 KAR 45:160		895 KAR 1:015
24 C.F.R.	815 KAR 25:090		895 KAR 1:020
29 C.F.R.	806 KAR 17:091		895 KAR 1:025
	815 KAR 35:060		895 KAR 1:030
	902 KAR 20:260		895 KAR 1:035
	902 KAR 20:275		895 KAR 1:040
30 C.F.R.	400 KAR 1:001		895 KAR 1:045
	400 KAR 1:040		895 KAR 1:050
	400 KAR 1:090		895 KAR 1:055
	400 KAR 1:110		900 KAR 2:040
39 C.F.R.	400 KAR 1:090		902 KAR 20:260
40 C.F.R.	401 KAR 5:002		902 KAR 20:275
	401 KAR 52:050		902 KAR 100:022
	401 KAR 52:070		902 KAR 100:052
	902 KAR 100:022		902 KAR 100:070
42 C.F.R.	806 KAR 17:570		902 KAR 100:072
	895 KAR 1:001		902 KAR 100:100
	895 KAR 1:010		902 KAR 100:142
	895 KAR 1:015		906 KAR 1:190
	895 KAR 1:030		921 KAR 1:380
	895 KAR 1:035		921 KAR 3:030
	895 KAR 1:055		921 KAR 3:035

KRS SECTION	REGULATION
	922 KAR 1:100
	922 KAR 1:360
49 U.S.C.	302 KAR 29:020
50 U.S.C.	103 KAR 17:130
52 U.S.C.	921 KAR 3:030
2012 Ky Acts ch. 144, Part XII	806 KAR 17:091
Pres. EO 13166	921 KAR 3:030
Pub. L 108-173	806 KAR 17:570

KRS SECTION	REGULATION
-------------	------------

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
400 KAR 001:060	05-14-1987	05-14-1987	08-06-2018	Remain in Effect without Amendment
400 KAR 001:120	02-22-1995	08-04-2017	08-06-2018	Remain in Effect without Amendment
401 KAR 004:010	02-05-1975	08-25-2005	07-30-2018	Remain in Effect without Amendment
401 KAR 004:020	07-06-1977	07-06-1977	07-30-2018	Remain in Effect without Amendment
401 KAR 004:030	06-11-1975	06-11-1975	07-30-2018	Remain in Effect without Amendment
401 KAR 004:040	06-11-1975	06-11-1975	07-30-2018	Remain in Effect without Amendment
401 KAR 004:050	11-06-1980	11-06-1980	07-30-2018	Remain in Effect without Amendment
401 KAR 004:060	10-02-1987	03-09-2007	07-30-2018	Remain in Effect without Amendment
401 KAR 004:070	05-05-2017	05-05-2017	07-30-2018	Remain in Effect without Amendment
401 KAR 004:200	08-07-1984	08-07-1984	07-30-2018	Remain in Effect without Amendment
401 KAR 004:220	06-26-1991	06-26-1991	07-30-2018	Remain in Effect without Amendment
401 KAR 004:300	04-28-1993	04-28-1993	07-30-2018	Remain in Effect without Amendment
401 KAR 048:005	11-07-1994	12-07-2017	08-13-2018	Remain in Effect without Amendment
401 KAR 048:050	05-08-1990	11-07-1994	08-13-2018	Remain in Effect without Amendment
401 KAR 048:060	05-08-1990	05-08-1990	08-13-2018	Remain in Effect without Amendment
401 KAR 048:070	05-08-1990	05-08-1990	08-13-2018	Remain in Effect without Amendment
401 KAR 048:080	05-08-1990	05-08-1990	08-13-2018	Remain in Effect without Amendment
401 KAR 048:090	05-08-1990	12-07-2017	08-13-2018	Remain in Effect without Amendment
401 KAR 048:170	05-08-1990	05-08-1990	08-13-2018	Remain in Effect without Amendment
401 KAR 048:200	05-08-1990	05-08-1990	08-13-2018	Remain in Effect without Amendment
401 KAR 048:205	10-06-2011	10-06-2011	08-13-2018	Remain in Effect without Amendment
401 KAR 048:206	10-06-2011	10-06-2011	08-13-2018	Remain in Effect without Amendment
401 KAR 048:207	10-06-2011	10-06-2011	08-13-2018	Remain in Effect without Amendment
401 KAR 048:208	10-06-2011	10-06-2011	08-13-2018	Remain in Effect without Amendment
401 KAR 048:300	05-08-1990	11-07-1994	08-13-2018	Remain in Effect without Amendment
401 KAR 048:310	05-08-1990	11-07-1994	08-13-2018	Remain in Effect without Amendment
401 KAR 048:320	09-08-1999	09-08-1999	08-13-2018	Remain in Effect without Amendment
401 KAR 051:001	06-24-1992	12-07-2012	07-30-2018	Remain in Effect without Amendment
401 KAR 051:005	06-06-1979	06-06-1979	07-30-2018	Remain in Effect without Amendment
401 KAR 051:017	09-22-1982	12-07-2012	07-30-2018	Remain in Effect without Amendment
401 KAR 051:052	09-22-1982	12-07-2012	07-30-2018	Remain in Effect without Amendment
401 KAR 051:150	02-03-2006	02-03-2006	07-30-2018	Remain in Effect without Amendment

CERTIFICATION LETTER SUMMARIES

401 KAR 051:160	08-15-2001	02-03-2006	07-30-2018	Remain in Effect without Amendment
401 KAR 051:170	08-15-2001	08-15-2001	07-30-2018	Remain in Effect without Amendment
401 KAR 051:180	08-15-2001	08-15-2001	07-30-2018	Remain in Effect without Amendment
401 KAR 051:190	08-15-2001	08-15-2001	07-30-2018	Remain in Effect without Amendment
401 KAR 051:195	08-15-2001	08-15-2001	07-30-2018	Remain in Effect without Amendment
401 KAR 051:210	02-02-2007	02-02-2007	07-30-2018	Remain in Effect without Amendment
401 KAR 051:220	02-02-2007	06-13-2007	07-30-2018	Remain in Effect without Amendment
401 KAR 051:230	02-02-2007	02-02-2007	07-30-2018	Remain in Effect without Amendment
401 KAR 058:005	01-25-1989	07-07-1998	07-30-2018	To be amended, file deadline 01-03-20
401 KAR 058:010	01-25-1989	01-25-1989	07-30-2018	Remain in Effect without Amendment
401 KAR 058:025	01-07-1985	11-14-2007	07-30-2018	Remain in Effect without Amendment
401 KAR 058:040	11-06-1987	11-06-1987	07-30-2018	Remain in Effect without Amendment
401 KAR 100:030	03-18-2004	03-18-2004	03-18-2004	Remain in Effect without Amendment
401 KAR 101:001	07-06-2009	07-06-2009	08-13-2018	Remain in Effect without Amendment
401 KAR 101:010	07-06-2009	07-06-2009	08-13-2018	Remain in Effect without Amendment
401 KAR 101:020	07-06-2009	07-06-2009	08-13-2018	Remain in Effect without Amendment
401 KAR 101:030	07-06-2009	07-06-2009	08-13-2018	Remain in Effect without Amendment
401 KAR 101:040	07-06-2009	07-06-2009	08-13-2018	Remain in Effect without Amendment
401 KAR 102:005	02-03-2014	02-03-2014	08-13-2018	Remain in Effect without Amendment
401 KAR 102:010	01-14-2002	02-03-2014	08-13-2018	Remain in Effect without Amendment
401 KAR 102:020	02-03-2014	02-03-2014	08-13-2018	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
405 KAR 007:097	06-09-1999	06-09-1999	07-03-2018	Remain in Effect without Amendment

CERTIFICATION LETTER SUMMARIES

[illegible]

CERTIFICATION LETTER SUMMARIES

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
405 KAR 030:220	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment

CERTIFICATION LETTER SUMMARIES

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
750 KAR 001:010	07-02-1986	04-02-2010	07-25-2018	Remain in Effect without Amendment
750 KAR 002:010	11-04-1993	02-04-1999	07-25-2018	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

CERTIFICATION LETTER SUMMARIES

805 KAR 004:060	06-11-1975	06-26-1991	06-27-2018	Remain in Effect without Amendment
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
825 KAR 001:020	06-14-2002	12-07-2006	08-06-2018	Remain in Effect without Amendment
825 KAR 001:030	11-12-2002	11-12-2002	08-06-2018	Remain in Effect without Amendment

CERTIFICATION LETTER SUMMARIES

900 KAR 006:040	12-18-1996	12-18-1996	07-30-2018	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
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
910 KAR 001:200	01-10-1992	04-01-2011	08-10-2018	Remain in Effect without Amendment
910 KAR 001:260	12-01-2006	12-11-2012	08-10-2018	Remain in Effect without Amendment
910 KAR 003:020	05-01-2009	05-01-2009	08-10-2018	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
009 KAR 001:050	09-12-2018		
016 KAR 009:040	09-12-2018		
020 KAR 001:010	08-14-2018		
103 KAR 001:010	09-12-2018		
103 KAR 016:320	07-16-2018		
103 KAR 018:020	07-16-2018		
103 KAR 018:090	07-16-2018		
104 KAR 001:020	09-12-2018		
104 KAR 001:040	09-12-2018		
200 KAR 005:365	09-12-2018		
200 KAR 012:030	09-12-2018		
301 KAR 002:132	09-12-2018		
401 KAR 039:005	07-09-2018		
703 KAR 005:280	09-10-2018		
804 KAR 004:370	08-01-2018		
900 KAR 006:040	08-02-2018		
900 KAR 011:010	07-13-2018		
902 KAR 030:180	07-18-2018		
902 KAR 048:020	09-13-2018		
907 KAR 017:020	06-05-2018		
920 KAR 001:060	07-25-2018		
921 KAR 001:400	08-22-2018		
921 KAR 001:410	08-22-2018		

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

Industrial Hemp

Materials incorporated by reference; 302 KAR 050:080

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

Conduct of Business; Employees

Repeal of 804 KAR 005:020; 804 KAR 005:021

Transportation of Alcoholic Beverages

Identification of vehicles used to transport alcoholic beverages;
804 KAR 008:050

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

Chiropractic Examiners; 201 KAR Chapter 21

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

CHIROPRACTIC EXAMINERS

Code of ethical conduct and standards of practice; 201 KAR
021:015

Specialties; 201 KAR 021:045

COMMUNITY BASED SERVICES

Child Welfare

Independent non-relative adoptions; 922 KAR 001:010

Private child care placement, levels of care, and payment; 922
KAR 001:36

Public agency adoptions; 922 KAR 001:100

Putative father registry and operating procedures; 922 KAR
001:560

Repeal of 922 KAR 001:410; 922 KAR 001:411

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

SUBJECT INDEX

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*)
Workforce Development, KAR Title 787 (*See Workforce Development*)
For Workforce Development, see listing below:
Workplace Standards; KAR Title 803 (*See Workplace Standards*)

ELECTION FINANCE

Election finance statement forms; campaign contributions or expenditures in excess of \$3,000; 32 KAR 001:030

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

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 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

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
Importation of cervid carcasses and parts; 301 KAR 002:095
White-tailed deer hunting requirements; 301 KAR 002:016
Hunting and Fishing
License, tag, and permit fees; 301 KAR 003:022
Special commission permits; 301 KAR 003:100
Wildlife
Buying and selling of inedible wildlife parts; 301 KAR 004:090

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
Real Estate Authority: Board of Home Inspectors

SUBJECT INDEX

Definitions for 815 KAR Chapter 6; 815 KAR 006:001
Education requirements and providers; 815 KAR 006:040
Licensing requirements; 815 KAR 006:010.
Repeal of 815 KAR 006:020, 815 KAR 006:080, 815 KAR
006:090, and 815 KAR 006:100; 815 KAR 006:101
Standards of conduct, complaints, and discipline; 815 KAR
006:030

INSURANCE

Agents, Consultants, Solicitors, and Adjusters
Pharmacy Benefit Manager License; 806 KAR 9:360
Health Insurance Contracts
Medicare supplement insurance policies and certificates,
minimum standards for; 806 KAR 17:570

HOUSING, BUILDINGS AND CONSTRUCTION

Kentucky Building Code
Building code; 815 KAR 7:120
Residential code; 815 KAR 7:125

INSPECTOR GENERAL (HEALTH)

Civil Money Penalty Funds collected from certified Long-term Care
facilities; 906 KAR 1:200
Inspector General
Repeal of 906 KAR 001:050, 906 KAR 001:060, and 906 KAR
001:070; 906 KAR 1:071E
National background check; 906 KAR 1:190
State Health Plan
State Health Plan for facilities and services; 900 KAR 005:020

INSURANCE

Health Insurance Contracts
Disclosure of other coverage in application; 806 KAR 017:020
Prompt payment of claims; 806 KAR 017:360
Provider agreement and risk-sharing agreement filing
requirements; 806 KAR 017:300
806 KAR 017:091. Repeal of 806 KAR 017:010, 806 KAR
017:090, 806 KAR 017:130, 806 KAR 017:310, 806 KAR
017:320, 806 KAR 017:330, 806 KAR 017:440, 806 KAR
017:460, 806 KAR 017:500, 806 KAR 017:540, 806 KAR
017:545, 806 KAR 017:555.

JUSTICE AND PUBLIC SAFETY

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

Certificate of Need
Certificate of need application fee schedule; 900 KAR 006:020
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
Payment for nursing facility services provided by an
intermediate care facility for individuals with an intellectual
disability, a dually-licensed pediatric facility, an institution for
mental diseases, or a nursing facility with an all-inclusive
rate unit; 907 KAR 001:025
Repeal of 907 KAR 001:120 and 907 KAR 001:130; 907 KAR
001:121
Medical Review Panels
Medical review panels; 900 KAR 011:010
Office of Inspector
General: Division of Health Care: Long-term Care
Citations and violations; criteria and specific acts; 900 KAR
002:040
Repeal of 900 KAR 002:020; 900 KAR 002:021

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;
profess201 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

OFFICE OF EMPLOYMENT AND TRAINING

Unemployment Insurance
Application for employer account; reports; 787 KAR 001:010

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
Plan Year Handbook for the Public Employee Health Insurance
Program; 101 KAR 002:210
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

SUBJECT INDEX

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

Home-based processors and farmers market home-based microprocessors; 902 KAR 045:090

Kentucky food code; 902 KAR 045:005

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

Repeal of 902 KAR 045:006 and 902 KAR 045:140; 902 KAR 045:007

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

Operation and services; nursing facilities; 902 KAR 020:300

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

Cellulosic ethanol tax credit; 103 KAR 015:120

Endow Kentucky Tax Credit; 103 KAR 015:195

Ethanol tax credit; 103 KAR 015:110

Filing dates and extensions; 103 KAR 015:050

Kentucky new markets development program tax credit; 103 KAR 015:180

Repeal of 103 KAR 15:040 and 103 KAR 15:090; 103 KAR 015:041.

Income Tax; Corporations

Repeal of 103 KAR 016:380; 103 KAR 016:381

Income Tax; Individual

Combined individual returns; 103 KAR 017:020

Division of income between married individuals filing separate tax returns; 103 KAR 017:100

Income subject to taxation; portions; 103 KAR 017:060

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

Residence; 103 KAR 017:010

Income Tax; Withholding

Employer's withholding reporting requirements; 103 KAR 018:150

Kentucky economic development acts wage assessment; 103 KAR 018:180

Repeal of 103 KAR 018:080 and 103 KAR 018:160; 103 KAR 018:081

Repeal of 103 KAR 018:190. 103 KAR 018:200, 103 KAR 018: 210, and 103 KAR 018:220; 103 KAR 018:191

Security for compliance; bonds; 103 KAR 018:120

Voluntary withholding; 103 KAR 018:110

Withholding statements; 103 KAR 018:050

Income Tax; Miscellaneous

Computation of income; estates and trusts; 103 KAR 019:010

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

SUBJECT INDEX

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
Office of Employment and Training; Title 787

WORKPLACE STANDARDS

Workers' Claims; 803 KAR Chapter 25 (*See Workers' Claims*)

SUBJECT INDEX