



ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on November 13, 2018, at 1:00 p.m. in room 149 Capitol Annex.

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

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VOLUME 45, NUMBER 5 – NOVEMBER 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.



**Administrative Regulation Review Subcommittee
Tentative Meeting Agenda
Tuesday, November 13, 2018 1:00 PM
Annex Room 149**



- 1. Call to Order and Roll Call**
- 2. Regulations for Committee Review**

STATE BOARD OF ELECTIONS

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[103 KAR 015:060](#). Estimated tax, amended declarations; short years.

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[103 KAR 018:110](#). Voluntary withholding.

[103 KAR 018:120](#). Security for compliance; bonds.

[103 KAR 018:150](#). Employer's withholding reporting requirements.

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[201 KAR 021:015](#). Code of ethical conduct and standards of practice.

[201 KAR 021:045](#). Specialties.

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[301 KAR 002:095](#). Importation of cervid carcasses and parts.

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[301 KAR 003:100](#). Special commission permits.

DEPARTMENT OF AGRICULTURE

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Office of the Secretary

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

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

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Department of Vehicle Regulation

Administration

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

EDUCATION AND WORKFORCE DEVELOPMENT

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Office of Chief State School Officer

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Department of Workforce Investments: Office of Employment and Training

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PUBLIC PROTECTION

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Department of Alcoholic Beverage Control

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[815 KAR 006:030](#). Standards of conduct, complaints, and discipline.

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[815 KAR 025:090](#). Site preparation, installation, and inspection requirements. (Not Amended After Comments)

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[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)

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) (Amended After Comments)

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

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

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

[895 KAR 001:025 & E](#). Beneficiary premiums. ("E" withdrawn by agency, 7-2-2018) (Not Amended After Comments)

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

[895 KAR 001:035 & E](#). Covered services within the Kentucky HEALTH program. ("E" withdrawn by agency, 7-2-2018) (Not Amended After Comments)

[895 KAR 001:040 & E](#). Deductible accounts within the Kentucky HEALTH program. ("E" withdrawn by agency, 7-2-2018) (Not Amended After Comments)

[895 KAR 001:045 & E](#). Accommodation, modifications, and appeals for beneficiaries participating in the Kentucky HEALTH program. ("E" withdrawn by agency, 7-2-2018) (Not Amended After Comments)

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

[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) (Not Amended After Comments)

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Long-term Care

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

[900 KAR 002:040](#). Citations and violations; criteria and specific acts.

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) (Amended After Comments)

Certificate of Need

[900 KAR 006:020](#). Certificate of need application fee schedule.

Medical Review Panels

[900 KAR 011:010 & E](#). Medical review panels. ("E" expires 03-12-2019)

Department for Public Health: Division of Health Care

Health Services and Facilities

[902 KAR 020:300](#). Operation and services; nursing facilities.

Food and Cosmetics

[902 KAR 045:005](#). Kentucky food code.

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

[902 KAR 045:090](#). Home-based processors and farmers market home-based microprocessors.

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. (Amended After Comments)

[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. (Amended After Comments)

[902 KAR 100:072](#). Medical use of byproduct material. (Amended After Comments)

[902 KAR 100:100](#). Licenses for industrial radiography and radiation safety requirements for industrial radiographic operations. (Amended After Comments)

[902 KAR 100:142](#). Licenses and radiation safety requirements for well logging. (Amended After Comments)

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Department for Medicaid Services: Division of Policy and Operations

Medicaid Services

[907 KAR 001:025](#) & E. 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.

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) (Deferred from October)

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

[922 KAR 001:010](#). Independent non-relative adoptions.

[922 KAR 001:100](#) & E. Public agency adoptions. ("E" expires 03-12-2019)

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

[922 KAR 001:560 & E](#). Putative father registry and operating procedures. ("E" expires 2-11-2019 ext.) (Amended After Comments)

3. REGULATIONS REMOVED FROM NOVEMBER'S AGENDA

STATE BOARD OF ELECTIONS: Forms and Procedures

[031 KAR 004:120 & E](#). Additional and emergency precinct officers. ("E" expires 1-20-2019) (Comments Received, SOC ext.; due 10-15-2018)(Withdrawn; SOC not filed by deadline, 10-15-2018)

BOARDS AND COMMISSIONS: Board of Pharmacy

[201 KAR 002:370](#). Pharmacy services in long-term care facility (LTCF). (Comments Received, SOC ext.; due 11-15-2018)

Board of Podiatry

[201 KAR 025:090](#). Prescribing and dispensing controlled substances. (Deferred from February) (Withdrawn by agency, 10-26-2018)

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

[301 KAR 002:169E](#). White-tailed deer hunting requirements. ("E" expires 02-20-2019)(Withdrawn by Agency)

ENERGY AND ENVIRONMENT: 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)

PUBLIC PROTECTION: Workers' Compensation Funding Commission: Collective Bargaining and Arbitration

[803 KAR 030:010](#). Special fund assessments. (Comments Received; SOC ext. due 11-15-2018)

HEALTH AND FAMILY SERVICES: Department for Community Based Services: Division of Protection and Permanency Child Welfare

[922 KAR 001:360 & E](#). Private child care placement, levels of care, and payment. ("E" expires 2-28-2019) (Comments Received, SOC ext.; due 11-15-2018)

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
105 KAR 1:147E

Pursuant to KRS 13A.190, the proposed new administrative regulation is an emergency. This emergency administrative regulation establishes the processes and procedures to implement the provisions of 2017 Ky. Acts ch. 104, sec. 1 (House Bill 351). An emergency administrative regulation is necessary to provide the processes and procedures to implement 2017 Ky Acts ch. 104, sec. 1. in order to prevent a loss of state funds pursuant to KRS 13A.190(1)(a). Kentucky Retirement Systems is experiencing an increase in employer noncompliance, including failure to remit statutorily required contributions, and requires this emergency administrative regulation to effectively administer the involuntary cessation process to prevent immediate harm to the pension trusts. 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
DAVID L. EAGER, Executive Director

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(New Emergency Administrative Regulation)

105 KAR 1:147E. Involuntary cessation of participating employers.

RELATES TO: KRS 61.510, 61.522, 61.546, 61.552, 61.555, 61.565, 61.590, 61.598, 61.625, 61.637, 61.675, 78.510 – 78.852, 26 U.S.C. 401

STATUTORY AUTHORITY: KRS 61.522(8), 61.645(9)(e)

EFFECTIVE: October 5, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705, and 78.510 to 78.852. KRS 61.522 authorizes the Board of Trustees of Kentucky Retirement Systems to involuntarily terminate participation of employers in the Kentucky Employees Retirement System and the County Employees Retirement System determined by the board to no longer qualify to participate in a governmental plan or to be noncompliant with the provisions of KRS 61.510 to 61.705 or 78.510 to 78.852. The Board of Trustees of Kentucky Retirement Systems shall require lump sum payment of the full actuarial cost of benefits accrued by its current and former employees for those involuntarily ceased employers. KRS 61.522(8) requires the board to promulgate administrative regulations to administer the provisions of the statute. This administrative regulation establishes the procedures and requirements for involuntary cessation from participation in the Kentucky Employees Retirement System and the County Employees Retirement System.

Section 1. Definitions.

(1) "Ceased employer" means an employer who the Board of Trustees has determined must involuntarily cease participation.

(2) "Involuntary cessation date" means the date established by the Board of Trustees when approving the employer's involuntary cessation from participation in the Kentucky Employees Retirement System or County Employees Retirement System.

Section 2. Upon determination by the Board of Trustees, an employer shall be required to involuntarily cease participation from the Kentucky Employees Retirement System or the County Employees Retirement System.

(1) The Board of Trustees shall provide written notice to the employer of its intention to involuntarily cease participation. The notice shall be sent by certified mail to the employer's designated reporting official on file at Kentucky Retirement Systems.

(2) The notice shall provide an explanation of the board's decision for involuntary cessation, including whether:

(a) The board has determined that the employer is no longer qualified to participate in a governmental plan; or

(b) The board has determined that the employer has failed to comply with the requirements of KRS 61.510 to 61.705 or 78.510 to 78.852.

(3) The notice shall provide the employer with the opportunity to fully resolve its noncompliance within sixty (60) days of the date the notice was issued by Kentucky Retirement Systems. The board may extend this time if provided a written statement from the employer ensuring full resolution but requiring additional time due to factors outside the employer's control preventing the employer from fully resolving its noncompliance within sixty (60) days of the date of the notice.

(a) Upon expiration of this time, the board shall determine whether the employer fully resolved its noncompliance and shall remain a participant of the Kentucky Employees Retirement System or County Employees Retirement System or that the employer failed to fully resolve its noncompliance and to proceed with involuntary cessation.

(b) If the board determines that the employer fully resolved its noncompliance, then the employer shall be informed that the involuntary cessation process shall be suspended contingent upon continued compliance.

(4) If the board determines involuntary cessation should proceed, the employer shall be provided with written notice indicating:

(a) That the employer shall pay the full actuarial cost of the benefits accrued by its current and former employees;

(b) That the employer shall be responsible for all fees incurred by Kentucky Retirement Systems for use of external professional services including the administrative costs of an actuarial study performed by Kentucky Retirement Systems' consulting actuary;

(c) That the employer shall be responsible for reimbursing Kentucky Retirement Systems for the cost of compensation and benefits of Kentucky Retirement Systems' employees computed on an hourly basis as well as the costs of postage, printing, and other expenses incurred by Kentucky Retirement Systems;

(d) That the involuntary cessation of participation applies to all of the employer's current and former employees; and

(e) An involuntary cessation date.

(5) The employer shall submit in an encrypted electronic file a list of each current and former full-time employee as defined by KRS 61.510(21) and 78.510(21) who were employed during any time period the employer participated in Kentucky Employees Retirement System or County Employees Retirement System, containing:

(a) Full name;

(b) Last known address;

(c) Date of birth;

(d) Social Security number or Kentucky Retirement Systems member identification number;

(e) Beginning date of employment;

(f) Date employment ended, if applicable;

(g) Sick leave balance;

(h) Beginning and ending dates of any active duty military service when the employee was not employed by the employer; and

(i) Beginning and ending dates of any active duty military service when the employee was employed by the employer.

(j) If the employer refuses or fails to submit the requested information, Kentucky Retirement Systems shall make reasonable efforts to issue a notice to the last known address on file to those current and former employees of the employer that involuntary cessation has been initiated. Kentucky Retirement Systems will provide an involuntary cessation date and notification that the employee will no longer earn service credit while employed with the employer after that date.

(6) Upon receipt of the actuarial study, Kentucky Retirement Systems shall:

(a) Issue an invoice to the employer for the full actuarial cost of cessation as determined in the actuarial study and the total administrative costs for administering the involuntary cessation; and

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(b) Require the employer to pay the invoice by lump sum within thirty (30) days of its issuance by Kentucky Retirement Systems.

Section 3. (1) (a) Former employees of the ceased employer who are currently employed with a different employer participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance until terminating employment with the participating employer.

(b) Current employees of the ceased employer who are also employed by another employer participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance unless they terminate all employment with participating employers.

(2) Current employees of a ceased employer shall terminate employment with the ceased employer and all employers participating in the State Police Retirement System, County Employees Retirement System, and Kentucky Employees Retirement System prior to retiring pursuant to KRS 61.590 or taking a refund pursuant to KRS 61.625.

(3) Employees of a ceased employer shall comply with KRS 61.637 and 105 KAR 1:390 after retirement.

(4) Employees of a ceased employer shall have sixty (60) days from the involuntary cessation date to pay in full any outstanding balance on an installment purchase agreement pursuant to KRS 61.552(14) and 105 KAR 1:150.

(5) (a) The four (4) percent employer pay credit and applicable interest accrued while employed with a ceased employer shall vest as of the involuntary cessation date for those employees who began participating on or after January 1, 2014.

(b) Employees of the ceased employer who began participating on or after January 1, 2014, shall not be vested in the four (4) percent employer pay credit or applicable interest attributable to a time of employment with an employer other than the ceased employer.

(6) Employees of the ceased employer shall receive service credit for sick leave accrued pursuant to KRS 61.546 or 78.616 as of the involuntary cessation date.

(a) If the employer participates in a sick leave program established in KRS 61.546 or 78.616, the employer shall report to Kentucky Retirement Systems the number of hours of each employee's accumulated sick leave as of the involuntary cessation date.

(b) Kentucky Retirement Systems shall credit the months of sick leave service reported pursuant to this section to the employee's total service credit to determine the employer's full actuarial cost.

(c) If the employer refuses or fails to certify an employee's unused sick leave, Kentucky Retirement Systems shall credit the months of sick leave last reported to the employee's file with Kentucky Retirement Systems as of the employer's involuntary cessation date.

(7) Kentucky Retirement Systems shall credit the months of military service pursuant to KRS 61.555(1)-(2) reported prior to the employer's involuntary cessation date to determine the employer's full actuarial cost.

(8) Kentucky Retirement Systems shall use the employer's involuntary cessation date as the member's last day of paid employment pursuant to KRS 61.510(32) for any member who files for disability retirement benefits that has not established a last day of paid employment prior to the involuntary cessation date.

Section 4. If the employer fails to timely remit the full actuarial cost and Kentucky Retirement Systems' total administrative costs attributable to involuntary cessation, the Board of Trustees may file an action in the Franklin Circuit Court to enforce the provisions of KRS 61.522 and this administrative regulation to recover the full actuarial cost.

Section 5. (1) A person eligible to purchase service credit pursuant to KRS 61.552 related to employment with the ceasing employer, must either complete the purchase or enter into a

service purchase agreement with Kentucky Retirement Systems no later than the employer's involuntary cessation date.

(2) Current and former employees shall not be eligible to purchase service credit related to employment with a ceased employer, pursuant to KRS 61.552 after the employer's involuntary cessation date.

(3) A person may purchase service credit pursuant to KRS 61.552(20) if the service is not related to employment with the ceased employer.

(4) A former employee of a ceased employer who becomes employed with a participating employer after terminating employment with the ceased employer may purchase service credit pursuant to KRS 61.552 that is not related to employment with a ceased employer.

Section 6. (1) If an employer files legal action against Kentucky Retirement Systems regarding the provisions of KRS 61.522 or this administrative regulation, the employer shall pay all administrative costs and legal fees incurred by Kentucky Retirement Systems if the employer's legal action against Kentucky Retirement Systems is unsuccessful or is dismissed for any reason other than by the agreement of the parties.

Section 7. If any due date or time period deadline provided in KRS 61.522 or this administrative regulation falls on a Saturday, Sunday, or day that Kentucky Retirement Systems is closed due to state holiday, the due date or time period deadline shall extend to the close of business of the next business day.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: October 4, 2018

FILED WITH LRC: October 5, 2018 at 10 a.m.

CONTACT PERSON: Mark C. Blackwell, Executive Director
Office of Legal Services, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8645, fax (502) 696-8801, email mark.blackwell@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mark C. Blackwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the involuntary cessation processes and procedures for an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System to be used by the Board of Trustees of Kentucky Retirement Systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the involuntary cessation processes and procedures for an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System to be used by the Board of Trustees of Kentucky Retirement Systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the involuntary cessation processes and procedures for an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System to be used by the Board of Trustees of Kentucky Retirement Systems.

(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 involuntary cessation processes and procedures for an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System to be used by the Board of Trustees of Kentucky Retirement Systems in accordance with KRS 61.522.

(2) If 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.

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(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: Kentucky Retirement Systems and employers participating in the Kentucky Employees Retirement System or the County Employees Retirement System required to involuntarily cease participation pursuant to KRS 61.522(2)(b).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An employer required to involuntarily cease participation will be required to pay by lump sum to Kentucky Retirement Systems the full actuarial cost of the benefits accrued by its current and former employees as well as the cost of the actuarial study and any other administrative costs as determined by the Board of Trustees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If an employer is required to involuntarily cease participation, which is established by KRS 61.522(2)(b), it will be required to pay by lump sum to Kentucky Retirement Systems the full actuarial cost of the benefits accrued by its current and former employees as well as the cost of the actuarial study and any other administrative costs as determined by the Board of Trustees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The involuntary cessation processes and procedures will allow Kentucky Retirement Systems to involuntarily cease the participation of agencies determined by the Board to no longer qualify to participate in a governmental plan or to have failed to comply with Kentucky Retirement Systems' requirements.

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

(a) Initially: The cost of completing the process of involuntary withdrawal.

(b) On a continuing basis: There will be no continuing cost to the employer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and agency funds).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees. The employer must pay the administrative costs incurred by Kentucky Retirement Systems pursuant to KRS 61.522.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers required to involuntarily cease participation are subject to the same processes and procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Retirement Systems and employers required to involuntarily cease participation in the Kentucky Employees Retirement System or the County Employees Retirement System.

(2) Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 61.522.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 employer will have to pay its internal administrative costs and Kentucky Retirement Systems' administrative costs. The administrative regulation generates no revenue, but will allow Kentucky Retirement Systems to involuntarily cease the participation of certain employers. The employer is required by statute to pay the full actuarial cost.

(a) How much 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? Ultimately, the cost to Kentucky Retirement Systems should be negligible, as KRS 61.522 requires an involuntary ceasing employers to pay its internal administrative costs and Kentucky Retirement Systems' administrative costs related to cessation.

(d) How much will it cost to administer this program for subsequent years? KRS 61.522 requires the ceasing employer to pay its internal administrative costs and Kentucky Retirement Systems' administrative costs so the cost to Kentucky Retirement Systems should be negligible.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 900 KAR 6:075E

This emergency administrative regulation is being promulgated in accordance with KRS 13A.190(1)(a), to meet an imminent threat to public health, safety, or welfare. A public health crisis exists in counties without adequate services to treat medical emergencies with urgency and with respect to patient choice. The Pegasus Institute Report (July 2018, "Certificate of Need: Kentucky's CON Regulations and Their Impact on Ambulance Care") demonstrates that in counties with only one (1) private provider, patient health, safety, and welfare is at risk due to excessive response times and disregard to patient preference. A July 2018 report by The Pegasus Institute concluded that Kentucky has a shortage of ambulance providers. There is no competition or patient choice of ambulance services in the several counties that have only one (1) Class I ambulance provider. There are on average 6.4 licensed ambulance services per county in Kentucky. Obviously, counties with just one (1) are well below the state average. The resulting private provider monopolies can result in lower quality of care for patients and a restriction on the ability for patients to choose their providers. Providers owned by public organizations tend not to have the same risk for monopoly and restriction on patient choice. Putting certain types of ambulance Certificate of Need applications into nonsubstantive review will streamline and speed up the process of approving additional providers in those counties and will help increase competition, protect patient choice, and alleviate this shortage. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation.

Matthew G. Bevin, Governor
Adam M. Meier, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Emergency Amendment)

900 KAR 6:075E. Certificate of need nonsubstantive review.

RELATES TO: KRS 216B.010, 216B.015, 216B.090, 216B.455, 216B.990, 311A.030(1)(b)

STATUTORY AUTHORITY: KRS 216B.040(2)(a)1, 216B.095, EO 2018-325

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.095 authorizes the review of certificate of need applications that are granted nonsubstantive status. EO 2018-325 abolished the Office of Health Policy and created the Division of Certificate of Need within the Office of Inspector General. This administrative regulation establishes the requirements necessary for consideration for nonsubstantive review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015(4).

(2) "Cabinet" is defined by KRS 216B.015(6).

(3) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx> [<http://chfs.ky.gov/ohp/con>].

(4) "Days" means calendar days, unless otherwise specified.

(5) "Formal review" means the review of an application for certificate of need that is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and that is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(6) "Nonsubstantive review" is defined by KRS 216B.015(18).

(7) "Public notice" means notice given through the cabinet's Certificate of Need Newsletter.

Section 2. Nonsubstantive Review. (1) The cabinet shall grant nonsubstantive review status to an application to change the location of a proposed health facility or to relocate a licensed health facility only if:

(a) There is no substantial change in health services or bed capacity; and

(b)1. The change of location or relocation is within the same county; or

2. The change of location or relocation is for a psychiatric residential treatment facility.

(2) The cabinet shall grant nonsubstantive review status to an application that proposes to establish an ambulatory surgical center pursuant to the conditions specified in KRS 216B.095(7).

(3) In addition to the projects specified in KRS 216B.095(3)(a) through (e), pursuant to KRS 216B.095(3)(f), the Office of Inspector General[Health Policy] shall grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b) The proposal involves an application to relocate or transfer licensed acute care beds, not including neonatal Level III or Level IV beds, from one (1) existing licensed hospital to another existing licensed hospital within the same area development district and the requirements established in this paragraph are met.

1.a. There shall not be an increase in the total number of licensed acute care beds in that area development district; and

b. The hospital from which the licensed beds are relocated delicens those beds.

2. If neonatal Level II beds are relocated or transferred pursuant to this paragraph:

a. The receiving hospital shall have an existing licensed Level

II, Level III, or Level IV neonatal unit;

b. A minimum of four (4) beds shall be relocated; and

c. The relocation shall not leave the transferring hospital with less than four (4) neonatal Level II beds unless the relocated beds represent all of its neonatal Level II beds;

(c) The proposal involves an application by an existing licensed acute care hospital to:

1. Convert licensed psychiatric or chemical dependency beds to acute care beds, not including special purpose acute care beds such as neonatal Level II beds, Level III beds, or Level IV beds;

2. Convert and implement the beds on-site at the hospital's existing licensed facility; and

3. Delicense the same number of psychiatric or chemical dependency beds that are converted;

(d) The proposal involves an application by an existing licensed hospital providing inpatient psychiatric treatment to:

1. Convert psychiatric beds licensed for use with geriatric patients to acute care beds, not including special purpose acute care beds such as neonatal Level II beds, Level III beds, or Level IV beds;

2. Convert and implement the beds on-site at the existing licensed hospital; and

3. Delicense the same number of converted beds;

(e) The proposal involves an application to re-establish a licensed healthcare facility or service that was provided at a hospital and was voluntarily discontinued by the applicant under the following circumstances:

1. The termination or voluntary closure of the hospital:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for re-licensure; and

d. Was not an express condition of any subsequent certificate of need approval;

2. The application to re-establish the healthcare facility or service that was voluntarily discontinued is filed no more than one (1) year from the date the hospital last provided the service that[which] the applicant is seeking to re-establish;

3. A proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours;[or]

(f)1. The proposal involves an application to establish an ambulatory surgical center that does not charge its patients and does not seek or accept commercial insurance, Medicare, Medicaid, or other financial support from the federal government; and

2. The proposed ambulatory surgical center shall utilize the surgical facilities of an existing licensed ambulatory surgical center during times the host ambulatory surgical center is not in operation; or

(g)1. The proposal involves an application to establish a Class I ground ambulance service;

2. The applicant's proposed service area is limited to a county with a population of 50,000 or more;

3. There is no more than one (1) licensed Class I ground ambulance service in the county that the applicant is proposing to serve; and

4. The current Class I ground ambulance service provider serving the county is not owned or operated by a public organization.

(4) A certificate of need approved for an application submitted under subsection (3)(f) of this section shall state the limitations specified under subsection (3)(f)1. and 2. of this section.

(5) If an application is denied nonsubstantive review status by the Office of Inspector General[Health Policy], the application shall automatically be placed in the formal review process.

(6) If an application is granted nonsubstantive review status by

the Office of ~~Inspector General~~[Health Policy], notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(7)(a) If an application is granted nonsubstantive review status by the Office of ~~Inspector General~~[Health Policy], any affected person who believes that the application is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review.

(b) The provisions of 900 KAR 6:090 shall govern the conduct of all nonsubstantive review hearings.

(c)1. Except as provided in subparagraph 2, of this paragraph, nonsubstantive review applications shall not be comparatively reviewed.

2. If the capital expenditure proposed involves the establishment or expansion of a health facility or health service for which there is a component in the State Health Plan, the nonsubstantive review applications shall be comparatively reviewed.

(d) Nonsubstantive review applications may be consolidated for hearing purposes.

(8) If an application for certificate of need is granted nonsubstantive review status by the Office of ~~Inspector General~~[Health Policy], there shall be a presumption that the facility or service is needed and a presumption that the facility or service is consistent with the State Health Plan.

(9) If each applicable review criterion in the State Health Plan has been met, there shall be a presumption that the facility or service is needed unless the presumption of need has been rebutted by clear and convincing evidence by an affected party.

(10) Unless a hearing is requested pursuant to 900 KAR 6:090, the Office of ~~Inspector General~~[Health Policy] shall approve each application for a certificate of need that has been granted nonsubstantive review status if the exception established in subsection (11)(a) of this section does not apply.

(11) The cabinet shall disapprove an application for a certificate of need that has been granted nonsubstantive review if the cabinet finds that the:

(a) Application is not entitled to nonsubstantive review status; or

(b) Presumption of need or presumption that the facility or service is consistent with the State Health Plan provided for in subsection (8) of this section has been rebutted by clear and convincing evidence by an affected party.

(12) In determining whether an application is consistent with the State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application.

(13) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing ~~that~~[which] is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision or decision following a court ruling.

(14) A decision to approve or disapprove an application ~~that~~[which] has been granted nonsubstantive review status shall be rendered within thirty-five (35) days of the date that nonsubstantive review status has been granted.

(15) If a certificate of need is disapproved following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and 900 KAR 6:065;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

STEVE DAVIS, Inspector General

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: September 25, 2018

FILED WITH LRC: September 25, 2018 at 4 p.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Molly Lewis, molly.lewis@ky.gov, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation addresses the nonsubstantive review of certificate of need applications. Nonsubstantive review is an expedited review process granted to certain applications pursuant to KRS 216B.095. 900 KAR 6:075 expands upon the types of applications qualified for nonsubstantive review per the statute.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.010, 216B.015(18), and 216B.095.

(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 adding types of certificate of need applications qualified for nonsubstantive review status and setting forth the procedure for granting nonsubstantive review status and performing the expedited review as well as the procedure for affected parties to request a hearing to dispute the review status or application.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administrative of the statutes by adding types of certificate of need applications qualified for nonsubstantive review status and setting forth the procedure for granting nonsubstantive review status and performing the expedited review as well as the procedure for affected parties to request a hearing to dispute the review status and/or application.

(2) If 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 revising the identity of the regulating agency to reflect the dissolution of the Office of Health Policy and the Office of Inspector General's adoption of the certificate of need program and by adding a type of ambulance application to the list of type of applications qualified for nonsubstantive review status.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to address a public health emergency created by lack of access of Class I ambulances in Kentucky's larger counties. According to a recent (July 2018) report published by the Pegasus Institute, "Certificate of Need: Kentucky's CON Regulations and Their Impact on Ambulance Care," counties above 50,000 residents have 25.65% fewer ambulance providers (all classes) compared to six (6) other states that either border the Commonwealth or are in the same region. Further, the largest discrepancies between Kentucky and the sample were in high population counties. Two (2) Kentucky counties were notable outliers compared to others in the same sample population. Jefferson County has only thirteen (13) providers (all classes) as compared to 26.76 providers from similar sized counties in the sample; and Warren County has only one (1) provider compared to the sample size average of 6.93 licenses in similar sized counties. Relatedly, in Louisville, ambulance response times (10 minutes, 19 seconds) are significantly above national average (8 minutes), and well above Nashville (7 minutes, 12 seconds) and Indianapolis (5 minutes, 44 seconds); and in Bowling Green, Medicare data demonstrates that for emergency services at The Medical Center in Bowling Green (the owner, operator of the sole provider for the county), wait times for emergency services are 55 minutes versus Tri-Star (8 minutes) (the county's other hospital). At the Medical Center in Bowling Green, wait times are even longer for STEMI (ST-Elevation

Myocardial Infarction, a very serious type of heart attack) patients and pain related to broken bones and patients are six (6) times more likely to leave The Medical Center without seeing a healthcare professional than at Tri-Star. As a result of these findings, the Pegasus Institute's top recommendation to the Commonwealth, which is one (1) of only four (4) states with certificate of need requirements for ambulance providers, is that Kentucky immediately suspend its CON requirements for ground ambulances in counties above 50,000 residents and begin phasing out CON laws in rural counties. This administrative regulation is a more conservative response than the recommendation, as it preserves the certificate of need requirement but provides for nonsubstantive review, which is an expedited review process that gives the applicant proposing the service the presumption that the service is needed and transfers the burden of proof to the affected party opposing the application's proposal.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by promulgating an administrative regulation conveying nonsubstantive review status to a specific type of certificate of need application that is necessary to improve access to quality health care in Kentucky.

(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 revising the identity of the regulating agency to reflect the dissolution of the Office of Health Policy and the Office of Inspector General's adoption of the certificate of need program and by adding a type of ambulance application to the list of type of applications qualified for nonsubstantive review status.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certificate of need applicants proposing Class I ambulance services and affected parties. In 2018 to date, seven (7) applications proposing Class I ambulance services have been filed. Nineteen (19) of Kentucky's 120 counties have more than 50,000 residents. Of these counties, eleven (11) counties have only one (1) Class I ambulance and six (6) counties (Bullitt, Jessamine, Laurel, McCracken, Pike, and Warren) only have one (1) Class I ambulance that is not owned or operated by a public organization.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certificate of need applications proposing to establish a Class I ambulance provider serving a county with at least 50,000 residents and only one (1) existing ambulance provider that is not owned or operated by a public organization may be submitted during any batching cycle and request nonsubstantive review status.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to entities to comply with this amendment other than the certificate of need application filing fee, which is determined using a methodology calculated using the capital expenditure of the proposed service. The certificate of need application filing fee is the same for nonsubstantive review and formal review and is established in a separate administrative regulation, 900 KAR 6:020.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If an applicant proposes to establish a Class I ambulance service in a county with a population of at least 50,000 and only one (1) other Class I ambulance provider that is not owned or operated by a public organization, then that applicant will benefit from nonsubstantive review, be relieved of the formal application batching cycle, have the presumption of need, and have an expedited review process.

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

(a) Initially: No additional costs will be incurred to implement

this administrative regulation.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new funding will be needed to implement the provision of the amended administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is used as the CON review criteria for applications proposing a Class I ground ambulance service in a county with a population of at least 50,000 and only one (1) other Class I provider will be expedited and less rigorous than the review criteria for applications proposing other ambulance services.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Office of Inspector General and may impact any government owned or operated ambulance providers if the public organization is in a county with a population of at least 50,000 and only one (1) other Class I ambulance provider, which is not owned or operated by a public organization.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.015(18), and 216B.095.

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

(a) How much 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 local government only if the government applies to establish a Class I ambulance for a county with a population over 50,000 and with only one (1) Class I provider that is not owned or operated by a public organization. The revenue could be generated from fees for ambulance runs as well as a public necessity tax on residents.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? If a local government in a county with a population over 50,000 and with only one (1) Class I provider that is not owned or operated by a public organization applies for certificate of need authority to establish its own Class I ambulance service and the application is approved, that government owned service may generate revenue from fees for ambulance runs as well as a public necessity tax on residents. The amount of revenue will depend on volume, rate of reimbursement, operational costs, and tax if imposed.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, October 9, 2018)

103 KAR 15:110. Ethanol tax credit.

RELATES TO: KRS 141.010, 141.020, 141.030, 141.040, 141.0401, 141.422, 141.4242, 141.4246, 141.4248

STATUTORY AUTHORITY: KRS 131.130[(4)], 141.4246

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.4242 provides [for] a nonrefundable tax credit to[for] producers of ethanol. KRS 131.130(1) authorizes the department to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS 141.4246(2) requires the department to promulgate an administrative regulation to establish the manner in which a pass-through entity shall electronically notify the department of who may claim the approved tax credit. This administrative regulation establishes guidelines and filing requirements for an ethanol producer filing a tax credit claim for gallons of ethanol produced in this state.

Section 1. Definitions. (1) "Applicant" means an ethanol producer that files a tax credit claim as provided by KRS 141.4242.

(2) "Application" or "Schedule ETH" means the Schedule ETH, Application, and Credit Certificate of Income Tax/LLET Credit Ethanol (Revenue Form 41A720ETH)[, in incorporated by reference in 103 KAR 3:040,] that is used to make an ethanol tax credit claim with the department for gallons of ethanol produced in this state as provided by KRS 141.4242(3).

(3) "ASTM" means the American Society for Testing and Materials.

(4) "Corporation" is defined by KRS 141.010(4)[141.010(24)].

(5) "Department" is defined by KRS 141.010(5)[141.010(2)].

(6) "Ethanol" is defined by KRS 141.422(9).

(7) "Ethanol producer" is defined by KRS 141.422(11).

(8) "Identification number" means[the]:

(a) Social Security number for individuals;

(b) Federal Employer Identification Number for general partnerships, estates, and trusts; and

(c) Kentucky corporation income tax and limited liability entity tax account number for corporations and limited liability pass-through entities.

(9) "Individual" is defined by KRS 141.010(13)[(10)]141.010(7).

(10) "Limited liability pass-through entity" is defined by KRS 141.010(15)[141.010(28)].

(11) "Pass-through entity" is defined by KRS 141.010(21)[141.010(26)].

(12) "Tax credit" means the[cellulosic] ethanol tax credit authorized by KRS 141.4242 and 141.4246.

Section 2. Application for Tax Credit. An applicant shall mail to the department a completed application on or before January 15 for the preceding calendar year.

Section 3. Proof of ASTM standard specification. (1) An/A][An] ethanol producer shall provide proof that the ethanol gallons reported on the application meet ASTM standard specification D4806 for ethanol.

(2) Proof submitted by an ethanol producer shall be in the form of documentation of laboratory results that certify that the ethanol reported on the Schedule ETH meets the ASTM standard specification.

(3) An independent ASTM certified laboratory shall be used to generate the laboratory results that are required by this section.

(4) Failure to submit documented laboratory results that certify that the[cellulosic] ethanol meets the ASTM standard

specification with the Schedule ETH shall result in the department disallowing the credit.

(5)(a) An ethanol producer shall have the ethanol tested as provided by subsection (2) of this section on July 1 and December 31 of each calendar year to determine if the ethanol meets the ASTM standard specification[speciation].

(b) A copy of the laboratory results for July 1 and December 31 of each calendar year shall be attached to the application, Schedule ETH, submitted to the department as provided by Section 2 of this administrative regulation.

(c) Failure to provide proof of meeting the ASTM standard specification on July 1 and December 31 of each calendar year with the application shall result in the denial of the credit[claimed] for gallons of ethanol back to the previous testing date of July 1 or December 31.

(d) If proof is timely submitted and the proof certifies that the ethanol does not meet the ASTM standard specification, then all credit claimed for gallons of ethanol back to the previous testing date of July 1 or December 31 shall be disallowed.

Section 4. Filing Requirements. (1) An applicant claiming the tax credit shall attach the credit certificate issued by the department to the[its] tax return on which the tax credit is claimed.

(2) A partner, member, or shareholder claiming the tax credit shall attach a copy of Schedule K-1: Form 720S, Form number 41A720S(K-1); Form 765, Form number 41A765(K-1);417 or Form 765GP, Form number 42A765GP(K-1)[, in incorporated by reference in 103 KAR 3:040,] to the partner's, member's, or shareholder's tax return on which the credit is claimed.

Section 5. Electronic Filings for Pass-through Entities. (1) Each pass-through entity or agricultural cooperative association organized under KRS Chapter 272 claiming the ethanol tax credit shall file a report with the department by electronic mail at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov.

(2) The electronic mail shall contain a separate attachment in plain format text or plain ASCII format that includes each partner's, member's, or shareholder's:

(a) Name;

(b) Address;

(c) Telephone number;

(d) Identification number; and

(e) Distributive share of the tax credit.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: August 14, 2018

FILED WITH LRC: August 15, 2018 at 10 a.m.

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.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, October 9, 2018)

103 KAR 15:120. Cellulosic ethanol tax credit.

RELATES TO: KRS 141.010, 141.020, 141.030, 141.040, 141.0401, 141.422, 141.4244, 141.4246, 141.4248

STATUTORY AUTHORITY: KRS 131.130(1), 141.4246

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.4244 provides a nonrefundable tax credit to producers of cellulosic ethanol. KRS 131.130(1) authorizes the department to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS 141.4246(2) requires the

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department to promulgate an administrative regulation to establish the manner in which a pass-through entity shall electronically notify the department of who may claim the approved tax credit. This administrative regulation establishes guidelines and filing requirements for a cellulosic ethanol producer filing a tax credit claim for gallons of cellulosic ethanol produced in this state.

Section 1. Definitions. (1) "Applicant" means a cellulosic ethanol producer that files a tax credit claim as provided by KRS 141.4244.

(2) "Application" or "Schedule CELL" means the Schedule CELL, Application, and Credit Certificate of Income Tax/LLET Credit Cellulosic Ethanol (Revenue Form 41A7220CELL) [~~incorporated by reference in 103 KAR 3:040,~~] that is used to make a cellulosic ethanol tax credit claim with the department for gallons of cellulosic ethanol produced in this state as provided by KRS 141.4244(3).

(3) "ASTM" means the American Society for Testing and Materials.

(4) "Cellulosic ethanol" is defined by KRS 141.422(6).

(5) "Cellulosic ethanol producer" is defined by KRS 141.422(7).

(6) "Corporation" is defined by KRS 141.010(4) [~~141.040(24)~~].

(7) "Department" is defined by KRS 141.010(5) [~~141.040(2)~~].

(8) "Identification number" [~~the~~] means:

(a) Social Security number for individuals;

(b) Federal Employer Identification Number for general partnerships, estates, and trusts; and

(c) Kentucky corporation income tax and limited liability entity tax account number for corporations and limited liability pass-through entities.

(9) "Individual" is defined by KRS 141.010(13) [~~141.040(7)~~].

(10) "Limited liability pass-through entity" is defined by KRS 141.010(15) [~~141.040(28)~~].

(11) "Pass-through entity" is defined by KRS 141.010(21) [~~141.040(26)~~].

(12) "Tax credit" means the cellulosic ethanol tax credit authorized by KRS 141.4244 and 141.4246.

Section 2. Application for Tax Credit. An applicant shall mail to the department a completed application on or before January 15 for the preceding calendar year.

Section 3. Proof of ASTM standard specification. (1) A cellulosic ethanol producer shall pro-*vide* proof that the cellulosic ethanol gallons reported on the application meet ASTM standard specification D4806 for ethanol that is produced from cellulosic biomass materials.

(2) Proof submitted by a cellulosic ethanol producer shall be in the form of documentation of laboratory results that certify that the cellulosic ethanol reported on the Schedule CELL meets the ASTM standard specification.

(3) An independent ASTM certified laboratory shall be used to generate the laboratory results that are required by this section.

(4) Failure to submit documented laboratory results that certify that the cellulosic ethanol meets the ASTM standard specification with the Schedule CELL shall result in the department disallowing the credit.

(5)(a) A cellulosic ethanol producer shall have the cellulosic ethanol tested as provided by subsection (2) of this section on July 1 and December 31 of each calendar year to determine if the cellulosic ethanol meets the ASTM standard specification.

(b) A copy of the laboratory results for July 1 and December 31 of each calendar year shall be attached to the application, Schedule CELL, submitted to the department as provided by Section 2 of this administrative regulation.

(c) Failure to provide proof of meeting the ASTM standard specification on July 1 and December 31 of each calendar year with the application shall result in the denial of the credit for gallons of cellulosic ethanol back to the previous testing date of July 1 or December 31.

(d) If proof is timely submitted and the proof certifies that the cellulosic ethanol does not meet the ASTM standard specification, then all credit claimed for gallons of cellulosic ethanol back to the previous testing date of July 1 or December 31 shall be disallowed.

Section 4. Filing Requirements. (1) An applicant claiming the tax credit shall attach the cred-it certificate issued by the department to the tax return on which the tax credit is claimed.

(2) A partner, member, or shareholder claiming the tax credit shall attach a copy of Schedule K-1: Form 720S, Form number 41A720S(K-1); Form 765, Form number 41A765(K-1); ~~Form 765GP, Form number 42A765GP(K-1),~~ ~~incorporated by reference in 103 KAR 3:040,~~ to the partner's, member's, or shareholder's tax return on which the credit is claimed.

Section 5. Electronic Filings for Pass-through Entities. (1) Each pass-through entity or agricultural cooperative association organized under KRS Chapter 272 claiming the cellulosic ethanol tax credit shall file a report with the department by electronic mail at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov.

(2) The electronic mail shall contain a separate attachment in plain format text or plain ASCII format that includes each partner's, member's, or shareholder's:

(a) Name;

(b) Address;

(c) Telephone number;

(d) Identification number; and

(e) Distributive share of the tax credit.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: August 14, 2018

FILED WITH LRC: August 15, 2018 at 10 a.m.

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.

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

(As Amended at ARRS, October 9, 2018)

103 KAR 15:140. Biodiesel tax credit.

RELATES TO: KRS 141.010, 141.020, 141.030, 141.040, 141.0401, 141.422, 141.423, 141.424

STATUTORY AUTHORITY: KRS 131.130, 141.424, 141.425

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.423 establishes a nonrefundable tax credit for biodiesel producers, biodiesel blenders, and renewable diesel producers. KRS 141.425 authorizes the department to promulgate administrative regulations necessary to administer the biodiesel tax credit. KRS 141.424 requires the department to promulgate an administrative regulation to establish the manner in which a pass-through entity shall electronically notify the department of who may claim the approved tax credit.

Section 1. Definitions. (1) "Applicant" means a biodiesel producer, biodiesel blender, or re-newable diesel producer that files a tax credit claim as provided by KRS 141.423.

(2) "Application" or "Schedule BIO" means the Schedule BIO, Application and Credit Certificate of Income Tax/LLET Credit Cellulosic Ethanol (Revenue Form 41A720BIO) [~~incorporated by reference in 103 KAR 3:040,~~] that is used to make a tax credit claim with the department for gallons of biodiesel produced in this state, gallons of biodiesel used in blended biodiesel produced in this state, or gallons of renewable diesel produced in this state as provided by KRS 141.423(4).

(3) "ASTM" means the American Society for Testing and Materials.

(4) "Biodiesel" is defined by KRS 141.422(4).

(5) "Biodiesel blender" means an entity that blends biodiesel with petroleum diesel as pro-*vided* by KRS 141.422(8).

(6) "Biodiesel producer" is defined by KRS 141.422(5).

(7) "Blended biodiesel" is defined by KRS 141.422(8).

(8) "Corporation" is defined by KRS 141.010(4) [~~141.040(24)~~].

(9) "Department" is defined by KRS 141.010(5) [~~141.040(2)~~].

(10) "Identification number" means the:

(a) Social Security number for individuals;

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(b) Federal Employer Identification Number for general partnerships, estates, and trusts; and

(c) Kentucky corporation income tax and limited liability entity tax account number for corporations and limited liability pass-through entities.

(11) "Individual" is defined by KRS 141.010(13)[141.010(7)].

(12) "Limited liability pass-through entity" is defined by KRS 141.010(15) [141.010(28)].

(13) "Pass-through entity" is defined by KRS 141.010(21) [141.010(26)].

(14) "Renewable diesel" is defined by KRS 141.422(12).

(15) "Renewable diesel producer" is defined by KRS 141.422(13).

Section 2. Application for Tax Credit. An applicant shall mail to the department a completed application on or before January 15 for the preceding calendar year.

Section 3. Proof of ASTM standard specification. (1) A biodiesel producer or biodiesel blender shall provide proof the biodiesel gallons reported on the application meet ASTM standard specification D6751 for biodiesel fuel (B100) blend stock distillate fuels.

(2) A renewable diesel producer shall provide proof that the renewable diesel gallons reported[re-reported] on the application meet ASTM standard specification D396 for fuel oils intended for use in various types of fuel-oil-burning equipment, D975 for diesel fuel oils suitable for various types of diesel fuel engines, or D1655 for aviation fuels.

(3) Proof submitted by a biodiesel producer or a renewable diesel producer shall be in the form of documentation of laboratory results that certify that the biodiesel or renewable diesel reported on the Schedule BIO meets the ASTM standard specification.

(4) A biodiesel blender shall obtain from the biodiesel producer a copy of laboratory results that certify that the biodiesel reported on the Schedule BIO meets the ASTM standard specification.

(5) An independent ASTM certified laboratory shall be used to generate the laboratory results that are required by this section.

(6) Failure to submit documented laboratory results that certify that the biodiesel, renewable diesel, or the biodiesel used in the blended biodiesel meets the ASTM standard specification with the Schedule BIO shall result in the department disallowing the credit.

(7)(a) A biodiesel producer, biodiesel blender, or renewable diesel producer shall have the biodiesel, blended biodiesel, or renewable diesel tested as provided by subsections (1) or (2)[subsection (4)] of this section on July 1 and December 31 of each calendar year to determine if the biodiesel, blended biodiesel, or renewable diesel meets the ASTM standard specification, as required to be reported by subsection (4) of this section.

(b) A copy of the laboratory results for July 1 and December 31 of each calendar year shall be attached to the Schedule BIO submitted to the department as provided by Section 2 of this administrative regulation.

(c) Failure to provide proof of meeting the ASTM standard specification on July 1 and December 31 of each calendar year with the application shall result in the denial of the credit claimed for gallons of biodiesel or renewable diesel back to the previous testing date of July 1 or December 31.

(d) If proof is timely submitted and the proof certifies that the biodiesel or renewable diesel does not meet the ASTM standard specification, then all credit claimed for gallons of biodiesel, renewable diesel, or biodiesel used in the blended biodiesel back to the previous testing date of July 1 or December 31 shall be disallowed.

Section 4. Filing Requirements. (1) An applicant claiming the tax credit shall attach the credit certificate issued by the department to its tax return on which the tax credit is claimed.

(2) A partner, member, or shareholder claiming the tax credit shall attach a copy of Schedule K-1, Form 720S, Form number 41A720S(K-1), Form 765, Form number 41A765(K-1), or Form 765GP, Form number 42A765GP(K-1)[~~incorporated by reference in 103-KAR-3:040,~~] to the partner's, member's, or shareholder's tax

return on which the credit is claimed.

Section 5. Electronic Filings for Pass-through Entities. (1) Each pass-through entity claiming the biodiesel tax credit shall file a report with the department by electronic mail at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov.

(2) The electronic mail shall contain a separate attachment in plain format text or plain ASCII format that includes each partner's, member's, or shareholder's:

- (a) Name;
- (b) Address;
- (c) Telephone number;
- (d) Identification number; and
- (e) Distributive share of the tax credit.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: August 14, 2018

FILED WITH LRC: August 15, 2018 at 10 a.m.

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.

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, October 9, 2018)**

103 KAR 17:100. Division of income between married individuals filing separate tax returns.

RELATES TO: KRS 141.010, 141.020, 141.050, 141.300, 141.305

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation establishes the requirements for determining how income derived from joint ownership of property and self-employment is divided among married individuals filing separate tax returns.

Section 1. Definition. "Internal Revenue Code" is defined by KRS 141.010.

Section 2. Income derived from the joint ownership of real property, tangible personal property, or intangible property shall be divided in accordance with the actual ownership of the property[equally] by married individuals filing separate tax returns. If actual ownership is not known or specified, income shall be divided equally. Income derived from property not held jointly shall be attributable to its individual owner.

Section 3[2] Income derived from self-employment by a husband and wife filing separate tax returns shall be divided according to Section 6017 of the Internal Revenue Code, 26 U.S.C. 6017[the federal Small Business and Work Opportunity Tax Act of 2007 (Publication L. 110-28)] and other guidance issued by the U.S. Department of the Treasury and the Internal Revenue Service.[~~(4) Income derived from self-employment by a husband and wife filing separate tax returns shall be divided according to the percentage amount of each spouse's contribution of services and capital, unless self-employment taxes have been paid by each spouse separately, or a partnership agreement provides evidence of separate income.~~

(2) The following shall serve as an example.

Capital Contributions		Services Contributions	
Husband	30%	+	75% = 105/2 = 53%
Wife	70%	+	25% = 95/2 = 47%

~~Section 3. If a joint declaration of estimated tax is made by a~~

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husband and wife, but a joint return is not made for the same taxable year, the joint estimated tax payments for the taxable year shall be divided in the same manner as provided under Internal Revenue Code Section 6015, 26 U.S.C. 6015.]

DANIEL BORK, Commissioner

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FILED WITH LRC: August 15, 2018 at 10 a.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) 564-3875, email Lisa.Swiger@ky.gov.

FINANCE AND ADMINISTRATION CABINET Department of Revenue (As Amended at ARRS, October 9, 2018)

103 KAR 17:130. Individual income tax - military personnel - nonresidents.

RELATES TO: KRS 141.020 and 50 U.S.C. ~~4001[App. 571]~~
STATUTORY AUTHORITY: KRS 131.130, 141.020, 141.050
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. 50 U.S.C. ~~4001[App. 571, known as the Servicemembers Civil Relief Act (Pub. L. 108 - 189)]~~ prohibits a state from imposing a tax on income or compensation from military service on servicemembers who are temporarily located in the state because of military assignments and prohibits a state from using the military income to increase any tax due on income from nonmilitary sources. A servicemember shall file state income tax returns with his or her state of legal domicile, which usually is the state of residence prior to entering military service. This administrative regulation establishes the income tax filing requirements for servicemembers of the U.S. government, including residents of other states that are serving in the military and stationed in Kentucky.

Section 1. Definition. "Servicemember" means servicemember as defined ~~by~~in 50 U.S.C. ~~3911[App 511]~~3911[App 511](1).

Section 2. A Kentucky resident servicemember shall file and report all income earned or received under the provisions of 103 KAR 17:060.

Section 3. A nonresident servicemember who is temporarily located in Kentucky because of military assignment shall not be required to report income or compensation from service in the military. Income from nonmilitary Kentucky sources shall be subject to Kentucky income tax and shall be reported under the provisions of 103 KAR ~~17:060[17-060]~~.

Section 4. A civilian spouse of a nonresident servicemember shall be taxed in Kentucky in accordance with the provisions of 50 U.S.C. ~~4001[App. 571, also known as the Military Spouses Residency Relief Act or "MSRRA" (Pub.L. No. 111-97)]~~ who lives or works in Kentucky shall determine filing requirements based upon the provisions of 103 KAR 17:060].

Section 5. A nonresident civilian who marries a Kentucky resident servicemember who is living outside of Kentucky shall not be considered a resident of Kentucky merely because the servicemember is considered a resident for tax purposes.

Section 6. A resident servicemember may change his or her state of domicile from Kentucky to another state in which he or she resides. Notice of intent to change shall be filed with the personnel department of the appropriate military service.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: August 14, 2018

FILED WITH LRC: August 15, 2018 at 10 a.m.

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.

FINANCE AND ADMINISTRATION CABINET Department of Revenue (As Amended at ARRS, October 9, 2018)

103 KAR 17:140. Individual income tax - reciprocity - nonresidents.

RELATES TO: KRS 141.070

STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation establishes reciprocity requirements for Kentucky residents, and residents of states with which Kentucky has negotiated reciprocal agreements under the provisions of KRS 141.070.

Section 1. In accordance with KRS 141.070, reciprocal agreements with other states exempting specific income from tax shall apply only to the specific types of income listed. Income from other sources may require the filing of a nonresident income tax return.

Section 2. The agreements shall provide the same exemption for the listed income from withholding tax.

Section 3. A list of states that Kentucky has negotiated reciprocal agreements and the type of income exemption available are listed in this section:

(1) Illinois.

(a) Reciprocity with Illinois shall be in accordance with the reciprocity agreement titled "Agreement between Director of Revenue for the State of Illinois and the Commissioner of Revenue of the Commonwealth of Kentucky".

(b) Residents of Illinois shall be exempt from Kentucky income tax on wages and salaries.

(2) Indiana.

(a) Reciprocity with Indiana shall be in accordance with the reciprocity agreement titled "Reciprocal Income Tax Agreement between Commonwealth of Kentucky and State of Indiana".

(b) Residents of Indiana shall be exempt from Kentucky income tax on wages, salaries, and commissions.

(3) Michigan.

(a) Reciprocity with Michigan shall be in accordance with the reciprocity agreement titled "Reciprocal Income Tax Agreement between Commonwealth of Kentucky and State of Michigan".

(b) Residents of Michigan shall be exempt from tax on income earned from personal services in Kentucky. Personal services shall include salaries and wages.

(4) Ohio.

(a) Except as provided in paragraphs (b) and (c) of this subsection, reciprocity with Ohio shall be in accordance with the reciprocity agreement titled "Reciprocal Income Tax Agreement between Commonwealth of Kentucky and State of Ohio".

(b) Except as provided in paragraph (c) of this subsection, residents of Ohio shall be exempt from Kentucky income tax on salaries and wages.

(c) Effective for calendar years beginning on or after January 1, 2007, the reciprocity agreement with Ohio shall not apply with respect to wages which an S corporation pays to a shareholder-employee if the shareholder-employee is a "twenty (20) percent or greater" direct or indirect equity investor in the S corporation.

(5) Virginia.

(a) Reciprocity with Virginia shall be in accordance with the reciprocity agreement titled "Reciprocal Income Tax Agreement

between Commonwealth of Kentucky and Commonwealth of Virginia".

(b) Virginia residents commuting daily to work in Kentucky shall be exempt from income tax on salaries and wages.

(6) West Virginia.

(a) Reciprocity with West Virginia shall be in accordance with the reciprocity agreement titled "Reciprocal Income Tax Agreement between State of West Virginia and Commonwealth of Kentucky".

(b) Residents of West Virginia shall be exempt from Kentucky income tax on salaries and wages.

(7) Wisconsin.

(a) Reciprocity with Wisconsin shall be in accordance with the reciprocity agreement titled "Reciprocal Income Tax Agreement between Commonwealth of Kentucky and State of Wisconsin".

(b) Residents of Wisconsin shall be exempt from tax on income earned from personal services in Kentucky. Personal services shall include salaries and wages.

Section 4. For a person domiciled in one (1) of the states listed in Section 3 of this administrative regulation, but who maintains a place of abode and spends more than 183 days in Kentucky during the year, reciprocity shall not apply and that person shall be considered a Kentucky resident for tax purposes.

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

(a) Agreement between Director of Revenue for the State of Illinois and the Commissioner of Revenue of the Commonwealth of Kentucky, January 28, 1971;

(b) Reciprocal Income Tax Agreement between Commonwealth of Kentucky and State of Indiana and Commonwealth of Kentucky, January 1, 1965.

(c) Reciprocal Income Tax Agreement between Commonwealth of Kentucky and State of Michigan, February 16, 1968;

(d) Reciprocal Income Tax Agreement between Commonwealth of Kentucky and State of Ohio, January 7, 1972;

(e) Reciprocal Income Tax Agreement between Commonwealth of Kentucky and Commonwealth of Virginia, September 2, 1964;

(f) Reciprocal Income Tax Agreement between State of West Virginia and Commonwealth of Kentucky, April 9, 1965; and

(g) Reciprocal Income Tax Agreement between Commonwealth of Kentucky and State of Wisconsin, June 21, 1965.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601[40602], Monday through Friday, 8 a.m. to 5 p.m.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: August 14, 2018

FILED WITH LRC: August 15, 2018 at 10 a.m.

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.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, October 9, 2018)

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

RELATES TO: KRS 150.330, 150.340, 150.603

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these

requirements apply to a limited area. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes the requirements for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

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

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

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

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

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

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

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

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

(a) Dove, beginning on:

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

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

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

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

(c) Snipe, beginning on:

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

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

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

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

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

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

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

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

3. The Northeast Goose Zone].

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

(a) Dove. There shall be a:

1. Daily limit of fifteen (15); and

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

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

1. The head; or

2. A fully-feathered wing.

(c) Woodcock. There shall be a:

1. Daily limit of three (3); and
2. Possession limit of nine (9).

(d) Snipe. There shall be a:

1. Daily limit of eight (8); and
2. Possession limit of twenty-four (24).

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

a:

1. Daily limit of twenty-five (25); and
2. Possession limit of seventy-five (75).

(f) Common and purple gallinule, singly or in aggregate. There

shall be a:

1. Daily limit of three (3); and
2. Possession limit of nine (9).

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

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

(h) Canada goose. There shall be a:

1. Daily limit of five (5); and
2. Possession limit of fifteen (15).

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

- (a) The head; or
- (b) A fully-feathered wing.

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

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

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

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

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

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

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

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

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

(2) Containing:

(a) Lead shot;

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

(c) Shot larger than size "T".

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

(1) Hunting waterfowl or doves; or

(2) Accompanying a person hunting waterfowl or doves.

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

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

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

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

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

(a) Ballard WMA;

(b) Boatwright WMA;

(c) Doug Travis WMA;

(d) Duck Island WMA;

(e) Kaler Bottoms WMA;

(f) Kentucky River WMA;

(g) Ohio River Islands WMA;

(h) Sloughs WMA;

(i) South Shore WMA;

(j) Yatesville Lake WMA; and

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

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

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

(b) Woodcock.

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

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

~~(b) Woodcock.~~

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

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

~~(b) Woodcock.~~

~~(5) [(6)] At Grayson Lake WMA, a person shall not hunt:~~

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

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

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

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

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

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

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

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

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

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

(2) A youth shall:

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

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

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

(4) At the youth-mentor hunts:

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

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

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

(5) A person shall:

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

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

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

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

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

(a) Check-in prior to hunting;

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- (b) Not begin hunting before 2 p.m.;
- (c) Cease hunting by 7 p.m.;
- (d) Exit the area by 7:30 p.m.; and
- (e) Check out before exiting the field.

FRANK JEMLEY III, Acting Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: July 6, 2018

FILED WITH LRC: July 20, 2018 at 3 p.m.

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

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, October 9, 2018)

301 KAR 3:022. License, tag, and permit fees.

RELATES TO: KRS 150.025, 150.180, 150.183, 150.240, 150.275, 150.280, 150.290, 150.450, 150.485, 150.520, 150.525, 150.600, 150.603, 150.660, 150.720

STATUTORY AUTHORITY: KRS 150.175, 150.195(4)(f), 150.225, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175 authorizes the types of licenses, permits, and tags. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 requires[authorizes] the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation establishes fees and terms for licenses, permits, and tags.

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year. (1) Sport fishing licenses:

- (a) Statewide annual fishing license (resident): twenty-three (23) dollars;
- (b) Statewide annual fishing license (nonresident): fifty-five (55) [fifty (50)] dollars;
- (c) Joint statewide fishing license (resident): forty-two (42) dollars;
- (d) Statewide three (3) year fishing license (resident): fifty-five (55) dollars; and
- (e) Trout permit (resident or nonresident): ten (10) dollars.
- (2) Commercial fishing licenses:
 - (a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: \$150; and
 - (b) Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: \$600.
 - (3) Commercial fishing gear tags (not to be sold singly):
 - (a) Commercial fishing gear tags (resident) block of ten (10) tags: fifteen (15) dollars; and
 - (b) Commercial fishing gear tags (nonresident) block of ten (10) tags: \$100.
 - (4) Hunting licenses:
 - (a) Statewide hunting license (resident): twenty-seven (27) dollars;
 - (b) Statewide hunting license (nonresident): \$150[\$140];
 - (c) Statewide junior hunting license (resident): six (6) dollars;
 - (d) Statewide junior hunting license (nonresident): ten (10) dollars;
 - (e) Shooting preserve hunting license (resident or nonresident): five (5) dollars; and
 - (f) Migratory game bird and waterfowl permit (resident or nonresident): fifteen (15) dollars.
 - (5) Combination hunting and fishing license (resident): forty-

two (42) dollars.

(6) Senior or disabled combination hunting and fishing license (resident): twelve (12) dollars.

(7) Trapping licenses:

(a) Trapping license (resident): twenty (20) dollars;

(b) Trapping license (resident landowner – tenant): ten (10) dollars;

(c) Trapping license (nonresident): \$130; and

(d) Junior trapping license (resident): five (5) dollars.

(8) Game permits:

- (a) Resident bear: thirty (30) dollars;
- (b) Resident youth bear: ten (10) dollars;
- (c) Nonresident bear: \$250;
- (d) Resident bear chase: thirty (30) dollars;
- (e) Resident youth bear chase: ten (10) dollars;
- (f) Resident quota cow elk permit: sixty (60) dollars;
- (g) Nonresident quota cow elk permit: \$400;
- (h) Resident quota bull elk permit: \$100;
- (i) Nonresident quota bull elk permit: \$550;
- (j) Resident out-of-zone elk permit: thirty (30) dollars;
- (k) Nonresident out-of-zone elk permit: \$400;
- (l) Resident deer permit: thirty-five (35) dollars;
- (m) Nonresident deer permit: \$185[\$120];
- (n) Resident youth deer: ten (10) dollars;
- (o) Nonresident youth deer: fifteen (15) dollars;
- (p) Additional deer[Deer management] permit[Bonus antlerless deer permit (two (2) tags per permit)] (resident or nonresident): fifteen (15) dollars;
- (q)[Bonus quota hunt deer permit (resident or nonresident): thirty (30) dollars;
- (r)[Resident spring turkey: thirty (30) dollars;
- (s)] Nonresident spring turkey: eighty-five (85)[seventy-five (75)] dollars;
- (t)[Resident fall turkey: thirty (30) dollars;
- (u)] Nonresident fall turkey: eighty-five (85)[seventy-five (75)] dollars;
- (v)[Resident youth turkey: ten (10) dollars;
- (w)] Nonresident youth turkey: fifteen (15) dollars;
- (x)[Resident youth elk: thirty (30) dollars; and
- (y)] Nonresident youth elk: \$200[forty (40) dollars].
- (9) Peabody individual permit: fifteen (15) dollars.
- (10) Sportsman's license (resident), which includes a resident hunting and fishing license, spring turkey permit, fall turkey permit, trout permit, state migratory game bird and waterfowl permit, and deer permit: ninety-five (95) dollars.
- (11) Junior sportsman's license (resident), which includes a junior hunting license, two (2) junior deer permit[permits], and two (2) junior turkey permits: thirty (30) dollars.
- (12) Land Between the Lakes hunting permit: twenty (20) dollars.
- (13) Conservation permit: five (5) dollars.

Section 2. Licenses, tags, and permits listed in this section shall be valid for the calendar year issued. (1) Live fish and bait dealer's licenses:

- (a) Live fish and bait dealer's license (resident): fifty (50) dollars; and
- (b) Live fish and bait dealer's license (nonresident): \$150.
- (2) Commercial taxidermist license: \$150.
- (3) Commercial guide licenses:
 - (a) Commercial guide license (resident): \$150; and
 - (b) Commercial guide license (nonresident): \$400.
- (4) Shooting area permit: \$150.
- (5) Dog training area permit: fifty (50) dollars.
- (6) Collecting permits:
 - (a) Educational wildlife collecting permit: twenty-five (25) dollars; and
 - (b) Scientific wildlife collecting permit: \$100.
- (7) Nuisance wildlife control operator's permit: \$100.
- (8) Pay lake license:
 - (a) First two (2) acres or less: \$150; and
 - (b) Per additional acre or part of acre: twenty (20) dollars.
- (9) Commercial captive wildlife permit: \$150.

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- (10) Commercial fish propagation permit: fifty (50) dollars.
- (11) Wildlife rehabilitator's permit: twenty-five (25) dollars.
- (12) Annual wildlife transportation permit: \$250.
- (13) Peabody Wildlife Management Area annual event permit: \$250.
- (14) Fish transportation permit: twenty-five (25) dollars.

Section 3. Licenses, tags, and permits listed in this section shall be valid for three (3) years from the date of issue. (1) Falconry permit: seventy-five (75) dollars.

- (2) Noncommercial captive wildlife permit: seventy-five (75) dollars.

Section 4. Licenses, tags, and permits listed in this section shall be valid for the date or dates specified on each. (1) Short-term licenses:

- (a) One (1) day resident fishing license: seven (7) dollars;
- (b) One (1) day nonresident fishing license: fifteen (15)~~ten (10)~~ dollars;
- (c) Seven (7) day nonresident fishing license: thirty-five (35)~~thirty (30)~~ dollars;
- (d) ~~Fifteen (15) day nonresident fishing license: forty (40) dollars;~~
- (e) One (1) day resident hunting license (not valid for deer, elk, or turkey hunting): seven (7) dollars;
- (e)(f) One (1) day nonresident hunting license (not valid for deer, elk, or turkey hunting): twenty-five (25)~~fifteen (15)~~ dollars; and
- (f)(g) Seven (7) day nonresident hunting license (not valid for deer, elk, or turkey hunting): sixty-five (65)~~fifty-five (55)~~ dollars; and
- (h) ~~Three (3) day fur bearer's license: fifty (50) dollars.~~
- (2) Individual wildlife transportation permit: twenty-five (25) dollars.
- (3) Special resident commercial fishing permit: \$600.
- (4) Special nonresident commercial fishing permit: \$900.
- (5) Commercial waterfowl shooting area permit: \$150.
- (6) Shoot to retrieve field trial permits:
- (a) Per trial (maximum four (4) days): seventy-five (75) dollars; and
- (b) Single day: twenty-five (25) dollars.
- (7) Boat dock permit: \$100 per ten (10) year permit period beginning January 1, 2008, except that the fee shall be pro-rated for the number of years remaining in the ten (10) year period.
- (8) Shoreline use permit: Valid for a fifteen (15) year permit period beginning January 1, 2010 and shall contain three (3) tiers:
 - (a) Tier I: \$100;
 - (b) Tier II: \$200;
 - (c) Tier III: \$300; and
 - (d) The fees shall be pro-rated to the nearest five (5) year interval remaining in the fifteen (15) year permit period.
- (9) Peabody individual event permit: twenty-five (25) dollars.
- (10) Commercial roe-bearing fish buyer's permit:
 - (a) Commercial roe-bearing fish buyer's permit (resident): \$500; and
 - (b) Commercial roe-bearing fish buyer's permit (nonresident): \$1,000.
- (11) Commercial roe-bearing fish harvester's permit:
 - (a) Commercial roe-bearing fish harvester's permit (resident): \$500; and
 - (b) Commercial roe-bearing fish harvester's permit (nonresident): \$1,500.
- (12) Otter Creek Outdoor Recreation Area:
 - (a) Daily Entry Permit: three (3) dollars, with children under twelve (12) free; and
 - (b) Daily Special Activities Permit: seven (7) dollars.
- (13) Commercial foxhound training enclosure permit: \$150.

Section 5. Licenses, tags, and permits listed in this section shall be valid on a per unit basis as specified. (1) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.

- (2) Pheasant hunt permit (per person, per day): twenty-five (25) dollars.

- (3) Horse stall rental (per space, per day): two (2) dollars.
- (4) Dog kennel rental (per dog, per day): fifty (50) cents.
- (5) ~~Commercial~~ Captive cervid permit (per facility, per year): \$150.
- (6) Noncommercial captive cervid permit (per facility, per three (3) years): seventy-five (75) dollars.

Section 6. The following licenses listed in this section shall be valid from April 1 through March 31 of the following year:

- (1) Fur processor's license (resident): \$150;
- (2) Fur buyer's license (resident): fifty (50) dollars; and
- (3) Fur buyer's license (nonresident): \$300.

Section 7. The following Otter Creek Outdoor Recreation Act permits shall be valid from July 1 through June 30 of the following year:

- (1) Annual Entry Permit: thirty (30) dollars, with children under twelve (12) free; and
- (2) Annual Special Activities Permit: seventy (70) dollars.

FRANK JEMLEY III, Acting Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: August 10, 2018

FILED WITH LRC: August 15, 2018 at 9 a.m.

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

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, October 9, 2018)**

301 KAR 4:090. Buying and selling of inedible wildlife parts.

RELATES TO: KRS 150.010, ~~[150.025,]~~ 150.175, 150.180, 150.183, 150.305~~[150.304]~~, 150.330, 150.370, 150.411, 150.990
STATUTORY AUTHORITY: KRS ~~[13A.350,]~~ 150.025(1), 150.4111

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations regarding the buying, selling, or transporting of wildlife. KRS 150.4111 authorizes a person to sell the inedible parts of any legally taken wildlife to a licensed taxidermist for the purpose of mounting, authorizes a licensed taxidermist to buy or sell the inedible parts of any legally taken wildlife for the purpose of mounting, and authorizes any person to purchase from or sell to a licensed taxidermist any legally mounted specimen. This administrative regulation establishes the requirements for the buying and selling of inedible wildlife parts.~~[The commissioner, with the concurrence of the commission, finds it necessary to regulate the buying and selling of inedible wildlife parts in order to assure the trade is limited to legally taken animals. The purpose of this administrative regulation is to detail procedures and responsibilities for taxidermists and others involved in storing, labeling and mounting wildlife, buying and selling inedible wildlife parts and the buying and selling of mounted wildlife specimens and products manufactured from processed wildlife].~~

Section 1. Definitions. (1) ~~"Licensed taxidermist" means any person, partnership, firm or corporation that engages in the business and accepts remuneration for the mounting of skins or other inedible wildlife parts or wildlife and who holds a license under the provisions of KRS Chapter 150.175.~~

~~(2) "Federally protected wildlife" means any federal threatened or endangered species or [and] any native migratory bird.~~

~~(2) "Furbearer" means mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, least weasel, long-tailed weasel, river otter, bobcat, coyote, or striped skunk.~~

~~(3) "Licensed taxidermist" means any person, partnership, firm, or corporation that accepts remuneration for the mounting of skins or other inedible wildlife parts and who holds a Kentucky~~

taxidermist license, as established in KRS 150.175.

(4) "Mounting" means to arrange processed wildlife for the purpose of display.

(5) "Permanently preserved pelt" means any processed furbearer pelt, but does not include raw fur or pelts treated with salt, borax, or sunlight.

Section 2. Licenses Required. (1) Any person, partnership, firm, or corporation engaged in the business and accepting remuneration for mounting skins or other inedible parts of wildlife shall possess a Kentucky taxidermist license.

(2) A licensed taxidermist shall:

(a) Openly display a valid taxidermist license at the place of business; and

(b) Have [Such licenses are available by writing: Division of Fiscal Control, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. The license shall be openly displayed at the place of business and shall be open, along with] all records pertaining to the business and all wildlife specimens or wildlife parts[,] available for[te] inspection during normal business hours by a [any properly authorized agent of the] department conservation officer.

(3) A person or business who transforms a legally acquired, processed, inedible wildlife part into a hand-crafted or manufactured finished product shall not be required to possess a license from the department [Individuals or businesses engaged in the selling of garments or manufactured products comprised of legally taken processed wildlife are not required to possess a license from the department of Fish and Wildlife Resources].

(4) A person or business is not required to possess a license to buy or sell legally acquired furbearer inedible parts, secretions, or permanently preserved pelts, excluding raw fur.

(5) [(3)] In addition to the appropriate state license, all taxidermists who mount federally protected species shall possess [must have] a valid federal taxidermist license issued by the [Federal permit application information is available by writing:] U.S. Fish and Wildlife Service[,] Division of Law Enforcement, P.O. Box 4839, Atlanta, Georgia 30302].

Section 3. Labeling Requirements. (1) All licensed taxidermists shall keep records of the name, address, and phone number of the owner and the date killed of all wildlife or wildlife parts in their possession and shall tag each specimen or part to identify its owner. [Inedible parts of wildlife so tagged may be possessed year round by a licensed taxidermist.]

(2) Wildlife [Deer] heads harvested in Kentucky or other parts separated from the carcass for mounting by a taxidermist shall have the hunter's confirmation number, if applicable, [portion of the official game check card properly filled out and] attached to the separated part. [Parts of deer taken out of state shall be accompanied with proof of legal harvest.]

FRANK JEMLEY III, Acting Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: August 2, 2018

FILED WITH LRC: August 15, 2018 at 9 a.m.

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

GENERAL GOVERNMENT
Department of Agriculture
Office of the State Veterinarian
(As Amended at ARRS, October 9, 2018)

302 KAR 20:211. Repeal of 302 KAR 20:210.

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS 257.030, 257.080, 257.230

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.080 authorizes the department to promulgate administrative

regulations listing all reportable diseases of livestock, poultry, and fish and setting out the conditions under which the diseases shall be reported. KRS 257.230 requires the state veterinarian to be the chief executive agent of the board and to promulgate administrative regulations. [The prevention of the spread of pseudorabies, via the movement (both intrastate and interstate) of feeder pigs within market channels. Breeding swine on farms of origin which produce feeder pigs may be required to be tested.] This administrative regulation repeals 302 KAR 20:210 because Kentucky was declared pseudorabies free by the USDA on May 1, 1997, making this administrative regulation not needed.

Section 1. 302 KAR 20:210. Pseudorabies surveillance [Procedures for the prevention of the spread of pseudorabies, via the movement (both intrastate and interstate) of feeder pigs within market channels], is hereby repealed.

RYAN F. QUARLES, Kentucky Commissioner of Agriculture

APPROVED BY AGENCY: August 9, 2018

FILED WITH LRC: August 10, 2018 at 2 p.m.

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.

GENERAL GOVERNMENT
Department of Agriculture
Office of the State Veterinarian
(As Amended at ARRS, October 9, 2018)

302 KAR 20:221. Repeal of 302 KAR 20:220.

RELATES TO: KRS 246.210, 257.050, 257.080, 257.110-257.170, 257.480

STATUTORY AUTHORITY: KRS 257.020, 257.030, 257.080, 257.230

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.080 authorizes the department to promulgate administrative regulation listing all reportable diseases of livestock, poultry, and fish and setting out the conditions under which the diseases shall be reported. KRS 257.230 requires the state veterinarian to be the chief executive agent of the board and to promulgate administrative regulations. [KRS 257.020(3) requires the board to prevent, control, and eradicate any communicable disease of livestock. KRS 257.030(4) authorizes the board to promulgate administrative regulations necessary to administer any provision of KRS Chapter 257. This administrative regulation establishes procedures for approving a pseudorabies herd cleanup plan and to eradicate pseudorabies from a porcine herd or animal upon a determination of infection or exposure to pseudorabies.] This administrative regulation repeals 302 KAR 20:220 because Kentucky was declared pseudorabies free by the USDA on May 1, 1997, making this administrative regulation not needed.

Section 1. 302 KAR 20:220. Pseudorabies: eradication and control [Procedures for approving a pseudorabies herd cleanup plan and to eradicate pseudorabies from a porcine herd or animal upon a determination of infection or exposure to pseudorabies], is hereby repealed.

RYAN F. QUARLES, Kentucky Commissioner of Agriculture

APPROVED BY AGENCY: August 9, 2018

FILED WITH LRC: August 10, 2018 at 2 p.m.

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.

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GENERAL GOVERNMENT
Department of Agriculture
Office of the State Veterinarian
(As Amended at ARRS, October 9, 2018)

302 KAR 20:231. Repeal of 302 KAR 20:230.

RELATES TO: KRS CHAPTER 257

STATUTORY AUTHORITY: KRS 257.020, 257.030, 257.080,
257.230

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.080 authorizes the department to promulgate administrative regulations listing all reportable diseases of livestock, poultry, and fish and setting out the conditions under which the diseases shall be reported. KRS 257.230 requires the state veterinarian to be the chief executive agent of the board and to promulgate administrative regulations.~~[To establish procedures for setting a fee basis schedule for the purpose of reimbursement payments to licensed and accredited veterinarians by the department for expenses incurred in performing the professional services mandated by the pseudorabies testing program as set out at 302 KAR 20:220.]~~ This administrative regulation repeals 302 KAR 20:230 because Kentucky was declared pseudorabies free by the USDA on May 1, 1997, making this administrative regulation not needed.

Section 1. 302 KAR 20:230. Fee basis schedule~~[Procedures for setting a fee basis schedule for the purpose of reimbursement payments to licensed and accredited veterinarians by the department for expenses incurred in performing the professional services mandated by the pseudorabies testing program as set out at 302 KAR 20:230]~~, is hereby repealed.

RYAN F. QUARLES, Kentucky Commissioner of Agriculture

APPROVED BY AGENCY: August 9, 2018

FILED WITH LRC: August 19, 2018 at 2 p.m.

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.

GENERAL GOVERNMENT
Department of Agriculture
Office of the State Veterinarian
(As Amended at ARRS, October 9, 2018)

302 KAR 20:541. Repeal of 302 KAR 20:054.

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS 257.020, 257.030, 257.080,
257.230

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.080 authorizes the department to promulgate administrative regulations listing all reportable diseases of livestock, poultry, and fish and setting out the conditions under which the diseases shall be reported. KRS 257.230 requires the state veterinarian to be the chief executive agent of the board and to promulgate administrative regulations.~~[To establish procedures for setting a fee basis schedule for reimbursement payments to licensed and accredited veterinarians for expenses incurred in performing professional services found necessary to eliminate brucellosis and to achieve the status of a brucellosis free state.]~~ This administrative regulation repeals 302 KAR 20:054 because Kentucky was declared brucellosis free by the USDA on September 16, 1997, making this administrative regulation not needed.

Section 1. 302 KAR 20:054. Fee basis schedule for brucellosis testing~~[as set out at 302 KAR 20:054]~~, is hereby repealed.

RYAN F. QUARLES, Kentucky Commissioner of Agriculture

APPROVED BY AGENCY: August 9, 2018

FILED WITH LRC: August 10, 2018 at 2 p.m.

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.

GENERAL GOVERNMENT
Department of Agriculture
Office of the State Veterinarian
(As Amended at ARRS, October 9, 2018)

302 KAR 20:561. Repeal of 302 KAR 20:056.

RELATES TO: KRS 257.020, 257.030, 257.110, 257.120,
257.140

STATUTORY AUTHORITY: KRS 257.030, 257.080, 257.110,
257.120, 257.140, 257.230

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.080 authorizes the department to promulgate administrative regulations listing all reportable diseases of livestock, poultry, and fish and setting out the conditions under which the diseases shall be reported. KRS 257.230 requires the state veterinarian to be the chief executive agent of the board and to promulgate administrative regulations.~~[The administrative regulation is necessary to explain the conditions under which a cattle herd owner may collect state indemnity which is available only for sero-negative exposed adult breeding cattle and heifer calves from within a brucellosis-infected herd which are sent directly to slaughter.]~~ This administrative regulation repeals 302 KAR 20:056 because Kentucky was declared brucellosis free by the USDA on September 16, 1997, making this administrative regulation not needed.

Section 1. 302 KAR 20:056. Qualifications and eligibility requirements on state brucellosis indemnity payments for negative exposed cattle, is hereby repealed.

RYAN F. QUARLES, Kentucky Commissioner of Agriculture

APPROVED BY AGENCY: August 9, 2018

FILED WITH LRC: August 10, 2018 at 2 p.m.

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.

GENERAL GOVERNMENT
Department of Agriculture
Office of the State Veterinarian
(As Amended at ARRS, October 9, 2018)

302 KAR 20:571. Repeal of 302 KAR 20:057.

RELATES TO: KRS 257.020, 257.030, 257.040, 257.050

STATUTORY AUTHORITY: KRS 257.020, 257.030, 257.040,
257.050, 257.080, 257.230

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.080 authorizes the department to promulgate administrative regulations listing all reportable diseases of livestock, poultry, and fish and setting out the conditions under which the diseases shall be reported. KRS 257.230 requires the state veterinarian to be the chief executive agent of the board and to promulgate administrative regulations.~~[The purpose of the administrative regulation is to delineate the procedures for quarantine and quarantine release of brucellosis infected and exposed herds.]~~ This administrative regulation repeals 302 KAR 20:057 because Kentucky was declared brucellosis free by the USDA on September 16, 1997, making this administrative regulation not needed.

Section 1. 302 KAR 20:057. Brucellosis quarantine

requirements, is hereby repealed.

RYAN F. QUARLES, Kentucky Commissioner of Agriculture

APPROVED BY AGENCY: August 9, 2018

FILED WITH LRC: August 10, 2018 at 2 p.m.

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.

GENERAL GOVERNMENT
Department of Agriculture
Office of the State Veterinarian
(As Amended at ARRS, October 9, 2018)

302 KAR 20:581. Repeal of 302 KAR 20:058.

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS 257.030, 257.080, 257.110, 257.120, 257.230, 257.480

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.080 authorizes the department to promulgate administrative regulations listing all reportable diseases of livestock, poultry, and fish and setting out the conditions under which the diseases shall be reported. KRS 257.230 requires the state veterinarian to be the chief executive agent of the board and to promulgate administrative regulations. [To provide the procedure for enabling the Board of Agriculture to eliminate brucellosis by ordering the slaughtering or destruction of a bovine herd upon a determination of infection of or exposure to brucellosis within the herd. Such methods are necessary in order to achieve status of brucellosis free state.] This administrative regulation repeals 302 KAR 20:058 because Kentucky was declared brucellosis free by the USDA on September 16, 1997, making this administrative regulation not needed.

Section 1. 302 KAR 20:058. Brucellosis eradication, is hereby repealed.

RYAN F. QUARLES, Kentucky Commissioner of Agriculture

APPROVED BY AGENCY: August 9, 2018

FILED WITH LRC: August 10, 2018 at 2 p.m.

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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, October 9, 2018)

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics.

RELATES TO: KRS 61.805 - 61.850, 156.070(2), 160.380, 160.445, 20 U.S.C. 1681

STATUTORY AUTHORITY: KRS 156.070(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools, including interscholastic athletics in the schools. KRS 156.070(2) authorizes the board to designate an agency to manage athletics. This administrative regulation designates an agent for middle and high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures, and rules of the agent.

Section 1. Definitions. (1) "Contact" means that drills are run at Level 3, thud, or Level 4, live action.

(2) "KBE" means Kentucky Board of Education.

(3) "KHSAA" means Kentucky High School Athletics Association.

(4) "Level 0" or "air" means that players run a drill unopposed and without contact.

(5) "Level 1" or "bags" means that a drill is run against a bag or another soft contact surface.

(6) "Level 2" or "control" means that a drill is run at the assigned speed until the moment of contact; one (1) player is predetermined the winner by the coach; contact remains above the waist; and players stay on their feet.

(7) "Level 3" or "thud" means that a drill is run at the assigned speed through the moment of contact; there is not a predetermined winner; contact remains above the waist; players stay on their feet; and a quick whistle ends the drill.

(8) "Level 4" or "live action" means that a drill is run in game-like conditions and is the only time that players are taken to the ground.

(9) "Non-contact" means that drills are run at Level 0, air; Level 1, bags; or Level 2, control.

(10) "OCR" means Office for Civil Rights.

Section 2. The KHSAA shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the middle and high school level in the common schools, including a private school desiring to associate with KHSAA or to compete with a common school.

Section 3. To remain eligible to maintain the designation as the agent to manage interscholastic high school athletics, the KHSAA shall:

(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its high school Board of Control;

(2) Sponsor an annual meeting of its member high schools;

(3) Provide for each member high school to have a vote on KHSAA constitution and bylaw changes submitted for consideration;

(4) Provide for high school regional postseason tournament net revenues to be distributed to the member high schools in that region participating in that sport, utilizing a share approach determined by the high schools within that region playing that sport;

(5) Provide for students desiring to participate at the high school level (regardless of level of play) to be enrolled in at least grade seven (7) unless the student has participated at the high school level prior to the 2014 - 2015 school year;

(6) Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by December 31;

(7) Advise the Department of Education of all legal action brought against the KHSAA;

(8) Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;

(9) Employ a commissioner and evaluate that person's performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;

(10) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;

(11) Permit the Board of Control to assess fines on a member high school;

(12) Utilize a trained independent hearing officer instead of an eligibility committee for a high school athletic eligibility appeal;

(13) Establish a philosophical statement of principles to use as a guide in a high school eligibility case;

(14) Conduct continual cycles of field audits of the association's entire high school membership which provides that each high school is audited regarding each school's compliance with 20 U.S.C. Section 1681 (Title IX) and submit annual summary reports, including the highlighting of any potential deficiencies in OCR compliance to the Kentucky Board of Education;

(15) As a condition precedent to high school membership, require each member high school and superintendent to annually

submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);

(16) Conduct all meetings related to high school athletics in accordance with KRS 61.805 through 61.850;

(17) Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, KHSAA Bylaws, and other rules governing the conduct of high school interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school prior to being made public;

(18) Not punish or sanction, in any manner, a school, student, coach, or administrator for allowing a student to play in an athletic contest or practice with the team during a time when an order of a court of competent jurisdiction permits the student to participate or otherwise stays or enjoins enforcement of a KHSAA final decision on eligibility; and

(19) Require any student enrolled initially in grade seven (7) through twelve (12) who is repeating a grade for any reason, to be ineligible, during the school year that the grade is repeated, to compete in interscholastic athletics competition at any level.

Section 4. To remain eligible to maintain the designation as the agent to manage interscholastic athletics at the middle school level, the KHSAA shall implement the following requirements for all participants in middle school interscholastic athletics, distribute these requirements to all middle schools, and publish via the KHSAA Web site:

(1) Require that these provisions apply to all middle school interscholastic athletics. The following indicates that a team is representative of a school and classified as middle school athletics:

(a) The contest, event, or tournament is sponsored by a school or combined group of schools;

(b) Competitors wear a school issued uniform;

(c) The contest, event, or tournament is sponsored by an outside entity as a school entry event, which is advertised or promoted as a school event, whether or not an entry fee is required;

(d) A school entity pays an entry fee, for the student or team, including payment by booster organizations;

(e) A school representative accompanies the student-athlete or transports the student-athlete to the contest, event, or tournament;

(f) A designated or hired member of a school coaching staff, whether paid or unpaid, is present and offering instruction, advice, evaluation, or refinement of skills or exercising other duties defined as coaching within the sport rules;

(g) Transportation to or from the contest, event, or tournament utilizes school provided or approved transportation;

(h) Competitors in the contest, event, or tournament wear apparel identifying them by the name of the school, including the formal name, informal name, or team nickname;

(i) Competitors in the contest, event, or tournament are provided promotional or other resources by the school including school media recognition, signage, and items clearly indicative of school representation;

(j) Competition in a contest, event, or tournament has, in any form, jurisdiction of the local school board or school based decision making body, including financial or other approval control; or

(k) Competition in a contest, event, or tournament is covered by any school or school system provided or procured insurance policy;

(2) Require that any head or assistant coach, whether paid or unpaid, desiring to coach interscholastic athletics at the middle school level:

(a) Meet the requirements of KRS 156.070(2)(f)2.;

(b) Meet the requirements of KRS 160.380(4) and (6); and

(c) Provide to the school documentation of successful completion of a C.P.R. course including the use of an automatic external defibrillator and the first aid training, conducted by an instructor or program approved by a college or university, the American Red Cross, the American Heart Association, or other bona fide accrediting agency that is approved by the KHSAA based upon industry standards. Initial certification shall use in-person instruction and certification shall be updated as required by the approving

agency;

(3) Require the adherence to the following items regarding safety, sports medicine, and risk minimization for all interscholastic athletics at the middle school level:

(a) Each student, prior to trying for a place on a middle school athletic team, shall provide an annual medical examination, in accordance with KRS 156.070(2)(d), and shall use the KHSAA form PPE;

(b) All participants at the middle school level shall adhere to all sports medicine and risk minimization policies in use at the high school level that may be supplemented by the school, school district, conference, or association including:

1. Heat index and heat illness programs;

2. Wrestling weight management programs;

3. Concussion and other head injury policies including policies for minimizing impact exposure and concussion risks;

4. The following football drill work and practice activity limitations:

a. Football contact and non-contact practice shall use the appropriate clothing and equipment for the level of drill, including:

(i) A drill conducted in helmets-only shall be a Level 0, air, or Level 1, bags;

(ii) A drill conducted in shells (shorts, shoulder pads, and helmets) shall be a non-contact drill; and

(iii) A contact drill shall be conducted in full equipment;

b. Middle school football shall practice a minimum of eleven (11) days before engaging another group or opponent in full contact, using the following minimum schedule:

(i) Five (5) days in helmets;

(ii) Followed by three (3) days in helmets and shoulder pads; and

(iii) Concluding with three (3) days in full equipment practice; and

c. Contact drills shall not be conducted more than twenty-one (21) days before the first regular season contest;

5. The following baseball pitching limitations shall apply to all interscholastic play at the middle school level including scrimmages, regular season, and post season games:

a. The pitch count shall be based on pitches thrown for strikes (including foul balls), balls, balls in play, and outs;

b. Warm-up pitches allowed before each inning, warm-up pitches allowed by the umpire in case of injury or game delay, and plays attempted against the batter-runner or any runner at first, second, or third base shall not count against this limit;

c. A pitcher at any level who reaches the pitch count limit in the middle of an at-bat shall be allowed to finish that hitter;

d. The required calendar rest shall begin on the day following the date on which the game began or a resumed game began regardless of the conclusion time of the game; and

e. The rest periods shall be based on the following total pitches:

(i) Maximum pitches - eighty-five (85);

(ii) Fifty-six (56) pitches or more - three (3) calendar days rest;

(iii) Thirty-six (36) to fifty-five (55) pitches - two (2) calendar days rest;

(iv) Twenty (20) to thirty-five (35) pitches - one (1) calendar day rest; and

(v) One (1) to nineteen (19) pitches - no mandated rest;

6. Students seeking to play or practice, including scrimmages, regular season, and post season games, in the sport of fastpitch softball, shall be required to wear face protection, commercially manufactured for softball facial protection and worn as intended by the manufacturer, when playing the positions of first base, third base, and pitcher; and

7. Teams participating in middle school athletics as defined by subsection (1) of this section shall use KHSAA licensed officials in the sports of baseball, basketball, field hockey, football, soccer, softball, and volleyball;

(4) Create a permanent Middle School Athletics Advisory Committee. This committee shall:

(a) Be autonomous with respect to the Board of Control of the KHSAA;

(b) Be composed of no less than three (3) middle school representatives from each Supreme Court district as well as no less than three (3) at large representatives from throughout the state;

(c) Provide an opportunity for nonprofit athletic groups, parents, and others to participate and provide input on the sport, athletic event, or athletes involved in interscholastic activities through local school districts;

(d) Meet not less than twice annually to review current programs and policies, ~~and~~ make recommendations for improvements to and participation in middle school interscholastic activities, as well as any changes in statute, administrative regulation, or policy related to middle school interscholastic athletics, ~~and~~ and assist in the development of model guidelines for schools, districts, conferences, and associations to be used in implementing a middle school athletic program; and

(e) Report regularly, not less than annually, to the commissioner of the KHSAA and issue, in conjunction with the commissioner, a formal written report annually to the KBE with recommendations for changes in statute, administrative regulation, or policy;

(5) Require any organization conducting a school based event at the middle school level to submit the following, which shall be published and listed on the KHSAA Web site:

(a) Annual financial reports of all sanctioned and approved events sponsored by the organization; and

(b) Documentation of financial accountability including verification of federal status and tax documents including an annual IRS Form 990;

(6) Provide notice to the middle schools related to any program conducted by KHSAA related to educating school administrators about the provisions of 20 U.S.C. 1681, Title IX;

(7) Provide educational materials and a mechanism to facilitate the monitoring and tracking capabilities for the middle schools to ensure compliance with the provisions of KRS 160.445 and other requirements for coaches at the middle school level;

(8) Require any student enrolled initially in grade five (5) through eight (8) who is repeating a grade for any reason, to be ineligible, during the school year that the grade is repeated, to compete in interscholastic athletics competition at any level;

(9) Require that any student who turns:

(a) Fifteen (15) years of age prior to August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades eight (8) and below;

(b) Fourteen (14) years of age prior to August 1 of the current year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades seven (7) and below; and

(c) Thirteen (13) years of age prior to August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades six (6) and below;

(10) Require each school, school district, conference, or association of schools to develop rules and limitations regarding student participation at the middle school level to include:

(a) A defined age limitation for participating students;

(b) A policy regarding the participation of students below grade six (6);

(c) A limitation on practice time prior to the season in any sport or sport activity which shall not exceed the practice time adopted for play at the high school level;

(d) A limitation on the number of school based scrimmages and regular season, school based contests in each sport or sport-activity, which shall not include post season contests and shall not exceed the allowable number of contests for that sport or sport-activity at the high school level; and

(e) A limitation on the length of the regular competitive season in each sport or sport-activity, not including any post season activities, which shall not exceed the length for that sport or sport-activity at the high school level;

(11) Conduct all meetings related to middle school athletics in accordance with KRS 61.805 through 61.850;

(12) Issue an annual report to the KBE on the status of interscholastic athletics at the middle school level, including any recommendations for changes in statute, administrative regulation, or policy;

(13) Allow a school or school district to join a conference or association that has developed rules for any particular sport or sport-activity to satisfy the requirements of this administrative regulation; and

(14) The period of June 25 to July 9, inclusive, shall be a dead period for middle school athletics. During the dead period:

(a) Students shall not receive coaching or training from school personnel, whether salaried or non-salaried;

(b) School facilities, uniforms, nicknames, transportation, or equipment shall not be used;

(c) School funds shall not be expended in support of interscholastic athletics; and

(d) A postseason wrap-up activity, celebration, or recognition event relating to a spring sports team at a school may be held.

Section 5. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE by October 31:

(a) Draft budget for the next two (2) fiscal years, including the current year;

(b) End-of-year budget status report for the previous fiscal year;

(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;

(d) A summary report of operations including summaries of financial, legal, and administrative actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:

1. Athletic appeals and their disposition, including the name of the individual, grade, school, and the action taken by KHSAA;

2. Eligibility rules;

3. Duties of school officials;

4. Contests and contest limitations;

5. Requirements for officials and coaches; and

6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for vote by the member schools at the next legislative opportunity; and

(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.

(2) The KHSAA shall annually submit at the next meeting of the Kentucky Board of Education following receipt and adoption by the Board of Control, audited financial statements with the KHSAA Commissioner's letter addressing exceptions or notes contained in management correspondence, if any.

Section 6. Forms. The forms incorporated by reference in this administrative regulation[regulations] shall be filed:

(1) Using the paper form; or

(2) Using the electronic forms found on the Kentucky High School Athletic Association website at www.khsaa.org.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KHSAA Constitution", 6/2017;

(b) "KHSAA Bylaws", 6/2018[6/2017];

(c) "KHSAA Due Process Procedure", 6/2017;

(d) "KHSAA Board of Control and Officials Division Policies", 6/2018[6/2017];

(e) KHSAA Form BA101- Baseball Pitching Limitation", 6/2016;

(f) KHSAA Form GE01, "Application for Membership", 5/2017;

(g) KHSAA Form GE04, "Athletic Participation Form, Parental and Student Consent and Release for High School Level (grades 9 - 12) Participation", 4/2015;

(h) KHSAA Form DP02, "Request for Statutory Waiver of Bylaw 2", 6/2018;

(i)[(h)] KHSAA Form DP06, "Application for Athletic Eligibility for Domestic Students", 6/2018[8/2017];

(j)[(i)] KHSAA Form DP07, "Application for Athletic Eligibility for Students having J-1 or F-1 Status", 8/2017;

(k)[(j)] KHSAA Form DP08, "Application for Non U.S. Student Athletic Eligibility for Students Not having J-1/F-1 Status", 8/2017;

(l) KHSAA Form DP16, "Request for Waiver of 20 Day Notice", 6/2018;

(m) KHSAA Form DP17, "Add. Info for Appeal", 6/2018;

(n) KHSAA Form DP18 "Waiver – 15 Day Exceptions", 6/2018;

(o)(k) "KHSAA Form GE14- Contract for Athletic Contests", 8/2017;[(l) KHSAA Form GE16, "Request for Statutory Waiver of Bylaw 2", 6/2016;]

(p)(m) "KHSAA Form GE19-Title IX Procedures Verification", 5/2011;

(q)(n) KHSAA Form GE20, "Heat Index Measurement and Record", 4/2014;[(o) KHSAA Form GE35, "Request for Waiver of 20 Day Notice", 4/2014;

(p) "KHSAA Form GE36- Add. Info for Appeal", 6/2016;

(q) "KHSAA Form GE69- Waiver – 15 Day Exceptions", 6/2016;]

(r) KHSAA Form PPE/Physical Exam, "PPE- Physical Exam History/Physician Clearance Form (Grades 6 - 12)", 4/2015;

(s) KHSAA Form PPE/Supplemental, "PPE- Physical Exam History Supplemental Form for Athletes With Special Needs (Grades 6 - 12)", 4/2015; and

(t) "KHSAA Form MS01- Athletic Participation Parental and Student Consent and Release for Middle School (grades 5-8) Participation", 4/2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal, Legislative and Communication Services, Department of Education, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS Jr., Ph.D., Interim Commissioner of Education
HAL HEINER, Chair person

APPROVED BY AGENCY: August 15, 2018

FILED WITH LRC: August 15, 2018 at 10 a.m.

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.

LABOR CABINET

Department of Workers' Claims (As Amended at ARRS, October 9, 2018)

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

RELATES TO: KRS 342.0011(32), 342.019, 342.020, 342.035

STATUTORY AUTHORITY: KRS ~~342.020~~, 342.035(1), (4)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: June 11, 2018

FILED WITH LRC: June 11, 2018 at 3 p.m.

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

LABOR CABINET

Kentucky Occupational Safety and Health Review Commission (As Amended at ARRS, October 9, 2018)

803 KAR 50:010. Hearings~~;~~; procedure, disposition.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 13B.020(3)(e)2a, 338.071, 338.081, 338.141

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.071

VOLUME 45, NUMBER 5 – NOVEMBER 1, 2018

~~and 338.081 authorize~~ the Kentucky Occupational Safety and Health Review Commission~~[is authorized by KRS 338.071 and 338.081]~~ to hear and rule on appeals from citations, notifications, and variances and promulgate administrative regulations with respect to the procedural aspect of its hearings. According to KRS 13B.020(3)(e)2a, these occupational safety and health hearings are conducted under the authority of KRS 338.071(4), 338.081, and 338.141(3) rather than the hearing procedures in KRS Chapter 13B. This administrative regulation establishes procedures for these hearings and their proper disposition.

Section 1. Definitions. (1) "Act" means the Occupational Safety and Health Act of 1972, KRS Chapter 338.

(2) "Affected employee" or "employee" means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of the employee's assigned duties.

(3) "Authorized employee representative" means a labor organization which has a collective bargaining relationship with a cited employer and which represents affected employees.

(4) "Citation" means a written communication issued by the commissioner to an employer pursuant to KRS 338.141.

(5) "Commission" means the Kentucky Occupational Safety and Health Review Commission.

(6) "Commissioner" means the commissioner of the Department of Workplace Standards, Labor Cabinet.

(7) "Day" means a calendar day.

(8) "Executive director" means the executive director of the commission.

(9) "Hearing officer" means a hearing officer appointed by the commission pursuant to KRS 338.071(5) and 338.081.

(10) "Natural person" means an employer whose business is organized as a proprietorship or an affected employee who is not represented by a labor organization.

(11) "Proceeding" means any proceeding before the commission or before a hearing officer.

(12) "Representative" means an attorney authorized by a party or intervenor to represent him in a proceeding.

(13) "Working day" means all days except Saturdays, Sundays, or federal or state holidays.

Section 2. Meetings. (1) Regular meetings of the commission shall be held in its offices, Frankfort, Kentucky, on the first Tuesday of each month at 10:00 a.m., unless changed to another date, place, or time by commission action.

(2) Special meetings shall be held at the times and places as the call directs.

(3) The commission shall be considered as in continuous session for the performance of administrative duties.

Section 3. Assignment of Hearing. ~~[e];~~ Filings. (1) Pursuant to KRS 338.081, cases coming before the commission may be assigned to a hearing officer within the discretion of the commission for a hearing and a finding of facts, conclusions of law, and recommended order. Cases may be withdrawn by agreement, dismissed for cause, or otherwise disposed of before hearing in the discretion and judgment of the commission. Further, the commission may, upon its own motion or on motion of a party, if granted, hold hearings as provided under KRS 338.071, in which case provisions of this administrative regulation relating to hearing officers and hearings shall apply if applicable.

(2) A recommended order ~~or [off]~~ adjudication by the hearing officer or the initial order of the review commission, if dismissed or disposed of as provided in subsection (1) of this section or if the commission sits for a hearing, shall become the final order of the commission under the provisions of KRS 338.091, appealable to the Franklin Circuit Court forty (40) days from date of issue, unless called for further review pursuant to Section 48 of this administrative regulation. If reviewed by the commission, an order of the commission determinative of issues before it shall become a final order as defined in KRS 338.091(1) upon date of issue.

(3) Prior to the assignment of a case to a hearing officer, all papers shall be filed with the executive director at the commission offices, #4 Millcreek Park, Frankfort, Kentucky 40601. Subsequent

to the assignment of the case to a hearing officer, and before the hearing officer issues a decision, all papers shall be filed with the hearing officer at the address given in the notice informing of the assignment. Subsequent to a decision of the hearing officer, all papers shall be filed with the executive director.

(4) Unless otherwise ordered, all filing may be accomplished by first-class mail.

(5) Filing is effective when mailed.

Section 4. Scope of Rules; Applicability of Kentucky Rules of Civil Procedure. (1) The rules established by this administrative regulation shall govern all proceedings before the commission and its hearing officers.

(2) In the absence of a specific provision, procedure shall be in accordance with the Kentucky Rules of Civil Procedure.

Section 5. Words Denoting Number or Gender. (1) Words importing the singular number may extend and be applied to the plural and vice versa.

(2) Words importing masculine gender may be applied to feminine and vice versa.

Section 6. Computation of Time. (1) In computing a period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or federal or state holiday, in which event the period runs until the end of the next day not a Saturday, Sunday, or federal or state holiday. If the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and federal or state holidays shall be excluded in the computation.

(2) If service of a pleading or document is by mail pursuant to Section 3 of this administrative regulation, three (3) days shall be added to the time allowed by these rules for the filing of a responsive pleading.

Section 7. Extensions of Time. Requests for extensions of time for the filing of a pleading or document shall be received in advance of the date on which the pleading or document is due to be filed.

Section 8. Record Address. The initial pleading filed by a person shall contain the person's name, address, and telephone number. A change in this information shall be communicated promptly to the hearing officer or the commission, as the case may be, and to all other parties and intervenors. A party or intervenor who fails to furnish the information shall have waived the right to notice and service under these rules.

Section 9. Service and Notice. (1) ~~(a) Except as provided in paragraph (b) of this subsection,~~ a copy of all [At the Time of filing] pleadings or other documents [a copy thereof] shall be served by the filing party or intervenor on every other party or intervenor at the time of filing in accordance with this section. Every paper relating to discovery required to be served on a party shall also be served on all parties and intervenors in accordance with this section.

~~(b) [Except]~~ The original complaint, or an amended complaint if filed prior to service of the original complaint, shall be served in accordance with Section 20(3) of this administrative regulation.

(2) Service upon a party or intervenor who has appeared through an attorney shall be made only upon the attorney.

(3) Unless otherwise ordered, service may be accomplished by postage pre-paid first class mail at the last known address, by electronic transmission, or by personal delivery. Service is effective when mailed (if by mail), at the time of receipt (if by electronic transmission), or when personally delivered (if by personal delivery). Documents sent by overnight delivery service shall be deemed personal delivery. Service of documents by electronic transmission shall only be permitted if all parties consent to that method of service in writing. The certificate of service of the electronic transmission shall state that the required[such] consent has been given and the method of transmission.

(4) Proof of service shall be ~~accomplished~~accompanied by a written statement of service which states the date and manner of service. The statement shall be filed with the pleading or document.

(5) If service is accomplished by posting, proof of posting shall be filed not later than the first working day following the posting.

(6) Service and notice to employees represented by an authorized employee representative shall be accomplished by serving the ~~authorized employee representative~~authorized employee representative in the manner prescribed in subsection (3) of this section. If the authorized employee representative has appeared in a proceeding on behalf of the employees it represents, service shall be made upon the attorney for the authorized employee representative.

(7) If there are affected employees who are not represented by an authorized employee representative, the employer shall immediately upon receipt of notice of contest or request for extension or modification of the abatement period post, where the citation is required to be posted by 803 KAR 2:125, Section 1(1), a copy of the notice of contest and a notice informing the affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall comply with this paragraph:

(Name of employer)

Your employer has been cited by the Commissioner of the Department of Workplace Standards for violation of the Occupational Safety and Health Act of 1972. The citation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the Occupational Safety and Health Review Commission in its rules of procedure. Notice of intent to participate shall be sent to:

Kentucky Occupational Safety and Health Review Commission
#4 Millcreek Park

Frankfort, Kentucky 40601

All papers relevant to this matter may be inspected at: (Place shall be reasonably convenient to employees, preferably at or near work place.)

(8) If appropriate, the second sentence of the notice required by subsection (7) of this section shall be deleted and the following sentence shall be substituted: The reasonableness of the period prescribed by the Commissioner of the Department of Workplace Standards for abatement of the violation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission.

(9) The~~attorney for the~~ authorized employee representative, if any, shall be served with the notice required by subsections (7) and (8) of this section and with a copy of the notice of contest.

(10) A copy of the notice of the hearing to be held before the hearing officer shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of the hearing at or near the place where the citation is required to be posted by subsection (7) of this section.

(11) A copy of the notice of the hearing to be held before the hearing officer shall be served by the employer on ~~the attorney for~~ the authorized employee representative or affected employees in the manner prescribed in subsection (3) of this section, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date the notice is received by the employer.

(12) If a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support shall be provided to the employer for posting in the manner prescribed in subsection (7) of this section.

(13) An authorized employee representative who files a notice of contest shall serve any other authorized employee representative whose members are affected employees.

(14) If posting is required by this section, posting shall be maintained until the commencement of the hearing or until earlier disposition.

Section 10. Consolidation. Cases may be consolidated on the

motion of a party, on the hearing officer's own motion, or on the commission's own motion if there are common parties, common questions of law or fact, or both, or in other circumstances as justice and the administration of the Act require.

Section 11. Severance. Upon its own motion, or upon motion of a party or intervenor, the commission or the hearing officer may, for good cause, order a proceeding severed with respect to some or all issues or parties.

Section 12. Protection of Trade Secrets and Other Confidential Information. (1) Upon application by any person, in a proceeding where trade secrets or other matters may be divulged, the confidentiality of which is protected by law, the hearing officer shall issue orders as may be appropriate to protect the confidentiality of those matters.

(2) Interlocutory appeal from an adverse ruling under this section shall be granted as a matter of right.

Section 13. Employer or Employee Contests. (1) If a notice of contest is filed by an employer contesting a citation or notification issued pursuant to KRS 338.031(1), 338.141(3), or 338.153, an employee or an authorized employee representative may elect party status by a request for intervention at any time before commencement of the hearing or, if no hearing is held, before notice of an executed settlement agreement has been served according to Section 51(3) of this administrative regulation.

(2) If a notice of contest is filed by an employee or by an authorized employee representative contesting a citation or notification issued pursuant to KRS 338.031(1), 338.141(3), or 338.153, the employer may elect party status at any time before commencement of the hearing or, if no hearing is held, before notice of an executed settlement agreement has been served according to Section 51(3) of this administrative regulation.

Section 14. Intervention. (1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing, or if there is a settlement or dismissal, before issuance of a recommended order.

(2) The petition shall state the interest of the petitioner in the proceeding and show that participation of the petitioner will assist in the determination of the issues in question and that the intervention will not unnecessarily delay the proceeding.

(3) The commission or the hearing officer may grant a petition for intervention to the extent and upon those terms as the commission or the hearing officer shall determine.

(4) The caption of all cases where intervention is allowed shall reflect the intervention by adding, to the caption after the name of the respondent, the name of the intervenor followed by the designation intervenor.

Section 15. Representatives of Parties and Intervenors. (1) Except for natural persons who may represent themselves, a party or intervenor shall appear through an attorney.

(2) A representative of a party or intervenor shall control all matters respecting the interest of the party or intervenor in the proceeding.

(3) Affected employees who are represented by an authorized employee representative may appear only through an attorney for the authorized employee representative.

(4) Affected employees who are not represented by an authorized employee representative may elect party status by filing a request for intervention.

(5) Withdrawal of appearance of a representative may be ~~effected~~effected~~by~~ filing a written notice of withdrawal and by serving a copy of the notice on all parties and intervenors.

Section 16. Variance Contests. (1) An employer, employee or authorized employee representative who receives notification of an adverse ruling to an application for a variance made pursuant to KRS 338.153 may, within fifteen (15) working days of issuance of the ruling, file a notice of contest with the commissioner. The commissioner shall transmit the notice, together with the complete

record in the matter as compiled before the commissioner, to the commission within seven (7) days of receipt, under authority of KRS 338.071(4).

(2) The commission may on its own order or on motion of a party, if granted, consider the matter on the record or may require further hearing or filings of information in the matter.

(3) All pertinent provisions~~[,]~~ relating to contests of citations, if applicable, shall apply.

Section 17. Request for Extension or Modification of Abatement. (1) A party adversely affected by a ruling of the commissioner on an application for extension or modification of an abatement period may file an appeal from the notification with the commissioner, if an appeal is filed within fifteen (15) working days from receipt of the notice. The appeal shall be limited to the commissioner's ruling affecting the party's application for extension or modification of the abatement period.

(2) The commissioner shall transmit the appeal to the commission within seven (7) days after its receipt, together with all pertinent and relevant records considered by the commissioner in making the ruling.

(3) The commissioner shall file a response to the appeal within ten (10) days of receipt of notice of the appeal.

(4) The commission may on its own order or on motion of a party, if granted, consider the matter on the record or may require further hearing, pleading, or information in the matter.

Section 18. Form. (1) Except as provided in this section, there are no specific requirements as to the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with Section 19 of this administrative regulation which shall include the commission's docket number and a clear and plain statement of the relief that is sought, together with the grounds for the requested relief.

(2) Pleadings and other documents (other than exhibits) shall be typewritten, double spaced.

(3) Pleadings shall be signed by the party filing or by the party's representative. Signing constitutes a representation that the signer has read the document or pleading; that to the best of the signer's knowledge, information, and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The commission may refuse for filing any pleading or document which does not comply with the requirements of subsections (1), (2), and (3) of this section.

(5) All pleadings shall be filed in duplicate unless otherwise indicated.

(6) A pleading shall be assumed to be correct as submitted unless a reply or denial is received within ten (10) days of receipt of the pleading.

Section 19. Captions. (1) Cases initiated by a notice of contest shall be titled: Commissioner of the Department of Workplace Standards, Complainant v. (Name of Contestant), Respondent.

(2) Cases~~[,]~~ initiated from an adverse ruling of the commissioner of the Department of Workplace Standards relative to a variance or by a request for extension or modification of the abatement period~~[,]~~ shall be titled: (Name of Petitioner), Petitioner v. Commissioner of the Department of Workplace Standards, Respondent.

(3) The titles listed in subsections (1) and (2) of this section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

(4) The initial page of any pleading or document (other than exhibits) shall show, at the upper right of the page opposite the title, the docket number assigned by the commission.

Section 20. Notices of Contest of Citations. (1) Any employer, employee or authorized employee representative may contest any citation issued pursuant to KRS 338.141.

(2) If a notice of contest is received by the commissioner, the original and one (1) copy of the notification of contest shall be transmitted to the commission together with copies of all relevant documents, within seven (7) days of receipt of notice by the

commissioner.

(3) Complaint.

(a) The commissioner shall file a complaint with the commission no later than twenty (20) days after receiving the notice of contest.

(b) The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity:

1. The basis for jurisdiction;

2. The time, location, place, and circumstances of each alleged violation; and

3. The considerations upon which the period for abatement and the proposed penalty on each alleged violation is based.

(c) If the commissioner seeks in the complaint to amend the citation or proposed penalty, the commissioner shall state the reasons for amendment and shall state with particularity the change sought.

(d) The commissioner shall ensure that a copy of the complaint is personally served on the employer as required by this paragraph.[follows:]

1. An employer who is an individual within the Commonwealth. Service shall be made upon the individual within the Commonwealth, other than an unmarried infant or person of unsound mind, by delivering a copy of the complaint to the person or, if acceptance is refused, by offering personal delivery to the person, or by delivering a copy of the complaint to an agent authorized by appointment or by law to receive service of process for the individual.

2. An employer who is an infant or[et] person of unsound mind. Service shall be made upon an unmarried infant or a person of unsound mind by serving the person's resident guardian or committee if there is one known to the commissioner or, if none, by serving either the person's father or mother within the Commonwealth or, if none, by serving the person within the Commonwealth having control of the individual. If there are no persons, application shall be made to the appropriate court to appoint a practicing attorney as guardian ad litem who shall be served.

3. An employer which is a partnership or unincorporated association. Service shall be made upon a partnership or unincorporated association subject to suit under a common name by serving a partner or managing agent of the partnership, or an officer or[et] managing agent of the association, or an agent authorized by appointment or by law to receive service on its behalf.

4. An employer which is a corporation. Service shall be made upon a corporation by serving an officer or managing agent~~[thereof]~~, or any other agent authorized by appointment or by law to receive service on its behalf.

5. An employer which is the Commonwealth or a state[an] agency~~[thereof]~~. Service shall be made upon the Commonwealth or a state agency~~[thereof]~~ by serving the attorney general or an[any] assistant attorney general.

6. An employer which is a county, city, public board,[boards] or other similar body[such bodies]. Service shall be made upon a county by serving the county judge or, if he is absent from the county, the county attorney. Service shall be made upon a city by serving its[the] chief executive officer~~[thereof]~~ or [an] official attorney~~[thereof]~~. Service on a[any] public board or other similar[such] body, except state agencies, shall be made by serving a member~~[thereof]~~.

7. An employer which is an individual out of this state. Service may be made upon an individual out of this Commonwealth, other than an unmarried infant, a person of unsound mind or a prisoner, by certified mail or by personal delivery by someone who is over eighteen (18)[18] years of age as prescribed in paragraph (e) of this subsection[subparagraph (e) below].

8. A nonresident employer. Service may be made upon a nonresident individual who transacts business through an office or agency in this Commonwealth, or a resident individual who transacts business through an office or agency in any action growing out of or connected with the business of an office or agency, by serving the person in charge.

(e)~~[,]~~ Manner of service. The commissioner shall arrange for

an authorized person to perform personal delivery or serve the complaint through certified or registered mail.

1. Personal Delivery. The commissioner shall arrange for an authorized person to perform service. Proof of service shall be by affidavit of the person making ~~the[such]~~ service stating the time, place, and the individual who accepted or refused a copy of the complaint on behalf of the employer.

2. Certified or Registered Mail. The commissioner shall send a copy of the complaint to the employer by United States certified or registered mail, return receipt requested with instructions to the delivering postal employee to deliver to the addressee and show the address where delivered and the date of delivery. The return receipt shall be proof of the time, place, and manner of service by registered or certified mail.

3. Service of the complaint is effective upon receipt by the employer. The commissioner ~~shall[must]~~ file proof of service with the commission promptly after service, and, in any event, within the time during which the employer ~~shall[must]~~ respond to the complaint.

(4) Answer.

(a) Within fifteen (15) days after service of the complaint, the party against whom the complaint was issued shall file an answer with the commission.

(b) The answer shall contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied is admitted.

(c) Failure to file an answer may constitute a default and dismissal of the employer's notice of contest pursuant to Section 23 of this administrative regulation. Prior to the dismissal of a notice of contest for failing to file an answer, the commission shall enter an order requiring the employer to show cause as to why the commission should not declare the employer to be in default. The commission shall serve its order pursuant to Section 9 of this administrative regulation. The order shall provide at least seven (7) days from the date of service for the employer to respond. The commission may dismiss the notice of contest if the employer fails to comply with the show cause.

Section 21. Statement of Position. At any time prior to the commencement of the hearing before the hearing officer, a person entitled to appear as a party, or a person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

Section 22. Response to Motions. A party or intervenor upon whom a motion is served shall have ten (10) days from service of the motion to file a response.

Section 23. Failure to File. Failure to file any pleading pursuant to these rules when due may, in the discretion of the commission or the hearing officer, constitute a waiver of right to further participation in the proceedings.

Section 24. Withdrawal of Notice of Contest. At any stage of a proceeding, a party may withdraw his or her notice of contest, subject to the approval of the commission.

Section 25. Prehearing Conference. (1) At any time before a hearing, the commission or the hearing officer, on their own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings.

(2) The commission or the hearing officer may issue a prehearing order which includes the agreements reached by the parties. The order shall be served on all parties and shall be a part of the record.

Section 26. General Provisions Concerning Discovery; Methods; Service of Discovery Papers; Scope of Discovery; Protective Orders; Sanctions; Supplementation of Responses. (1) In conformity with ~~this section[these rules]~~, any party may, without leave of the commission or hearing officer, obtain discovery

through requests for admissions, interrogatories, and requests for production or inspection as set forth in Section 27 of this administrative regulation. Discovery ~~shall[is]~~ not be available through ~~depositions[dispositions]~~ under Section 28 of this administrative regulation without leave of the commission or hearing officer.

(2) Every paper relating to discovery ~~required[requested]~~ to be ~~served[served]~~ on a party shall be served on all parties pursuant to Section 9 of this administrative regulation. ~~Requests[Request]~~ for production or inspection, requests for admission and responses~~[thereto]~~, interrogatories and~~[the]~~ answers~~[thereto]~~, and discovery depositions shall be served upon other counsel or parties, but shall not be filed with the commission or hearing officer. If the interrogatories, requests, answers, responses, or depositions are to be used at the hearing or are necessary to a prehearing motion ~~that[which]~~ might result in a final order on any claim, the portions used shall be filed with the hearing officer or commission at the outset of the hearing or at the filing of the motion ~~if[insofar—as]~~ their use can be ~~reasonably[reasonable]~~ anticipated.

(3) The information or response sought through discovery may concern any matter that is not privileged and is relevant to the subject matter involved in the pending case. It ~~shall[is]~~ not be a ground for objection that the information or response sought will be inadmissible at the hearing, if the information or response appears reasonably calculated to lead to the discovery of admissible evidence, regardless of which party has the burden of proof.

(4) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the hearing officer or commission may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) That the discovery not be had;~~;~~

(b) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;~~;~~

(c) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;~~;~~

(d) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;~~;~~

(e) That discovery be conducted with no one present except persons designated by the commission or hearing officer;~~;~~

(f) That a ~~deposition[disposition]~~ after being sealed be opened only by order of the commission or hearing officer;~~;~~

(g) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; ~~or;~~

(h) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the commission or hearing officer.

(5) A party may apply for an order compelling discovery if another party refuses or obstructs discovery. An evasive or incomplete answer ~~shall[is-to]~~ be treated as failure to answer. If a hearing officer enters an order compelling discovery and there is failure to comply with that order, the hearing officer or commission may enter appropriate orders that are just, including the following sanctions:

(a) An order that designated facts shall be taken to be established for purposes of the case in accordance with the claim of the party obtaining that order;~~;~~

(b) An order refusing to permit the disobedient party to support or oppose designated claims or defenses, or prohibiting it from introducing matters in evidence;~~;~~

(c) An order striking out pleadings or ~~any of its parts[thereof]~~, or staying further proceedings until the order is obeyed; ~~or[and,]~~

(d) An order dismissing the proceeding or ~~any of its parts[part thereof]~~, or rendering an order by default against the disobedient party.

(6) A party who has responded to a request for discovery with a response that was complete when made ~~shall not have[is under no duty]~~ to supplement the response to include information ~~[thereafter]~~ acquired ~~later~~, except as ~~established by this~~

subsection. [follows:]

(a) A party ~~shall~~[is under a duty to] seasonably supplement the response with respect to any questions directly addressed to:

1. The identity and locations of persons having knowledge of discoverable matters; and

2. The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(b) A party ~~shall~~[is under a duty to] seasonably amend a prior response if the party obtains information upon the basis of which:

1. The party knows that the response was incorrect when made; or

2. The party knows that the response though correct when made is no longer true and under the circumstances, ~~are such that~~ a failure to amend the response is in substance a knowing concealment.

(c) A duty to supplement responses may be imposed by order of the commission or hearing officer, agreement of the parties, or at any time prior to the hearing through a new request for supplementation of prior responses. ~~Requests for Admissions. (1) At any time after the filing of responsive pleadings, a party may request of any other party admissions of facts to be made under oath. Each admission requested shall be stated separately. The matter shall be admitted unless, within fifteen (15) days after service of the request or within a shorter or longer time as the commission or the hearing officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission a specific written response.~~

~~(2) Copies of all requests and responses shall be served on all parties in accordance with Section 9 of this administrative regulation and filed with the commission within the time allotted and shall be a part of the record.]~~

Section 27. Requests for Admissions, Interrogatories, Production of Documents and Things. (1) Requests for Admissions.

(a) At any time after the filing of responsive pleadings, a party may request of any other party written requests for admissions, for the purposes of the pending action only, of the genuineness and authenticity of any document described in or attached to the requests, or of the truth of any specified matter of facts to be made under oath. Each matter of which an admission is requested shall be stated separately~~[set forth]~~. The number of requested admissions shall not exceed twenty-five (25), including subparts, without an order of the commission or hearing officer. The party seeking more than twenty-five (25) requested admissions, including subparts, shall have the burden of persuasion to establish that the complexity of the case or the number of citation items necessitates a greater number of requested admissions.

(b) Each admission requested shall be stated separately. The matter shall be admitted unless, within thirty (30) days after service of the request or within a shorter or longer time as the commission or the hearing officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission a written response specifically:

1. Admitting or denying the matter involved in whole or in part; 2. [or] Asserting that it cannot be truthfully admitted or denied and stating~~[setting forth]~~ in detail the reasons why this is so; [or]

3. Stating an objection, explaining~~[stating]~~ in detail the reason for the objection~~[reasons therefor]~~. The response shall be made under oath or affirmation and signed by the party or the party's representative.

(c) Any matter admitted under this subsection shall be~~[section is]~~ conclusively established unless the commission or hearing officer on motion permits withdrawal or amendment of the admission. The commission or hearing officer may permit withdrawal or amendment if doing so will subserve the presentation of the merits of the case ~~[will be subserved thereby]~~ and the party who obtained the admission fails to satisfy the commission or hearing officer that withdrawal or amendment will prejudice that party in presenting his or her case or defense on the

merits.

(2) Interrogatories.

(a) At any time after the filing of responsive pleadings, a party may serve interrogatories upon any other party. The number of interrogatories shall not exceed twenty-five (25) questions, including subparts, without an order of the commission or hearing officer. The party seeking to serve more than twenty-five (25) questions, including subparts, shall have the burden of persuasion to establish that the complexity of the case or the number of citation items necessitates a greater number of interrogatories. The following shall not be included in the maximum allowed:

1. Interrogatories requesting the name and address of the person answering;

2. The names and addresses of the witnesses; and

3. Whether the person answering is willing to supplement his or her answers if information subsequently becomes available.

(b) Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to. If objected to, [in which event] the reasons for objection shall be stated instead~~[in lieu]~~ of an answer. The answers ~~shall~~[are to] be signed by the person making them and the objections by the party or the party's counsel. The party upon whom the interrogatories have been served shall serve a copy of answers or objections upon all parties within thirty (30) days after service of the interrogatories. The hearing officer may allow a shorter or longer time.

(c) An interrogatory ~~shall~~[is] not necessarily be objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact.

(3) Production of documents and things.

(a) At any time after the filing of responsive pleadings, a party may serve on any other party a request to:

1. Produce or permit the party making the request, or a person acting on his or her behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things which are in the possession, custody, or control of the party upon whom the request is served; or;

2. Permit entry upon the designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operations on the property~~[thereon]~~.

(b) The request shall state~~[set forth]~~ items to be inspected either by individual item or category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing related acts. The party upon whom the request is made shall serve a written response within thirty (30) days after the service of the request. The hearing officer may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to. If objected to, [in which event] the reasons for objection shall be stated. ~~[Discovery Depositions and Interrogatories. (1) Except by special order of the commission or the hearing officer, discovery depositions of parties, intervenors, or witnesses and interrogatories directed to parties, intervenors, or witnesses shall not be allowed.~~

~~(2) If the commission or the hearing officer grants an application for the conduct of discovery proceedings, the order shall set forth appropriate time limits governing the discovery.]~~

Section 28. Discovery Depositions. (1) Except by special order of the commission or the hearing officer, discovery depositions of parties, intervenors, or witnesses shall not be allowed.

(2) A party wishing to take a discovery deposition shall~~[must]~~ file a written application with the commission or hearing officer and shall serve the application on all other parties and intervenors not less than fourteen (14) days prior to the time when it is desired to take the discovery deposition. The application shall state the reasons why the deposition should be taken and shall contain:

(a) The name and address of the deponent;

(b) The scope of questioning expected to be asked of the deponent;

(c) The time and place proposed for the taking of the deposition; and

(d) The name and address of the officer before whom it is desired that the deposition be taken.

(3) If the commission or the hearing officer grants an application for the conduct of discovery depositions, the order shall ~~state/set forth~~ appropriate scope and time limits for the discovery.

(4)(a) Except as provided in paragraph (b) of this subsection, the procedure for taking the deposition shall be governed by Section 40(3), ~~Subsection (3)~~ of this administrative regulation.

~~(b); except~~ A discovery deposition transcript shall not be delivered to the executive director as required by Section 40(3) of this administrative regulation.

~~(c); set forth therein.~~ The officer before whom the deposition is taken ~~shall/must~~ meet the requirements of Section 40(2), ~~Subsection (2)~~ of this administrative regulation. [Failure to Comply With Orders for Discovery. If a party or intervenor fails to comply with an order of the commission or the hearing officer to permit discovery that complies with Section 27 of this administrative regulation, the commission or the hearing officer may issue appropriate orders.]

Section 29. Issuance of Subpoenas;~~;~~[;] Petitions to Revoke or Modify Subpoenas;~~;~~[;] Right to Inspect or Copy Data. (1) A member of the commission shall, on the application of a party directed to the commission, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence or documents in the witness's possession or under the witness's control. Applications for subpoenas, if filed subsequent to the assignment of the case to a hearing officer, may be filed with the hearing officer. A hearing officer shall grant the application on behalf of any member of the commission. Applications for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(2) A person served with a subpoena, whether ad testificandum or duces tecum, shall within five (5) days after the date of service of the subpoena upon him move in writing to revoke or modify the subpoena if he does not intend to comply. Motions to revoke or modify shall be served on the party at whose request the subpoena was issued. The hearing officer or the commission, as the case may be, shall revoke or modify the subpoena if, in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid. The hearing officer or the commission, as the case may be, shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed in response, and the ruling on the motion shall become a part of the record.

(3) Persons compelled to submit data or evidence at a public proceeding may retain or, on payments of lawfully prescribed costs, procure copies of transcripts of the data or evidence submitted by them.

(4) Upon the failure of any person to comply with a subpoena issued upon the request of a party, the party seeking to enforce the challenged subpoena shall initiate proceedings in the Franklin Circuit Court ~~or to~~^{or} appropriate circuit court to enforce the subpoena if, in its judgment enforcement would be consistent with law and with policies of the Act.

Section 30. Notice of Hearing. (1) Notice of the time, place, and nature of a hearing shall be given to the parties and intervenors at least ten (10) days in advance of the hearing, except as otherwise provided in Section 52 of this administrative regulation.

(2) Copy of notice of hearing shall be served by the employer on affected employees or the affected employees' representative

as provided in Section 9(9) and (10) of this administrative regulation, if no information has been received by the employer as to the employee intervention in the case before the commission. Notice of hearing shall be given by the commission to any party or intervenor.

(3) The hearing officer shall secure or cause to be secured a location for the hearing and secure a reporter for the taking of proof at any hearing.

Section 31. Postponement of Hearing. (1) Postponement of a hearing ordinarily shall not be allowed.

(2) Except in the case of an extreme emergency or in unusual circumstances, a request shall not be considered unless received in writing at least three (3) days in advance of the time set for the hearing.

(3) Postponement of hearing not in excess of thirty (30) days may be granted in the discretion of the hearing officer. One (1) additional postponement not in excess of thirty (30) days may be granted by the hearing officer in extreme emergency or under unusual circumstances. An additional postponement shall not be granted without commission approval.

Section 32. Failure to Appear. (1) Subject to the provisions of subsection (3) of this section, the failure of a party to appear at a hearing shall be a waiver of all rights except the rights to be served with a copy of the decision of the hearing officer and to request commission review pursuant to Section 48 of this administrative regulation.

(2) Requests for reinstatement shall be made, in the absence of extraordinary circumstances, within five (5) days after the scheduled hearing date.

(3) The commission or the hearing officer upon a showing of good cause may excuse the failure to appear. If excused, the hearing shall be rescheduled.

Section 33. Payment of Witness Fees and Mileage;~~;~~[;] Fees of Persons Taking Depositions. Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

Section 34. Reporter's Fees. Reporter's fees shall be borne by the commission, except as provided in Section 33 of this administrative regulation.

Section 35. Transcript of Testimony. Hearings shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the hearing officer before whom the matter was heard. The hearing officer shall promptly serve notice upon each of the parties and intervenors of the filing. Participants desiring copies of transcripts may obtain them from the official reporter after paying the transcript fees.

Section 36. Duties and Powers of Hearing Officers. The hearing officer shall conduct a fair and impartial hearing to assure that the facts are fully elicited and to adjudicate all issues and avoid delay. The hearing officer shall have authority with respect to cases assigned to him, between the time he is designated and the time he issues his decision, subject to this administrative regulation, to:

- (1) Administer oaths and affirmations;
- (2) Issue authorized subpoenas;
- (3) Rule upon petitions to revoke subpoenas;
- (4) Rule upon offers of proof and receive relevant evidence;~~;~~[;]

(5) Take or cause depositions to be taken if the needs of justice would be served;

(6) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

(7) Hold conferences for the settlement or simplification of the

issues;

(8) Dispose of procedural requests or similar matters including ~~motions~~~~[options]~~~~[motions]~~ referred to the hearing officer by the commission and motions to amend pleadings; to dismiss complaints or portions of them; and to order hearings reopened or, upon motion, consolidated prior to issuance of his decision;

(9) Call and examine witnesses and to introduce into the record documentary or other evidence;

(10) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support of their positions;

(11) Adjourn the hearing as the needs of justice and good administration require; and

(12) Take any other action necessary and authorized by this administrative regulation.

Section 37. Disqualification of Hearing Officer. (1) A hearing officer may withdraw from a proceeding ~~if~~~~[whenever]~~ disqualification is warranted.

(2) A party may request the hearing officer at any time, following his designation and before the filing of his decision, to withdraw on grounds of personal bias or disqualification by filing with him promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(3) If, in the opinion of the hearing officer the affidavit referred to in subsection (2) of this section is filed with due diligence and is sufficient on its face, the hearing officer shall forthwith disqualify himself and withdraw from the proceeding.

(4) If the hearing officer does not disqualify himself and withdraw from the proceedings, he shall so rule upon the record, stating the grounds for his ruling, and shall proceed with the hearing; or, if the hearing has closed, he shall proceed with the issuance of his decision in accordance with Section 47 of this administrative regulation.

Section 38. Examination of Witnesses. Witnesses shall be examined orally under oath. Opposing parties shall have the right to cross-examine any witness whose testimony is introduced by ~~an~~~~[a]~~ adverse party.

Section 39. Affidavits. An affidavit may be admitted as evidence in lieu of oral testimony if the matters contained in the affidavit are otherwise admissible and the parties agree to its admission.

Section 40. Deposition in Lieu of Oral Testimony; Application; Procedures; Form; Rulings. (1)(a) An application to take the deposition of a witness in lieu of oral testimony shall be in writing and shall state the reasons a deposition should be taken. The application shall contain:

1. The name and address of the witness;
2. The matters the witness is expected to testify about;
3. The time and place proposed for the taking of the deposition; and

4. The name and address of the officer before whom it is desired that the deposition be taken. The officer shall meet the requirements of subsection (2) of this section.

(b) The application shall be filed with the commission or the hearing officer, as the case may be, and shall be served on all other parties and intervenors not less than seven (7) days (when the deposition is to be taken elsewhere) prior to the time when it is desired that the deposition be taken.

(c) If good cause has been shown, the commission or the hearing officer shall make and serve on the parties and intervenors an order which specifies the name of the witness whose deposition is to be taken and the time, place, and designation of the officer before whom the witness is to testify. The officer may or may not be the officer specified in the application.

(2) The deposition may be taken before an officer authorized to administer oaths by the laws of Kentucky or of the place where the examination is held. If the examination is held in a foreign country, it may be taken before a secretary of embassy or legation, consul

general, consul, vice consul, or consular agent of the United States.

(3) At the time and place specified in the order, the officer designated to take the deposition shall permit the witness to be examined and cross-examined under oath by ~~all~~~~[the]~~~~[all]~~ parties appearing, and the testimony of the witness shall be reduced to typewriting by the officer or under his direction. All objections to questions or evidence shall be waived, unless made at the examination. The officer shall not have power to rule upon any objection, but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him; that the deposition is a true record of the testimony and exhibits given by the witness; and that the officer is not of counsel or attorney to any of the parties nor interested in the proceeding. If the deposition is not signed by the witness because he is ill, dead, cannot be found, refuses to sign it, or will be unavailable to sign the typed deposition and it is so stated by agreement, the ~~fact~~~~[fact]~~~~[fact]~~ shall be included in the certificate of the officer and the deposition may be used as fully as though signed. The officer shall immediately deliver an original of the transcript, together with his certificate, in person or by certified mail to the Executive Director, Kentucky Occupational Safety and Health Review Commission, #4 Millcreek Park, Frankfort, Kentucky 40601.

(4) The hearing officer shall rule upon the admissibility of the deposition or any part of it.

(5) Errors or irregularities in compliance with the provisions of this section shall be waived unless a motion to suppress the deposition or some part of it is made with reasonable promptness after the defect is, or with due diligence might have been, discovered.

(6) If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used as other depositions.

Section 41. Exhibits. (1) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

(2) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless excluded by the hearing officer pursuant to Section 42 of this administrative regulation.

(3) Unless the hearing officer finds it impractical, a copy of each exhibit shall be given to the other parties and intervenors.

(4) All exhibits offered but denied admission into evidence shall be identified as in subsection (1) of this section and shall be placed in a separate file designated for rejected exhibits.

Section 42. Rules of Evidence. Hearings before the commission and its hearing officers insofar as practicable shall be governed by the Kentucky Rules of Evidence.

Section 43. Burden of Proof. (1) In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the commissioner.

(2) In proceedings commenced by a request for extension or modification of the abatement period, the burden of establishing the necessity for the extension or modification shall rest with the petitioner.

(3) In all proceedings commenced by appealing from an adverse ruling on a variance application, the burden of proving the inequity of the ruling of the ~~commissioner~~~~[commission]~~~~[commissioner]~~ of the Department of Workplace Standards shall rest on the petitioner-~~complainant~~~~[complaint]~~~~[complainant]~~.

Section 44. Objections. (1) An objection with respect to the conduct of the hearing, including an objection to the introduction of evidence or a ruling of the hearing officer, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. An objection shall

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not be waived by further participation in the hearing.

(2) If evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record of the proceeding.

Section 45. Interlocutory Appeals; Special; as of Right. (1) Rulings by the hearing officer shall not be appealed directly to the commission except by its special permission.

(2) Request to the commission for special permission to appeal from a ruling shall be filed in writing within five (5) days following receipt of the ruling and shall state briefly the grounds relied on.

(3) Interlocutory appeal from a ruling of the hearing officer shall be allowed as of right if the hearing officer certifies that:

(a) The ruling involves an important question of law concerning which there is substantial ground for difference of opinion; and

(b) An immediate appeal from the ruling will materially expedite the proceedings. An appeal shall also be allowed in the circumstances set forth in Section 12 of this administrative regulation.

(4) Neither the filing of a petition for interlocutory appeal nor the granting thereof as provided in subsections (2) and (3) of this section shall stay the proceedings before the hearing officer unless a stay is specifically ordered by the commission.

Section 46. Filing of Briefs and Proposed Findings with the Hearing Officer; Oral Argument at the Hearing. (1) Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the hearing officer. The hearing officer may fix a reasonable period of time for the filing, but the initial period shall not exceed thirty (30) days from the receipt by the party of the transcript of the hearing or the date the hearing officer designates by order of his receipt. The complainant shall have fifteen (15) days to file, the respondent ten (10) days and the complainant five (5) days for reply, unless a shorter period is agreed on by all parties. Intervenor shall have until the 25th day of the thirty (30) day period in which to file briefs.

(2) A brief shall be filed within the time fixed and the hearing officer or the commission may refuse to consider any brief filed after the deadline. Application for extension of time to file briefs shall be made to the hearing officer or commission before whom the hearing was held.

(3) Briefs shall be accompanied with notice showing service upon all other parties; in addition to the original filed, three (3) copies of each document shall be furnished to the commission.

Section 47. Decisions of Hearing Officers. (1) The decision of the hearing officer shall include findings of fact, conclusions of law, and a recommended order disposing of all issues before the hearing officer.

(2) The hearing officer shall sign the decision and forward to the executive director. The executive director shall then date and issue the decision, sending a copy to all parties of record and to each commission member. Upon issuance of the recommended order, jurisdiction shall rest solely in the commission, and all motions, petitions, and other pleadings filed subsequent to its issuance shall be addressed to the commission.

(3) The recommended order of the hearing officer may be called for further review by any commission member or by the commission as a whole at any time within a forty (40) day period. If the recommended order is not ordered for further review, it shall become the final order of the commission forty (40) days after date of issuance. If a recommended order is called for review by a ~~commission member~~~~commissioner~~ or the commission on its own order, parties shall be advised in order that briefs may be submitted if desired. The commission shall set the briefing time.

Section 48. Discretionary Review; Petition. (1) A party aggrieved by the decision of a hearing officer may submit a petition for discretionary review.

(2) The petition shall be received by the commission at its offices in Frankfort, Kentucky on or before the 25th day following

receipt by the commission of the hearing officer's decision.

(3) A petition shall contain a concise statement of each portion of the decision and order to which exception is taken and may be accompanied by a brief of points and authorities relied upon. The original and three (3) copies shall be filed with the commission.

(4) Statements in opposition to petitions for discretionary review may be filed at any time during the review period, if received by the commission on or before the 35th day from date of [the] issuance of the recommended order. The statement shall contain a concise statement on each portion of the petition for discretionary review to which it is addressed.

(5) The commission while reviewing a case may request briefs on any point, and shall set the time for filing.

(6) The original and three (3) copies of all briefs or statements provided for under this section and Section 47 of this administrative regulation shall be furnished for use of the commission.

(7) Failure to act on any petition for discretionary review in the review period shall be a denial of the petition.

Section 49. Stay of Final Order. (1) A party aggrieved by a final order of the commission may, while the matter is within the jurisdiction of the commission, file a motion for a stay.

(2) The motion shall state the reasons a stay is sought and the length of the stay requested.

(3) The commission may order a stay for the period requested or for a longer or shorter period as it finds appropriate.

Section 50. Oral Argument Before the Commission. (1) Oral argument before the commission ordinarily shall not be allowed.

(2) If the commission desires to hear oral argument with respect to any matter, it shall advise all parties to the proceeding of the date, hour, place, time allotted, and scope of [the] argument at least ten (10) days prior to the date set.

Section 51. Settlement or Dismissals. (1) Settlement is encouraged at any stage of the proceedings if a settlement is consistent with the provisions and objectives of the Act.

(2) Settlement agreements submitted by the parties shall be accompanied by an appropriate proposed order. The settlement agreement shall detail the basis for settlement, either by order or a stipulated agreement properly signed by all parties.

(3) If parties to settlement agree upon a proposal, it shall be served upon represented and unrepresented affected employees in the manner set forth in Section 9 of this administrative regulation. Proof of service shall accompany the proposed settlement when submitted to the commission or the hearing officer showing the notice to employees or authorized employee representative ten (10) days before submission to the hearing officer or the commission.

(4) In an action on a citation on motion of either party for dismissal, the motion shall state the reason for dismissal and show posting for ten (10) days as required for settlement agreements by subsection (3) of this section. If dismissal is moved by the respondent, respondent shall also show abatement of cited violation and payment of any penalty, if applicable.

Section 52. Expedited Proceeding. (1) Upon application of a party or intervenor, or upon a commissioner's own motion, a commission member may order an expedited proceeding.

(2) If an expedited proceeding is ordered, the executive director shall notify all parties and intervenors.

(3) The hearing officer assigned in an expedited proceeding shall make necessary rulings, with respect to time for filing of pleadings and with respect to all other matters, without reference to times required by this administrative regulation, shall order daily transcripts of the hearing, and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

Section 53. Standards of Conduct. Persons appearing in a proceeding shall conform to the standards of ethical conduct required in the courts of the Commonwealth of Kentucky.

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Section 54. Ex Parte Communication. (1) There shall not be ex parte communication, with respect to the merits of any case not concluded, between the commission, including a member, officer, employee, or agent of the commission who is employed in the decisional process, and a party or intervenor.

(2) If an ex parte communication occurs, the commission or the hearing officer may make orders or take action as fairness requires. Upon notice and hearing, the commission may take disciplinary action as is appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

Section 55. Restrictions as to Participation by Investigative or Prosecuting Officers. In a proceeding ~~noticed~~~~[notice]~~~~noticed~~ pursuant to this administrative regulation, the commissioner shall not participate or advise with respect to the report of the hearing officer or the commission decision.

Section 56. Inspection and Reproduction of Documents. (1) Subject to the provisions of law restricting public disclosure of information, a person may, at the offices of the commission, inspect and copy any document filed in a proceeding.

(2) Costs shall be borne by the requesting person.

Section 57. Restrictions with Respect to Former Employees.

(1) A former employee of the commission or the commissioner (including a member of the commission or the executive director) shall not appear before the commission as an attorney for a party in a proceeding or other matter, formal or informal, in which the former employee participated personally and substantially during the period of employment.

(2) A former employee of the commission or the commissioner (including a member of the commission or the executive director) shall not appear before the commission as an attorney for a party in a proceeding or other matter, formal or informal, for which the former employee was personally responsible during the period of employment, unless one (1) year has elapsed since the termination of the employment.

Section 58. Amendments to Rules. The commission may at any time upon its own motion or initiative, or upon written suggestion of an interested person stating reasonable grounds in support, amend or revoke any of the rules contained in this administrative regulation, in compliance with KRS Chapter 13A.

Section 59. Special Circumstances, Waiver of Rules. In special circumstances not contemplated by this administrative regulation, or for good cause shown, the commission may, upon application by a party or intervenor, or on its own motion, after three (3) days notice to all parties and intervenors, waive any rule or issue orders as justice or the administration of the Act Requires.

Section 60. Penalties. All penalties assessed by the commission are civil.

JEREMY J. SYLVESTER, Executive Director

APPROVED BY AGENCY: July 20, 2018

FILED WITH LRC: July 20, 2018 at noon

CONTACT PERSON: Jeremy Sylvester, Executive Director, Kentucky Occupational Safety and Health Review Commission, #4 Mill Creek Park, Frankfort, Kentucky 40601, phone (502)573-6892; fax (502) 573-4619, email Jeremy.Sylvester@ky.gov.

PUBLIC PROTECTION CABINET
Department of Insurance
(As Amended at ARRS, October 9, 2018)

806 KAR 17:570. Minimum standards for Medicare supplement insurance policies and certificates.

RELATES TO: KRS 304.2-310, 304.2-320, 304.3-240, 304.12-020, 304.14-120, 304.14-500-304.14-550, 304.17-311, 304.17A-

005, 304.18-034, 304.32-275, 304.33-030, 304.38-205, 42 C.F.R. 409.87, 45 C.F.R. Part 46, [42 C.F.R. 409.87] 74 F.R. 18808 (2009), 29 U.S.C. 1002, 42 U.S.C. 426, 42 U.S.C. 1320c-3, 1320d, 1320d-2[and d-2], 42 U.S.C. 1395-1395ggg, 42 U.S.C. 1396, Pub. L. 108-173

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-510, 304.32-250, 304.38-150[~~EO-2009-535~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner of the Department of Insurance~~[Executive Director of Insurance]~~ to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.14-510 authorizes the commissioner of the Department of Insurance~~[Executive Director of Insurance]~~ to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 authorizes the commissioner of the Department of Insurance~~[Executive Director of Insurance]~~ to promulgate administrative regulations ~~[which he deems]~~ necessary for the proper administration of KRS 304.32. KRS 304.38-150 authorizes the commissioner of the Department of Insurance~~[Executive Director of Insurance]~~ to promulgate administrative regulations~~[which he deems]~~ necessary for the proper administration of KRS Chapter 304.38.~~[EO-2009-535, effective June 12, 2009, established the Department of Insurance and the Commissioner of Insurance as the head of the department.]~~ This administrative regulation establishes minimum standards for Medicare supplement insurance policies and certificates.

Section 1. Definitions. (1) "Applicant" is defined by KRS 304.14-500(1).

(2) "Bankruptcy" means a petition for declaration of bankruptcy filed by or filed against a Medicare Advantage organization that is not an insurer and has ceased doing business in the state.

(3) "Certificate" is defined by KRS 304.14-500(2).

(4) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the insurer.

(5) "Commissioner" means Commissioner of the Department of Insurance.

(6) "Compensation" means monetary or non-monetary remuneration of any kind relating to the sale or renewal of the policy or certificate including bonuses, gifts, prizes, awards, and finder's fees.

(7) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select insurer or its network providers.

(8) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three (63) days.

(9) "Creditable coverage" is defined by KRS 304.17A-005(8).

(10) "Employee welfare benefit plan" means a plan, fund, or program of employee benefits as defined in 29 U.S.C. Section 1002 of the Employee Retirement Income Security Act.

(11) "Family member" means, with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of the individual.

(12) "Genetic information" means except for information relating to the sex or age:

(a) With respect to any individual:

1. Information about the individual's genetic tests, the genetic tests of family members of the individual, and the manifestation of a disease or disorder in family members of the individual; or

2. Any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by the individual or any family member of the individual.

(b) Any reference to genetic information concerning an individual or family member of an individual who is a pregnant woman, including:

1. Genetic information of any fetus carried by a pregnant woman; or

2. With respect to an individual or family member utilizing reproductive technology, genetic information of any embryo legally

held by an individual or family member.

(13) "Genetic services" means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.

(14) "Genetic test":

(a) Means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detect genotypes, mutations, or chromosomal changes;

(b) Except for an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that may reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

(15) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select insurer or its network providers.

(16) "Health care expenses" ~~means[shall be defined as]~~ expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

(17) "Insolvency" is defined by KRS 304.33-030(18).

(18) "Insurer" ~~means[includes]~~ insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

(19) "Insurer of a Medicare supplement policy or certificate" means an insurer or third-party administrator, or other person acting for or on behalf of the insurer.

(20) "Medicare" is defined by KRS 304.14-500(4).

(21) "Medicare Advantage plan" means a plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C. 1395w-28(b)(1), including:

(a) A coordinated care plan, which provides health care services, including the following:

1. A health maintenance organization plan, with or without a point-of-service option;

2. A plan offered by provider-sponsored organization; and

3. A preferred provider organization plan;

(b) A medical savings account plan coupled with a contribution into a Medicare Advantage plan medical savings account; and

(c) A Medicare Advantage private fee-for-service plan.

(22) "Medicare Select insurer" means an insurer offering, or seeking to offer, a Medicare Select policy or certificate.

(23) "Medicare Select policy" or "Medicare Select certificate" means, respectively, a Medicare supplement policy or certificate that contains restricted network provisions.

(24) "Medicare supplement policy" is defined by KRS 304.14-500(3).

(25) "Network provider" means a provider of health care, or a group of providers of health care, ~~that[which]~~ has entered into a written agreement with the insurer to provide benefits insured under a Medicare Select policy.

(26) "Policy form" means the form on which the policy is delivered or issued for delivery by the insurer["Pre-Standardized Medicare supplement benefit plan," "Pre-Standardized benefit plan" or "Pre-Standardized plan" means a group or individual policy of Medicare supplement insurance issued prior to January 1, 1992];

(27) "Pre-Standardized Medicare supplement benefit plan," "Pre-Standardized benefit plan," or "Pre-Standardized plan" means a group or individual policy of Medicare supplement insurance issued prior to January 1, 1992["Policy form" means the form on which the policy is delivered or issued for delivery by the insurer].

(28) "Restricted network provision" means any provision ~~that[which]~~ conditions the payment of benefits, in whole or in part, on the use of network providers.

(29) "Secretary" means the Secretary of the U.S. Department of Health and Human Services.

(30) "Service area" means the geographic area approved by the commissioner within which an insurer is authorized to offer a

Medicare Select policy.

(31) "Structure, language, designation, and format" means style, arrangement, and overall content of a benefit.

(32) "Underwriting purposes" means:

(a) Rules for, or determination of, eligibility, including enrollment and continued eligibility, for benefits under the policy;

(b) The computation of premium or contribution amounts under the policy;

(c) The application of any pre-existing condition exclusion under the policy; and

(d) Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

(33) "1990 Standardized Medicare supplement benefit plan," "1990 Standardized benefit plan," or "1990 plan" means a group or individual policy of Medicare supplement insurance issued on or after January 1, 1992, with an effective date for coverage prior to June 1, 2010 including Medicare supplement insurance policies and certificates renewed on or after that date ~~that[which]~~ are not replaced by the insurer at the request of the insured.

(34) "2010 Standardized Medicare supplement benefit plan," "2010 Standardized benefit plan," or "2010 plan" means a group or individual policy of Medicare supplement insurance issued with an effective date for coverage on or after June 1, 2010.

Section 2. Purpose. The purpose of this administrative regulation shall be to:

(1) Provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies;

(2) Facilitate public understanding and comparison of the policies;

(3) Eliminate provisions contained in the policies ~~that[which]~~ may be misleading or confusing in connection with the purchase of the policies or with the settlement of claims; and

(4) Provide for full disclosures in the sale of accident and sickness insurance coverage to persons eligible for Medicare.

Section 3. Applicability and Scope. (1) Except as provided in Sections ~~6, 15, 16, 19, and 24[6, 14, 15, 18, and 23]~~, the requirements of this administrative regulation shall apply to:

(a) All Medicare supplement policies delivered or issued for delivery in Kentucky on or after January 4, 2010~~the effective date of this administrative regulation~~; and

(b) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in Kentucky.

(2) This administrative regulation shall not apply to a policy or contract:

(a) Of one (1) or more employers or labor organizations, or of the trustees of a fund established by one (1) or more employers or labor organizations, or combination thereof;

(b) For employees or former employees, or a combination thereof; or

(c) For members or former members, or a combination thereof, of the labor organizations.

Section 4. Policy Definitions and Terms. A policy or certificate shall not be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms that conform to this section.

(1) "Accident," "accidental injury," or "accidental means" shall be defined to employ "result" language and shall not include words that establish an accidental means test or use words including "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(b) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any

workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless the definition is prohibited by law.

(2) "Activities of daily living" shall include bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(3) "At-home recovery visit" shall mean the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four (24) hour~~twenty-four hour~~ period of services provided by a care provider shall be one (1) visit.

(4) "Benefit period" or "Medicare benefit period" shall not be defined more restrictively than as defined in the Medicare program.

(5) "Care provider" shall mean a duly qualified or licensed home health aide or homemaker, personal care aide, or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(6) "Convalescent nursing home", "extended care facility", or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare program.

(7) "Emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(8) "Home" shall mean any place used by the insured as a place of residence, if the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(9) "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but shall not be defined more restrictively than as defined in the Medicare program.

(10) "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended", or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.

(11) "Medicare eligible expenses" shall mean expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare.

(12) "Physician" shall not be defined more restrictively than as defined in the Medicare program.

(13) "Preexisting condition" shall not be defined more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(14) "Sickness" shall not be defined to be more restrictive than the following: "Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability, or similar law.

Section 5. Policy Provisions. (1) Except for permitted preexisting condition clauses as described in Sections 6(2)(a), 7(1)(a), and 8(1) ~~8(1)(a)~~ of this administrative regulation, a policy or certificate shall not be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(2) A Medicare supplement policy or certificate shall not:

(a) Contain a probationary or elimination period; or

(b) Use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(3) A Medicare supplement policy or certificate in force in the state shall not contain benefits that duplicate benefits provided by Medicare.

(4)(a) Subject to Sections 6(2)(d), (e), and (g), and 7(1)(d) and (e) of this administrative regulation, a Medicare supplement policy

with benefits for outpatient prescription drugs in existence prior to January 1, 2006, shall be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.

(b) A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.

(c) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs shall~~may~~ not be renewed after the policyholder enrolls in Medicare Part D unless:

1. The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan; and

2. Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at Medicare Part D enrollment, accounting for any claims paid, if applicable.

Section 6. Minimum Benefit Standards for Pre-Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery Prior to January 1, 1992. (1) A policy or certificate shall not be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards, which shall not preclude the inclusion of other provisions or benefits that~~which~~ are not inconsistent with these standards.

(2) General standards. The following standards shall apply to Medicare supplement policies and certificates and are in addition to all other requirements of this administrative regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition and the policy or certificate shall not define a preexisting condition more restrictively than Section 4(13) of this administrative regulation.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with the changes.

(d) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

1. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

2. Be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health.

(e)1. An insurer shall not cancel or nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

2. If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in paragraph (e)4 of this subsection, the insurer shall offer certificate holders an individual Medicare supplement policy with at least the following choices:

a. An individual Medicare supplement policy currently offered by the insurer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

b. An individual Medicare supplement policy that~~which~~ provides the benefits as are required to meet the minimum standards as defined in Section 8(2) of this administrative regulation.

3. If membership in a group is terminated, the insurer shall:

a. Offer the certificate holder the conversion opportunities described in subparagraph 2 of this paragraph; or

b. At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

4. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the insurer of the replacement policy shall offer

coverage to all persons covered under the old group policy on its date of termination, and coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits shall not be considered in determining a continuous loss.

(g) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173, the modified policy shall satisfy the guaranteed renewal requirements of this subsection.

(3) Minimum benefit standards. The following minimum benefit standards shall apply to Medicare supplement policies and certificates and are in addition to all other requirements of this administrative regulation.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety (90) percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(e) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2) or already paid for under Part B;

(f) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible; and

(g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2) or already paid for under Part A, subject to the Medicare deductible amount.

Section 7. Benefit Standards for 1990 Standardized Medicare Supplement Benefit Plan and Policies or Certificates Issued or Delivered on or After January 1, 1992, and With an Effective Date for Coverage Prior to June 1, 2010. The following standards shall apply to all Medicare supplement policies or certificates delivered or issued for delivery in Kentucky on or after January 1, 1992, and with an effective date for coverage prior to June 1, 2010. A policy or certificate shall not be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. (1) General Standards. The following standards shall apply to Medicare supplement policies and certificates and are in addition to all other requirements of this administrative regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition and the policy or certificate shall not define a preexisting condition more restrictively than Section 4(13) of this administrative regulation.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different

basis than losses resulting from accidents[:

1. Contain a probationary or elimination period; or
2. Indemnify against losses resulting from sickness on a different basis than losses resulting from accidents].

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare shall be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with the changes.

(d) A Medicare supplement policy or certificate shall not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(e) Each Medicare supplement policy shall be guaranteed renewable.

1. The insurer shall not cancel or nonrenew the policy solely on health status of the individual.

2. The insurer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

3. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under subparagraph 5 of this paragraph~~(Section 7(1)(e)5 of this administrative regulation)~~, the insurer shall offer certificate holders an option to choose an individual Medicare supplement policy which, at the option of the certificate holder:

a. Provides for continuation of the benefits contained in the group policy; or

b. Provides for benefits that meet the requirements of this subsection.

4. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the insurer shall:

a. Offer the certificate holder the conversion opportunity described in subparagraph 3 of this paragraph~~(Section 7(1)(e)3 of this administrative regulation)~~; or

b. At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

5. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the insurer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

6. If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. 108-173, the modified policy shall satisfy the guaranteed renewal requirements of this paragraph.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss that~~which~~ commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits shall~~will~~ not be considered in determining a continuous loss.

(g)1. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period, not to exceed twenty-four (24) months, in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq., but only if the policyholder or certificate holder notifies the insurer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance.

2. If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted, effective as of the

date of termination of entitlement, as of the termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

3. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended, for any period that may be provided by 42 U.S.C. 1395ss(q)(5), at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act, 42 U.S.C. 426(b), and is covered under a group health plan, as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act, 42 U.S.C. 1395y(b)(1)(A)(v). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated, effective as of the date of loss of coverage, if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

4. Reinstitution of coverages as described in subparagraphs 2 and 3 of this paragraph:

a. Shall not provide for any waiting period with respect to treatment of preexisting conditions;

b. Shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstatement of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

c. Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(h) If an insurer makes a written offer to the Medicare Supplement policyholders or certificate holders of one or more of its plans, to exchange during a specified period from his or her 1990 Standardized plan, as described in Section 9 of this administrative regulation, to a 2010 Standardized plan, as described in Section 10 of this administrative regulation, the offer and subsequent exchange shall comply with the following requirements:

1. An insurer shall not be required to provide justification to the commissioner if the insured replaces a 1990 Standardized policy or certificate with an issue age rated 2010 Standardized policy or certificate at the insured's original issue age. If an insured's policy or certificate to be replaced is priced on an issue age rate schedule at offer, the rate charged to the insured for the new exchanged policy shall recognize the policy reserve buildup, due to the pre-funding inherent in the use of an issue age rate basis, for the benefit of the insured. The method proposed to be used by an insurer shall be filed with the commissioner in accordance with KRS 304.14-120 and 806 KAR 14:007.~~1~~²

2. The rating class of the new policy or certificate shall be the class closest to the insured's class of the replaced coverage.

3. An insurer ~~shall~~^{may} not apply new pre-existing condition limitations or a new incontestability period to the new policy for those benefits contained in the exchanged 1990 Standardized policy or certificate of the insured, but may apply pre-existing condition limitations of no more than six (6) months to any added benefits contained in the new 2010 Standardized policy or certificate not contained in the exchanged policy.

4. The new policy or certificate shall be offered to all policyholders or certificate holders within a given plan, except if the offer or issue would be in violation of state or federal law.

5. An insurer may offer its policyholders or certificate holders the following exchange options:

a. Selected existing plans; or

b. Certain new plans for a particular existing plan.

(2) Standards for basic (core) benefits common to benefit plans A to J. Every insurer shall make available a policy or certificate

including at a minimum the following basic "core" package of benefits to each prospective insured. An insurer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2); and

(e) Coverage for the coinsurance amount or for hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.~~1~~²

(3) Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by Section 9 of this administrative regulation:

(a) Medicare Part A Deductible, which is coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(b) Skilled Nursing Facility Care, which is coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.

(c) Medicare Part B Deductible, which is coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(d) Eighty (80) Percent of the Medicare Part B Excess Charges, which is coverage for eighty (80) percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program, and the Medicare-approved Part B charge.

(e) 100 Percent of the Medicare Part B Excess Charges, which is coverage for all of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare Program or state law, and the Medicare-approved Part B charge.

(f) Basic Outpatient Prescription Drug Benefit which is coverage for fifty (50) percent of outpatient prescription drug charges, after a \$250 calendar year deductible, to a maximum of \$1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(g) Extended Outpatient Prescription Drug Benefit, which is coverage for fifty (50) percent of outpatient prescription drug charges, after a \$250 calendar year deductible to a maximum of \$3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(h) Medically Necessary Emergency Care in a Foreign Country, which is coverage to the extent not covered by Medicare for eighty (80) percent of the billed charges for Medicare eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year

deductible of \$250, and a lifetime maximum benefit of \$50,000.

(i) 1. Preventive Medical Care Benefit, which is coverage for the following preventive health services not covered by Medicare:

a. An annual clinical preventive medical history and physical examination that may include tests and services from subparagraph 2 of this paragraph and patient education to address preventive health care measures; and

b. Preventive screening tests or preventive services, the selection and frequency of which are determined to be medically appropriate by the attending physician.

2. Reimbursement shall be for the actual charges up to 100 percent of the Medicare approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of \$120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(j) At-Home Recovery Benefit, which is coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

1. Coverage requirements and limitations.

a. At-home recovery services provided shall be primarily services that[which] assist in activities of daily living.

b. The insured's attending physician shall certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

c. Coverage shall be[is] limited to:

(i) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare-approved home health care visits under a Medicare-approved home care plan of treatment;

(ii) The actual charges for each visit up to a maximum reimbursement of forty (40) dollars per visit;

(iii) \$1,600 per calendar year;

(iv) Seven (7) visits in any one (1) week;

(v) Care furnished on a visiting basis in the insured's home;

(vi) Services provided by a care provider as described in Section 4(5) of this administrative regulation;

(vii) At-home recovery visits while the insured is covered under the policy or certificate and not excluded; and

(viii) At-home recovery visits received during the period the insured is receiving Medicare-approved home care services or no more than eight (8) weeks after the service date of the last Medicare-approved home health care visit.

2.[3.] Coverage shall be[is] excluded for:

a. Home care visits paid for by Medicare or other government programs; and

b. Care provided by family members, unpaid volunteers, or providers who are not care providers.

(4) Standards for Plans K and L.

(a) Standardized Medicare supplement benefit plan "K" shall consist of the following:

1. Coverage of 100 percent of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

2. Coverage of 100 percent of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

3. Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days;[L]

4. Medicare Part A Deductible, which is coverage for fifty (50) percent of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

5. Skilled Nursing Facility Care, which is coverage for fifty (50) percent of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for

posthospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

6. Hospice Care, which is coverage for fifty (50) percent of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

7. Coverage for fifty (50) percent, under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2)), unless replaced in accordance with 42 C.F.R. 409.87(c)(2), until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

8. Except for coverage provided in subparagraph 9 of this paragraph, coverage for fifty (50) percent of the cost sharing applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

9. Coverage of 100 percent of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

10. Coverage of 100 percent of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of \$4,000 in 2006, indexed each year by the appropriate inflation adjustment specified by the secretary.

(b) Standardized Medicare supplement benefit plan "L" shall consist of the following:

1. The benefits described in paragraph (a)1, 2, 3, and 9 of this section;

2. The benefit described in paragraph (a)4, 5, 6, 7, and 8 of this section, but substituting seventy-five (75) percent for fifty (50) percent; and

3. The benefit described in paragraph (a)10 of this section, but substituting \$2,000 for \$4,000.

Section 8. Benefit Standards for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery with an Effective Date for Coverage on or After June 1, 2010. The following standards shall apply[are applicable] to all Medicare supplement policies or certificates delivered or issued for delivery in Kentucky with an effective date for coverage on or after June 1, 2010. A policy or certificate shall not be advertised, solicited, delivered, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it complies with these benefit standards. An insurer shall not offer any 1990 Standardized Medicare supplement benefit plan for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued before June 1, 2010, remain subject to the requirements of Sections 7 and 9 of this administrative regulation. (1) General Standards. The general standards of Section 7(1)(a) through (g), except 7(1)(e)6[(6)], shall apply to all policies under Section 8 of this administrative regulation.~~[The following standards shall apply to Medicare supplement policies and certificates and shall be in addition to all other requirements of this regulation.~~

~~(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition.~~

~~(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.~~

~~(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with changes.~~

~~(d) A Medicare supplement policy or certificate shall not provide for termination of coverage of a spouse solely because of the occurrence specified for termination of coverage of the insured, other than the nonpayment of premium.~~

(e) Each Medicare supplement policy shall be guaranteed renewable.

1. The insurer shall not cancel or nonrenew the policy solely health status of the individual.

2. The insurer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

3. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under subsection (1)(e)5 of this section, the insurer shall offer certificate holders an individual Medicare supplement policy which, at the option of the certificate holder:

a. Provides for continuation of the benefits contained in the group policy; or

b. Provides for benefits that meet the requirements of this Subsection.

4. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the insurer shall:

a. Offer the certificate holder the conversion opportunity described in subsection (1)(e)5 of this section; or

b. At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

5. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the insurer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits shall not be considered in determining a continuous loss.

(g) 1. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period, not to exceed twenty-four (24) months, in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq., but only if the policyholder or certificate holder notifies the insurer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance.

2. If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted, effective as of the date of termination of entitlement, as of the termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

3. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended, for any period that may be provided by 42 U.S.C. 1395ss(q)(5)(A), at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act, 42 U.S.C. 426(b), and is covered under a group health plan, as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act, 42 U.S.C. 1395Y(b)(1)(A)(v). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted, effective as of the date of loss of coverage, if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

4. Reinstitution of coverages as described in subparagraphs 2 and 3 of this paragraph shall:

a. Not provide for any waiting period with respect to treatment

of preexisting conditions;

b. Provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension; and

c. Provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.]

(2) Standards for Basic (Core) Benefits Common to Medicare Supplement Insurance Benefit Plans A, B, C, D, F, High Deductible F, G, M and N. Every insurer of Medicare supplement insurance benefit plans shall make available a policy or certificate including, at a minimum, the following basic "core" package of benefits to each prospective insured. An insurer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(a) The basic core benefits included within Section 7(2)(a) through (e) of this administrative regulation shall be[are] applied to plans under this section[8]; and Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(e)(2);

(e) Coverage for the coinsurance amount, or for hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible;]

[b] [(f)] Hospice Care, which is coverage of cost sharing for all Part A Medicare eligible hospice care and respite care expenses.

(3) Standards for Additional Benefits. The following additional benefits shall be included in Medicare supplement benefit Plans B, C, D, F, High Deductible F, G, M, and N as provided by Section 10 of this administrative regulation.

(a) Medicare Part A Deductible, which is coverage for 100 percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(b) Medicare Part A Deductible, which is coverage for fifty (50) percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(c) Skilled Nursing Facility Care, which is coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.

(d) Medicare Part B Deductible, which is coverage for 100 percent of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(e) 100 percent of the Medicare Part B Excess Charges, which is coverage for the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program, and the Medicare-approved Part B charge.

(f) Medically Necessary Emergency Care in a Foreign Country, which is coverage to the extent not covered by Medicare for eighty (80) percent of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year

deductible of \$250, and a lifetime maximum benefit of \$50,000.

Section 9. Standard Medicare Supplement Benefit Plans for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or After January 1, 1992, and with an Effective Date for Coverage Prior to June 1, 2010. (1) An insurer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic core benefits, as defined in Section 7(2) of this administrative regulation.

(2) Groups, packages, or combinations of Medicare supplement benefits other than those listed in this section shall not be offered for sale in Kentucky, except as may be permitted in subsection (7) of this section [9(7)] and Section 11 of this administrative regulation.

(3) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit plans "A" through "L" listed in this section and conform to the definitions in Section 1 of this administrative regulation. Each benefit shall be structured in accordance with the format provided in Sections 7(2) and 7(3) or 7(4) of this administrative regulation and shall list the benefits in the order shown in this section.

(4) An insurer may use, in addition to the benefit plan designations required in subsection (3) of this section, other designations to the extent permitted by law.

(5) Make-up of benefit plans:

(a) Standardized Medicare supplement benefit Plan "A" shall be limited to the basic (core) benefits common to all benefit plans, as described in Section 7(2) of this administrative regulation.

(b) Standardized Medicare supplement benefit Plan "B" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible as described in Section 7(3)(a).

(c) Standardized Medicare supplement benefit Plan "C" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as described in Sections 7(3)(a), (b), (c), and (h) respectively.

(d) Standardized Medicare supplement benefit Plan "D" shall include only the following: The core benefit, as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and the at-home recovery benefit as described in Sections 7(3)(a), (b), (h), and (j) respectively.

(e) Standardized Medicare supplement benefit Plan "E" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as described in Sections 7(3)(a), (b), (h), and (i) respectively.

(f) Standardized Medicare supplement benefit Plan "F" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, the skilled nursing facility care, the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Section 7(3)(a), (b), (c), (e), and (h) respectively.

(g) Standardized Medicare supplement benefit high deductible Plan "F" shall include only the following: 100 percent of covered expenses following the payment of the annual high deductible Plan "F" deductible. The covered expenses shall include the core benefits as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Section 7(3)(a), (b), (c), (e), and (h) respectively. The annual high deductible Plan "F" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan "F" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible

Plan "F" deductible shall be \$1,500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars.

(h) Standardized Medicare supplement benefit Plan "G" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, eighty (80) percent of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as described in Section 7(3)(a), (b), (d), (h), and (j) respectively.

(i) Standardized Medicare supplement benefit Plan "H" shall consist of only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit and medically necessary emergency care in a foreign country as described in Section 7(3)(a), (b), (f), and (h) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(j) Standardized Medicare supplement benefit Plan "I" shall consist of only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country and at-home recovery benefit as described in Section 7(3)(a), (b), (e), (f), (h), and (j) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(k) Standardized Medicare supplement benefit Plan "J" shall consist of only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care and at-home recovery benefit as described in Section 7(3)(a), (b), (c), (e), (g), (h), (i), and (j) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(l) Standardized Medicare supplement benefit high deductible Plan "J" shall consist of only the following: 100 percent of covered expenses following the payment of the annual high deductible Plan "J" deductible. The covered expenses shall include the core benefits as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as described in Section 7(3)(a), (b), (c), (e), (g), (h), (i) and (j) respectively. The annual high deductible Plan "J" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan "J" policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be \$1,500 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(6) Design of two (2) Medicare supplement plans mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), Pub. L. 108-173, §

(a) Standardized Medicare supplement benefit plan "K" shall consist of only those benefits described in Section 7(4)(a) of this administrative regulation.

(b) Standardized Medicare supplement benefit plan "L" shall

consist of only those benefits described in Section 7(4)(b) of this administrative regulation(a)].

(7) New or Innovative Benefits: An insurer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not available, cost-effective, and offered in a manner that is consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit.

Section 10. Standard Medicare Supplement Benefit Plans for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates with an Effective Date for Coverage on or After June 1, 2010. The following standards shall apply~~are applicable~~ to all Medicare supplement policies or certificates with an effective date for coverage in this state on or after June 1, 2010. A policy or certificate shall not be advertised, solicited, delivered, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued before June 1, 2010, shall remain subject to the requirements of Section 7 and 9 of this administrative regulation. (1)(a) An insurer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic (core) benefits, as described in Section 8(2) of this administrative regulation.

(b) If an insurer makes available any of the additional benefits described in Section 8(3), or offers standardized benefit Plans K or L, as described in Sections 10(5)(h) and (i) of this administrative regulation, then the insurer shall make available to each prospective policyholder and certificate holder, in addition to a policy form or certificate form with only the basic (core) benefits as described in paragraph (a) of this subsection [(4)] of this section, a policy form or certificate form containing either standardized benefit Plan C, as described in Section 10(5)(c) of this administrative regulation, or standardized benefit Plan F, as described in 10(5)(e) of this administrative regulation.

(2) Groups, packages or combinations of Medicare supplement benefits other than those listed in this Section shall not be offered for sale in this state, except as may be permitted in Section 10(6) and in Section 12~~14~~ of this administrative regulation.

(3) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit plans listed in this subsection and conform to the definitions in Section 1 of this administrative regulation. Each benefit shall be structured in accordance with the format provided in Sections 8(2) and 8(3) of this administrative regulation; or, in the case of plans K or L, in subsection~~Sections~~ 10~~5~~(h) or (i) of this section~~administrative regulation~~ and list the benefits in the order shown.

(4) In addition to the benefit plan designations required in subsection (3) of this section, an insurer may use other designations if approved by the commissioner in accordance with subsection (6) of this section.

(5) 2010 Standardized Benefit Plans:

(a) Standardized Medicare supplement benefit Plan A shall include only the following: The basic (core) benefits as described in Section 8(2) of this administrative regulation.

(b) Standardized Medicare supplement benefit Plan B shall include only the following: The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible as described in Section 8(3)(a) of this administrative regulation.

(c) Standardized Medicare supplement benefit Plan C shall include only the following: The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, and medically necessary emergency care in a foreign country as described in Section 8(3)(a), (c), (d), and (f) of this administrative regulation,

respectively.

(d) Standardized Medicare supplement benefit Plan D shall include only the following: The basic (core) benefit, as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (c), and (f) of this administrative regulation, respectively.

(e) Standardized Medicare supplement Plan F shall include only the following: The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, the skilled nursing facility care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (c), (d), (e), and (f), respectively.

(f) Standardized Medicare supplement Plan High Deductible F shall include only the following: 100 percent of covered expenses following the payment of the annual deductible set forth in subparagraph 2 of this paragraph [(f)2] of this subsection.

1. The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (c), (d), (e), and (f) of this administrative regulation, respectively.

2. The annual deductible in High Deductible Plan F shall consist of out-of-pocket expenses, other than premiums, for services covered by Plan F, and shall be in addition to any other specific benefit deductibles. The basis for the deductible shall be \$1,500 and shall be adjusted annually from 1999 by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars.

(g) 1. Standardized Medicare supplement benefit Plan G shall include only the following: The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (c), (e), and (f), respectively.

2. Beginning~~Effective~~ January 1, 2020, the standardized benefit plans described in Section (11)(1)(d) of this administrative regulation (Redesignated Plan G High Deductible) may be offered to any individual who was eligible for Medicare prior to January 1, 2020.

(h) Standardized Medicare supplement Plan K is mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. 108-173, and shall include only the following:

1. Part A Hospital Coinsurance 61st through 90th days: Coverage of 100 percent of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

2. Part A Hospital Coinsurance, 91st through 150th days: Coverage of 100 percent of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

3. Part A Hospitalization After 150 Days: Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

4. Medicare Part A Deductible: Coverage for fifty (50) percent of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

5. Skilled Nursing Facility Care: Coverage for fifty (50) percent of the coinsurance amount for each day used from the twenty-first

(21) [24st] day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

6. Hospice Care: Coverage for fifty (50) percent of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

7. Blood: Coverage for fifty (50) percent, under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, as described under 42 C.F.R. 409.87(a)(2) unless replaced in accordance with 42 C.F.R. 409.87(c)(2) until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

8. Part B Cost Sharing: Except for coverage provided in subparagraph 9 of this paragraph, coverage for fifty (50) percent of the cost sharing applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in subparagraph 10 of this paragraph;

9. Part B Preventive Services: Coverage of 100 percent of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

10. Cost Sharing After Out-of-Pocket Limits: Coverage of 100 percent of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of \$4,000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(i) Standardized Medicare supplement Plan L is mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. 108-173, and shall include only the following:

1. The benefits described in paragraph[subparagraphs 10(5)](h)1, 2, 3, and 9 of this subsection;

2. The benefit described in paragraph[subparagraphs 10(5)](h)4, 5, 6, 7, and 8 of this subsection, but substituting seventy-five (75) percent for fifty (50) percent; and

3. The benefit described in paragraph[subparagraph 10(5)](h)10 of this subsection, but substituting \$2,000 for \$4,000.

(j) Standardized Medicare supplement Plan M shall include only the following: The basic core benefit as described in Section 8(2) of this administrative regulation, plus fifty (50) percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (c) and (f) of this administrative regulation, respectively.

(k) Standardized Medicare supplement Plan N shall include only the following: The basic core benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (c) and (f) of this administrative regulation, respectively, with copayments in the following amounts:

1. The lesser of twenty (20) dollars or the Medicare Part B coinsurance or copayment for each covered health care provider office visit, including visits to medical specialists; and

2. The lesser of fifty (50) dollars or the Medicare Part B coinsurance or copayment for each covered emergency room visit; however, this copayment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense.

(6) New or Innovative Benefits: An insurer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits, in addition to the standardized benefits provided in a policy or certificate that complies with the applicable standards of this section. The new or innovative benefits shall include only benefits that are appropriate to Medicare supplement insurance, are new or innovative, are not available, and are cost-effective. Approval of new or innovative benefits shall not adversely impact the goal of Medicare supplement simplification. New or innovative benefits shall not include an outpatient prescription drug benefit. New or innovative benefits shall not be used to change or

reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

Section 11. Standard Medicare Supplement Benefit Plans for 2020 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery to individuals Newly Eligible for Medicare on or After January 1, 2020. The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA), Pub. L. 114-10, requires the following standards to be applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state to individuals newly eligible for Medicare on or after January 1, 2020. A[No] policy or certificate providing coverage of the Medicare Part B deductible shall not[may] be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate to individuals newly eligible for Medicare on or after January 1, 2020. All policies shall[must] comply with the following benefit standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued to individuals eligible for Medicare before January 1, 2020, shall remain subject to the requirements of Sections[Section] 9 and 10 of this administrative regulation.

(1) Benefit Requirements. The standards and requirements of Section 10 shall apply to all Medicare supplement policies and certificates delivered or issued for delivery to individuals newly eligible for Medicare on or after January 1, 2020, with the following exceptions:

(a) Standardized Medicare supplement benefit Plan C is redesignated as Plan D and shall provide the benefits contained in Section (10)(5)(c) of this administrative regulation but shall not provide coverage for any portion of the Medicare Part B deductible.

(b) Standardized Medicare supplement benefit Plan F is redesignated as Plan G and shall provide the benefits contained in Section (10)(5)(e) of this administrative regulation but shall not provide coverage for 100 percent[%] or any portion of the Medicare Part B deductible.

(c) Standardized Medicare supplement benefit plans C, F, and F with High Deductible shall[may] not be offered to individuals newly eligible for Medicare on or after January 1, 2020.

(d) 1. Standardized Medicare supplement benefit Plan F with High Deductible is redesignated as Plan G with High Deductible and shall provide the benefits contained in Section (10)(5)(f) of this administrative regulation but shall not provide coverage for any portion of the Medicare Part B deductible.

2.[-; provided further that:] The Medicare Part B deductible paid by the beneficiary shall be considered an out of pocket expense in meeting the annual high deductible.

(2) Applicability to Certain Individuals. This section shall apply[applies] only to individuals that are newly eligible for Medicare on or after January 1, 2020:

(a) By reason of attaining age 65 on or after January 1, 2020; or

(b) By reason of entitlement to benefits under Part A pursuant to section 226(b) or 226A of the Social Security Act, 42 U.S.C. 426(b) or 426-1, or who is deemed eligible for benefits under section 226(a) of the Social Security Act, 42 U.S.C. 426(a), on or after January 1, 2020.

(3) Guaranteed Issue for Eligible Persons. For purposes of Section 14(5) of this administrative regulation, in the case of any individual newly eligible for Medicare on or after January 1, 2020, any reference to a Medicare supplement policy C or F (including F with High Deductible) shall be deemed to be a reference to Medicare supplement policy D or G (including G with High Deductible) respectively that meet the requirements of this section.

(4) Offer of Redesignated Plans to Individuals Other than Newly Eligible. On or after January 1, 2020, the standardized benefit plans described in subsection (1)(d) of this section may be offered to any individual who was eligible for Medicare prior to January 1, 2020 in addition to the standardized plans described in Section 10(5) of this administrative regulation.

Section 12. Medicare Select Policies and Certificates. (1)(a) This section shall apply to Medicare Select policies and certificates, as described in this section.

(b) A policy or certificate shall not be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

(2) The commissioner may authorize an insurer to offer a Medicare Select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990, 42 U.S.C. 1395ss and 42 U.S.C. 1320c-3, if the commissioner finds that the insurer has satisfied all of the requirements of this **administrative** regulation.

(3) A Medicare Select insurer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner pursuant to this section and KRS 304.14-120.

(4) A Medicare Select insurer shall file a proposed plan of operation with the commissioner. The plan of operation shall contain at least the following information:

(a) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

1. Covered services may be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall not be more than sixty (60) miles from the insured's place of residence.

2. The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

a. To deliver adequately all services that are subject to a restricted network provision; or

b. To make appropriate referrals.

3. There are written agreements with network providers describing specific responsibilities.

4. Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

5. If covered services are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This subparagraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(b) A statement or map providing a clear description of the service area.

(c) A description of the grievance procedure to be utilized.

(d) A description of the quality assurance program, including:

1. The formal organizational structure;

2. The written criteria for selection, retention, and removal of network providers; and

3. The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action if warranted.

(e) A list and description, by specialty, of the network providers.

(f) Copies of the written information proposed to be used by the insurer to comply with subsection (8) of this section.

(g) Any other information requested by the commissioner in accordance with this section, KRS 304.14-120, and **KRS** 304.14-130.

(5)(a) A Medicare Select insurer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing the changes. Changes shall be considered approved by the commissioner after sixty (60) days unless specifically disapproved.

(b) An updated list of network providers shall be filed with the commissioner at least quarterly.

(6) A Medicare Select policy or certificate shall not restrict payment for covered services provided by nonnetwork providers if:

(a) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury, or a condition;

(b) It is not reasonable to obtain services through a network

provider; or

(c) There are no network providers available within sixty (60) miles of the insured's place of residence.

(7) A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(8) A Medicare Select insurer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(a) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

1. Other Medicare supplement policies or certificates offered by the insurer; and

2. Other Medicare Select policies or certificates.

(b) A description, which shall include address, phone number and hours of operation of the network providers, including primary care physicians, specialty physicians, hospitals and other providers.

(c) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers shall not count toward the out-of-pocket annual limit contained in plans K and L.

(d) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(e) A description of limitations on referrals to restricted network providers and to other providers.

(f) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate offered by the insurer.

(g) A description of the Medicare Select insurer's quality assurance program and grievance procedure.

(9) Prior to the sale of a Medicare Select policy or certificate, a Medicare Select insurer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to subsection (8) of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

(10) A Medicare Select insurer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(a) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(b) Upon issuance of the policy or certificate, the insurer shall provide detailed information to the policyholder describing how a grievance may be registered with the insurer.

(c) A grievance shall be considered in a timely manner and shall be transmitted to appropriate decision makers who have authority to fully investigate the issue and take corrective action.

(d) If a grievance is found to be valid, corrective action shall be taken promptly.

(e) All concerned parties shall be notified about the results of a grievance.

(f) The insurer shall report no later than each March 31st to the commissioner regarding its grievance procedure, including the number of grievances filed in the past year and a summary of the subject, nature, and resolution of grievances.

(11) Upon initial purchase, a Medicare Select insurer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the insurer.

(12)(a) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select insurer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the insurer **that[which]** has comparable or lesser benefits and **that[which]** does not contain a restricted network provision. The insurer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or

certificate has been in force for six (6) months.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more of the following significant benefits not included in the Medicare Select policy or certificate being replaced, coverage for:

1. The Medicare Part A deductible;
2. At-home recovery services; or
3. Part B excess charges.

(13) Medicare Select policies and certificates shall provide for continuation of coverage if the secretary determines that Medicare Select policies and certificates issued pursuant to this section shall be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(a) Each Medicare Select insurer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the insurer ~~that~~which has comparable or lesser benefits and ~~that~~which does not contain a restricted network provision. The insurer shall make these policies and certificates available without requiring evidence of insurability.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more of the following significant benefits not included in the Medicare Select policy or certificate being replaced, coverage for:

1. The Medicare Part A deductible;
2. At-home recovery services; or
3. Part B excess charges.

(14) A Medicare Select insurer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

Section 13~~Section 12~~. Open Enrollment. (1)(a) An insurer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in Kentucky, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant if:

1. An application for a policy or certificate is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is sixty-five (65) years of age or older; and

2. The applicant is enrolled for benefits under Medicare Part B.

(b) Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

(2)(a) If an applicant qualifies under subsection (1) of this section and submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the insurer shall not exclude benefits based on a preexisting condition.

(b) If the applicant qualifies under subsection (1) of this section and submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the insurer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The secretary shall specify the manner of the reduction under this subsection.

(3) Except as provided in subsection (2) and Sections 14 and 25~~13 and 24~~ of this administrative regulation, subsection (1) of this section shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was diagnosed during the six (6) months before the coverage became effective.

Section 14~~Section 13~~. Guaranteed Issue for Eligible Persons.

(1) Guaranteed Issue:

(a) Eligible persons are those individuals described in subsection (2) of this section who seek to enroll under the policy during the period specified in subsection (3) of this section, and who submit evidence of the date of termination, disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.

(b) With respect to eligible persons, an insurer shall not:

1. Deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection (5) of this section that is offered and is available for issuance to new enrollees by the insurer;

2. Discriminate in the pricing of a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition; and

3. Impose an exclusion of benefits based on a preexisting condition under a Medicare supplement policy.

(2) An eligible person shall include the following:

(a) An individual that is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all the supplemental health benefits to the individual;

(b) An individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, and:

1. The individual is sixty (65) years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act, 42 U.S.C 1395eee, and there are circumstances similar to those described in subparagraph 2 of this paragraph that would permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a Medicare Advantage plan; or

2. Any of the following circumstances apply:

a. The certification of the organization or plan has been terminated;

b. The organization has terminated or discontinued providing the plan in the area in which the individual resides;

c. The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act, 42 U.S.C 1395w-21(g)(3)(B), if the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856, 42 U.S.C. 1395w-26, or the plan is terminated for all individuals within a residence area; or

d. The individual demonstrates, in accordance with guidelines established by the secretary, that:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide the covered care in accordance with applicable quality standards; ~~for~~

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(iii) The individual meets the other exceptional conditions as the secretary may provide;~~;~~

(c) 1. An individual is enrolled with:

a. An eligible organization under a contract under Section 1876 of the Social Security Act, 42 U.S.C. 1395mm regarding Medicare cost;

b. A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

c. An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act, 42 U.S.C. 1395l(a)(1)(A), regarding health care prepayment plan; or

d. An organization under a Medicare Select policy; and

2. The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under paragraph (b) of this subsection;~~;(2)(b) of this section.]~~

(d) The individual is enrolled under a Medicare supplement policy and the enrollment ceases due to any of the following reasons:

1.a. The insolvency of the insurer or bankruptcy of the non-insurer organization; or
b. The involuntary termination of coverage or enrollment under the policy;

2. The insurer of the policy substantially violated a material provision of the policy; or

3. The insurer, or an agent or other entity acting on the insurer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(e)1. An individual that was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any of the following:

a. A Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare;

b. An eligible organization under a contract under Section 1876 of the Social Security Act, 42 U.S.C. 1395mm regarding Medicare cost;

c. A similar organization operating under demonstration project authority;

d. A PACE provider under Section 1894 of the Social Security Act, 42 U.S.C. 1395eee; or

e. A Medicare Select policy; and

2. The subsequent enrollment under subparagraph 1 of this paragraph~~(e)1 of this subsection~~ is terminated by the enrollee during any period within the first twelve (12) months of subsequent enrollment during which the enrollee is permitted to terminate the subsequent enrollment under Section 1851(e) of the federal Social Security Act, 42 U.S.C. 1395w-21(e); ~~or~~

(f) An individual who, upon first becoming eligible for benefits under part A of Medicare at age 65, enrolls in:

1. A Medicare Advantage plan under part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, 42 U.S.C. 1395eee; and

2. Disenrolls from the plan or program by not later than twelve (12) months after the effective date of enrollment; or

(g) An individual that:

1. Enrolls in a Medicare Part D plan during the initial enrollment period;

2. Upon enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs; and

3. Terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in subsection (5)(d) of this section.

(3) Guaranteed Issue Time Periods.

(a) For an individual described in subsection (2)(a) of this section, the guaranteed issue period shall:

1. Begin on the later of the date:

a. The individual receives a notice of termination or cessation of all supplemental health benefits, or, if a notice is not received, notice that a claim has been denied because of a termination or cessation; or
b. That the applicable coverage terminates or ceases; and

2. End sixty-three (63) days thereafter;

(b) For an individual described in subsection (2)(b), (c), (e), or (f) of this section whose enrollment is terminated involuntarily, the guaranteed issue period shall begin/begins on the date that the individual receives a notice of termination and ends sixty-three (63) days after the date the applicable coverage is terminated;

(c) For an individual described in subsection (2)(d)1 of this section, the guaranteed issue period shall end on the date that is sixty-three (63) days after the date the coverage is terminated and shall begin on the earlier of the date that:

1. The individual receives a notice of termination, a notice of the insurer's bankruptcy or insolvency, or other the similar notice if any; or

2. The applicable coverage is terminated;

(d) For an individual described in subsection (2)(b), (d)2, (d)3, (e), or (f) of this section who disenrolls voluntarily, the guaranteed issue period shall begin on the date that is sixty (60) days before

the effective date of the disenrollment and shall end on the date that is sixty-three (63) days after the effective date;

(e) For an individual described in subsection (2)(g) of this section, the guaranteed issue period shall begin on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act, 42 U.S.C. 1395ss(v)(2)(B), from the Medicare supplement insurer during the sixty (60) day period immediately preceding the initial Part D enrollment period and shall end on the date that is sixty-three (63) days after the effective date of the individual's coverage under Medicare Part D; and

(f) For an individual described in subsection (2) of this section but not described in the preceding provisions of this subsection, the guaranteed issue period shall begin on the effective date of disenrollment and shall end on the date that is sixty-three (63) days after the effective date.

(4) Extended Medigap Access for Interrupted Trial Periods.

(a) For an individual described in subsection (2)(e) of this section whose enrollment with an organization or provider described in Subsection (2)(e)1 of this section is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls with another organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in subsection(2)(e) of this section;

(b) For an individual described in subsection (2)(f) of this section whose enrollment with a plan or in a program described in Subsection (2)(f) of this section is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls in another plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in subsection (2)(f) of this section; and

(c) For purposes of subsection (2)(e) and (f) of this section, enrollment of an individual with an organization or provider described in subsection (2)(e)1 of this section, or with a plan or in a program described in subsection (2)(f) of this section, shall not be deemed to be an initial enrollment under this paragraph after the two (2) year period beginning on the date on which the individual first enrolled with an organization, provider, plan, or program.

(5) Products to Which Eligible Persons are Entitled. The Medicare supplement policy to which eligible persons shall be/are entitled under:

(a) Section 14(2)(a), (b), (c) and (d)~~13(2)(a), (b), (c) and (d)~~ of this administrative regulation is a Medicare supplement policy that/which has a benefit package classified as Plan A, B, C, F, high deductible F, K, or L offered by any insurer;~~if~~

(b)1. Subject to subparagraph 2 of this paragraph, a person eligible pursuant to subsection (2)(e) of this section~~14(2)(e)13(2)(e)~~~~[of this administrative regulation]~~ is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same insurer, or, if not so available, a policy described in paragraph (a) of this subsection;

2. After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in this subparagraph is:

a. The policy available from the same insurer but modified to remove outpatient prescription drug coverage; or

b. At the election of the policyholder, an A, B, C, F, high deductible F, K, or L policy that is offered by any insurer;

(c) Subsection (2)(f) of this section~~14(2)(f)13(2)(f)~~~~[of this administrative regulation]~~ shall include any Medicare supplement policy offered by any insurer;

(d) Subsection (2)(g) of this section~~14(2)(g)13(2)(g)~~~~[of this administrative regulation]~~ is a Medicare supplement policy that:

1. Has a benefit package classified as Plan A, B, C, F, high deductible F, K, or L; and

2. Is offered and available for issuance to new enrollees by the same insurer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

(6) Notification provisions.

(a) Upon an event described in subsection (2) of this section

resulting in a loss of coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the insurer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of the individual's rights under this section, and of the obligations of insurers of Medicare supplement policies under subsection (1) of this section. This notice shall be communicated simultaneously with the notification of termination.

(b) Upon an event described in subsection (2) of this section resulting in an individual ceasing enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the insurer offering the policy, or the administrator of the plan, respectively, shall notify the individual of the individual's rights under this section, and of the obligations of insurer of Medicare supplement policies under subsection (1) of this section~~[(14(1))[(13(1)) [of this administrative regulation]]]~~. The notice shall be communicated within ten (10) working days of the insurer receiving notification of disenrollment.

Section 15~~Section 14~~. Standards for Claims Payment. (1) An insurer shall comply with 42 U.S.C. 1395ss, section 1882(c)(3) of the Social Security Act, by:

(a) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form required and making a payment determination on the basis of the information contained in that notice;

(b) Notifying the participating physician or supplier and the beneficiary of the payment determination;

(c) Paying the participating physician or supplier;

(d) Upon enrollment, furnishing each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

(e) Paying user fees for claim notices that are transmitted electronically or in another manner; and

(f) Providing to the secretary of, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

(2) Compliance with the requirements established in subsection (1) of this section shall be certified to the commissioner as part of the insurer's annual filing pursuant to KRS 304.3-240.

Section 16~~Section 15~~. Loss Ratio Standards and Refund or Credit of Premium. (1) Loss Ratio Standards.

(a)1. Pursuant to KRS 304.14-530, a Medicare Supplement policy form or certificate form shall not be delivered or issued for delivery in Kentucky unless it is expected to return to policyholders and certificate holders in the form of aggregate benefits, not including anticipated refunds or credits, provided under the policy form or certificate form which total:

a. At least seventy-five (75) percent of the aggregate amount of premiums earned in the case of group policies; or

b. At least sixty-five (65) percent of the aggregate amount of premiums earned in the case of individual policies.~~[(i)]~~

2. The calculation shall be in accordance with accepted actuarial principles and practices; and

a. Based on:

(i) Incurred claims experience or incurred health care expenses if coverage is provided by a health maintenance organization on a service rather than reimbursement basis; and

(ii) Earned premiums for the period; and

b. Incurred health care expenses if coverage is provided by a health maintenance organization shall not include:

(i) Home office and overhead costs;

(ii) Advertising costs;

(iii) Commissions and other acquisition costs;

(iv) Taxes;

(v) Capital costs;

(vi) Administrative costs; and

(vii) Claims processing costs.

(b) A filing of rates and rating schedules shall demonstrate that

expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(c) For policies issued prior to October 14, 1990, expected claims in relation to premiums shall meet:

1. The originally filed anticipated loss ratio when combined with the actual experience since inception;

2. The appropriate loss ratio requirement from paragraph (a)1a and b of this subsection~~[(1)(a)1a and b of this section]~~ when combined with actual experience beginning with July 5, 1996, to date; and

3. The appropriate loss ratio requirement from paragraph (a)1a and b of this subsection~~[(1)(a)1a and b of this section]~~ over the entire future period for which the rates are computed to provide coverage.

(2) Refund or Credit Calculation.

(a) An insurer shall collect and file with the commissioner by May 31 of each year the data contained in the applicable reporting form contained in HL-MS-1 for each type in a standard Medicare supplement benefit plan.~~[(i)]~~

(b) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation shall be required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(c) For policies or certificates issued prior to October 14, 1990, the insurer shall make the refund or credit calculation separately for all individual policies, including all group policies subject to an individual loss ratio standard when issued, combined and all other group policies combined for experience after July 5, 1996.

(d) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds the level as identified on the annual refund calculation form HL-MS-1. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but it shall not be less than the average rate of interest for thirteen (13) week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

(3) Annual filing of Premium Rates.

(a) An insurer of Medicare supplement policies and certificates issued before or after January 14, 1992, in this state shall file annually for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner in KRS 304-14-120:

1. Rates;

2. Rating schedule; and

3. Supporting documentation, including ratios of incurred losses to earned premiums by policy duration.

(b) The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves.

(c) An expected third-year loss ratio that[which] is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.

(d) As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every insurer of Medicare supplement policies or certificates in this state shall file with the commissioner, in accordance with KRS 304-14.120:

1.a. Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing.

b. Appropriate premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to

minimum loss ratio standards for Medicare supplement policies and ~~that[which]~~ are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the insurer for the Medicare supplement policies or certificates. A premium adjustment ~~that[which]~~ would modify the loss ratio experience under the policy other than the adjustments described in this subsection shall not be made with respect to a policy at any time other than upon its renewal date or anniversary date.

c. If an insurer fails to make premium adjustments acceptable to the commissioner in accordance with this section, the commissioner may order premium adjustments, refunds or premium credits necessary to achieve the loss ratio required by this section.

2. Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

(4) Public Hearings. The commissioner may conduct a public hearing pursuant to KRS 304.2-310, to gather information concerning a request by an insurer for an increase in a rate for a policy form or certificate form issued before or after January 1, 1992, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance shall be made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in accordance with KRS 304.2-320.

Section 17~~[Section 46]~~. Filing and Approval of Policies and Certificates and Premium Rates. (1) An insurer shall not deliver or issue for delivery a policy or certificate to a resident of Kentucky unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures in KRS 304.14-120.

(2) An insurer shall file, with the commissioner, any riders or amendments to policy or certificate forms, issued in Kentucky, to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173.

(3) An insurer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the commissioner in accordance with KRS 304.14-120.

(4)(a) Except as provided in paragraph (b) of this subsection, an insurer shall not file for approval more than one (1) form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(b) An insurer may offer, with the approval of the commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one (1) for each of the following cases:

1. The inclusion of new or innovative benefits;
2. The addition of either direct response or agent marketing methods;
3. The addition of either guaranteed issue or underwritten coverage; and
4. The offering of coverage to individuals eligible for Medicare by reason of disability.

(c) A type of a policy or certificate form shall include:

1. An individual policy;
2. A group policy;
3. An individual Medicare Select policy; or
4. A group Medicare Select policy.

(5)(a) Except as provided in subparagraph 1 of this paragraph, an insurer shall continue to make available for purchase any policy form or certificate form issued after January 1, 1992, that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the insurer has actively offered it for sale in the previous twelve (12) months.

1. An insurer may discontinue the availability of a policy form or certificate form if the insurer provides to the commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the insurer shall not offer for sale the policy form or certificate form in Kentucky.

2. An insurer that discontinues the availability of a policy form or certificate form pursuant to subparagraph 1 of this paragraph shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the insurer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(b) The sale or other transfer of Medicare supplement business to another insurer shall be considered a discontinuance for the purposes of this subsection.

(c) A change in the rating structure or methodology shall be considered a discontinuance under paragraph (a) of this subsection unless the insurer complies with the following requirements:

1. The insurer provides an actuarial memorandum, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates; and

2. The insurer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential that is in the public interest.

(6)(a) Except as provided in paragraph (b) of this subsection, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Section 16 ~~[45]~~ of this administrative regulation.

(b) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

(7) An insurer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after October 4, 2005, based upon a structure or methodology with any groupings of attained ages greater than one (1) year. The ratio between rates for successive ages shall increase smoothly as age increases.

Section 18~~[Section 17]~~. Permitted Compensation Arrangements. (1) An insurer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(2) The commission or other compensation provided in subsequent (renewal) years shall be the same as that provided in the second year or period and shall be provided for no fewer than five (5) renewal years.

(3) An insurer or other entity shall not provide compensation to its agents or other producers and an agent or producer shall not receive compensation greater than the renewal compensation payable by the replacing insurer on renewal policies or certificates if an existing policy or certificate is replaced.

Section 19~~[Section 18]~~. Required Disclosure Provisions. (1) General Rules.

(a)1. Medicare supplement policies and certificates shall include a renewal or continuation provision.

2. The language or specifications of a renewal or continuation provision shall be consistent with the type of contract issued.

3. The renewal or continuation provision shall:
 - a. Be appropriately captioned;
 - b. Appear on the first page of the policy; and

c. Include any reservation by the insurer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

(b)1. A rider or endorsement added to a Medicare supplement policy after date of issue or at reinstatement or renewal that reduces or eliminates~~[which reduce or eliminate]~~ benefits or coverage in the policy shall require a signed acceptance by the insured, except for a rider or endorsement by which an insurer:

a. Effectuates a request made in writing by the insured;

b. Exercises a specifically reserved right under a Medicare supplement policy; or

c. Is required to reduce or eliminate benefits to avoid duplication of Medicare benefits.

2. After the date of policy or certificate issue, any rider or endorsement that~~[which]~~ increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless:

a. The benefits are required by the minimum standards for Medicare supplement policies; or

b. If the increased benefits or coverage is required by law.

3. If a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(c) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import.

(d) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, these limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(e) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate, or attached thereto, stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(f)1. Insurers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the language, format, type size, type proportional spacing, bold character, and line spacing developed jointly by the National Association of Insurance Commissioners and Centers for Medicare and Medicaid Services and in a type size no smaller than twelve (12) point type.

2. Delivery of the guide described in subparagraph 1 of this paragraph shall be made:

a. Whether or not the policies or certificates are advertised, solicited, or issued as Medicare supplement policies or certificates as described in this administrative regulation.

b. To the applicant upon application and acknowledgement of receipt of the guide shall be obtained by the insurer, except that direct response insurer shall deliver the guide to the applicant upon request but not later than at policy delivery.

(2) Notice requirements.

(a) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an insurer shall notify its policyholders and certificate holders of modifications it has made to Medicare supplement insurance policies or certificates. The notice shall:

1. Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate; and

2. Inform each policyholder or certificate holder as to if any premium adjustment is to be made due to changes in Medicare.

(b) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(c) The notices shall not contain or be accompanied by any solicitation.

(3) Insurers shall comply with any notice requirements of the

Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub.L. 108-173.

(4) Outline of Coverage Requirements for Medicare Supplement Policies.

(a) An insurer shall provide an outline of coverage to all applicants when an application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of the outline from the applicant.~~;~~
~~and]~~

(b) If an outline of coverage is provided at application and the Medicare supplement policy or certificate is issued on a basis that~~[which]~~ would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name:

"NOTICE: READ THIS OUTLINE OF COVERAGE CAREFULLY. IT IS NOT IDENTICAL TO THE OUTLINE OF COVERAGE PROVIDED UPON APPLICATION AND THE COVERAGE ORIGINALLY APPLIED FOR HAS NOT BEEN ISSUED."

(c) The outline of coverage provided to applicants pursuant to this section shall consist of four (4) parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the insurer. The outline of coverage shall be in the language and format prescribed in the HL-MS-4 or the Plan Benefit Chart in no less than twelve (12) point type. All plans shall be shown on the cover page, and the plans that are offered by the insurer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(5) Notice Regarding Policies or Certificates That~~[Which]~~ Are Not Medicare Supplement Policies.

(a)1. Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy, a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act, 42 U.S.C. 1395 et seq., disability income policy, or other policy identified in Section 3(2) of this administrative regulation, issued for delivery in Kentucky to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate.

2. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds.

3. The notice shall be in no less than twelve (12) point type and shall contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CONTRACT). If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

(b) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in paragraph (a) of this subsection~~[(5)(a) of this section]~~ shall disclose, using the applicable statement in HL-MS-3 the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

Section 20~~[Section 49]~~. Requirements for Application Forms and Replacement Coverage. (1) Comparison statement.

(a) If a Medicare Advantage or Medicare supplement policy or certificate is to replace another Medicare supplement or Medicare Advantage policy or certificate, there shall be presented to the applicant, no later than the application date, HL-MS-5.

(b) Direct response insurers shall present the comparison statement to the applicant not later than when the policy is delivered.

(c) Agents shall:

1. Obtain the signature of the applicant on the comparison statement;

2. Sign the comparison statement; and
3. Send the comparison statement to the insurer and attach a copy of the comparison statement to the replacement policy.

(2)(a) Application forms shall include the questions on HL-MS-6 designed to elicit information as to whether, as of the date of the application:

1. The applicant currently has Medicare supplement, Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force; or

2. A Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force.

(b) An agent shall provide the HL-MS-07 to the applicant.

(c) A supplementary application or other form to be signed by the applicant and agent containing the questions as found on the HL-MS-06 and statements on HL-MS-07 may be used.

(3) Agents shall list, on HL-MS-06 or on the supplementary form as identified in subsection (2)(c) of this section, any other health insurance policies they have sold to the applicant including:

(a) Policies sold that/which are still in force; and

(b) Policies sold in the past five (5) years that are no longer in force.

(4) For an insurer that uses direct response, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

(5) Upon determining that a sale will involve replacement of Medicare supplement coverage, any insurer, other than an insurer that uses direct response, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One (1) copy of the notice signed by the applicant and the agent, except if the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the insurer. An insurer that uses direct response shall deliver to the applicant at issuance of the policy, the notice regarding replacement of Medicare supplement coverage. Upon receipt of the notice, the applicant or the applicant's[their] designee shall notify the insurer who previously provided Medicare supplement coverage of the replacement coverage.

(6) The notice required by subsection (5) of this section for an insurer shall be provided as specified in HL-MS-08, in no less than twelve (12) point type or in a form developed by the insurer, which shall:

(a) Meet the requirements of this section; and

(b) Be filed with and approved by the commissioner prior to use.

Section 21[Section—20]. Filing Requirements for Advertising and Policy Delivery. (1) An insurer shall provide a copy of any Medicare supplement advertisement intended for use in Kentucky whether through written, electronic, radio, or television, or any other medium to the commissioner for review prior to use. Advertisements shall not require approval prior to use, but an advertisement shall not be used if it has been disapproved by the commissioner and notice of the disapproval has been given to the insurer.

(2) Insurers and agents shall not use the names and addresses of persons purchased as "leads" unless the solicitation material used to obtain the names and addresses of the "leads" are filed as advertisement as required by this section. Insurers and agents shall not use "leads" if the solicitation materials have been disapproved by the commissioner.

(3) If a Medicare supplement policy is not delivered by mail, the agent or insurer shall obtain a signed and dated delivery receipt from the insured. If the delivery receipt is obtained by an agent, the agent shall forward the delivery receipts to the insurer.

Section 22[Section—24]. Standards for Marketing. (1) An insurer, directly or through its agents or other representatives, shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents or other representatives will be

fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp or other appropriate means, on the first page of the policy the following disclosure:

"Notice to buyer: This policy may not cover all of your medical expenses."

(d) Inquire and make every reasonable effort to identify if a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any insurance.

(e) Establish auditable procedures for verifying compliance with this subsection [(1) of this section].

(2) In addition to the practices prohibited in KRS Chapter 304.12 and 806 KAR 12:092, the following acts and practices shall be prohibited:

(a) Twisting. Making any unfair or deceptive representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(3) The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and similar words shall not be used unless the policy is issued in compliance with this administrative regulation.

Section 23[Section—22]. Appropriateness of Recommended Purchase and Excessive Insurance. (1) In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(2) Any sale of a Medicare supplement policy or certificate that will provide an individual more than one Medicare supplement policy or certificate shall be prohibited.

(3) An insurer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage.

Section 24[Section—23]. Reporting of Multiple Policies. (1) On or before March 1 of each year, an insurer shall report to the commissioner the following information, using HL-MS-2, for every individual resident of Kentucky for which the insurer has in force more than one Medicare supplement policy or certificate:

(a) Policy and certificate number; and

(b) Date of issuance.

(2) The items set forth in subsection (1) of this section shall be grouped by individual policyholder.

Section 25[Section—24]. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods, and Probationary Periods in Replacement Policies or Certificates. (1) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new Medicare supplement policy or certificate to the extent time was spent under the original policy.

(2) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods.

Section 26~~[Section 25]~~. Prohibition Against Use of Genetic Information and Requests for Genetic Testing. This Section shall apply to all policies with policy years beginning on or after the effective date of this administrative regulation. (1) An insurer of a Medicare supplement policy or certificate shall not:

(a) Deny or condition the issuance or effectiveness of the policy or certificate, including the imposition of any exclusion of benefits under the policy based on a pre-existing condition, on the basis of the genetic information with respect to any individual; and

(b) Discriminate in the pricing of the policy or certificate, including the adjustment of premium rates, of an individual on the basis of the genetic information with respect to any individual.

(2)~~[Nothing in]~~ Subsection (1) of this section shall not be construed to limit the ability of an insurer, to the extent permitted by law, from:

(a) Denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium for a group based on the manifestation of a disease or disorder of an insured or applicant; or

(b) Increasing the premium for any policy issued to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy, and the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members and to further increase the premium for the group.

(3) Except as provided by subsection (6) of this section, an insurer of a Medicare supplement policy or certificate shall not request or require an individual or a family member of an individual to undergo a genetic test.

(4) Subsection (3) of this section shall not be construed to prohibit an insurer of a Medicare supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment, as described for the purposes of applying the regulations promulgated under part C of title XI of the Social Security Act, 42 U.S.C. [U.S.C.A.] 1320d et seq., and section 264 of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d-2, and consistent with subsection (1) of this section.

(5) For purposes of carrying out subsection (4) of this section, an insurer of a Medicare supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose.

(6) Notwithstanding subsection (3) of this section, an insurer of a Medicare supplement policy may request, but shall not require, that an individual or a family member of the individual undergo a genetic test if each of the following conditions is met:

(a) The request shall be made pursuant to research that complies with 45 C.F.R. part 46, or equivalent federal regulations, and any applicable state or local law, or administrative regulations, for the protection of human subjects in research.

(b) The insurer clearly indicates to each individual, or if a minor child, to the legal guardian of the child, to whom the request is made that:

1. Compliance with the request shall be voluntary; and

2. Noncompliance shall have no effect on enrollment status or premium or contribution amounts.~~[;]~~

(c) Genetic information collected or acquired under this subsection shall not be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate.

(d) The insurer notifies the secretary in writing that the insurer is conducting activities pursuant to the exception provided for under this subsection, including a description of the activities conducted.

(e) The insurer complies with other conditions as the secretary may by federal regulation require for activities conducted under this subsection.

(7) An insurer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes.

(8) An insurer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information with respect to any individual prior to an individual's enrollment under

the policy in connection with enrollment.

(9) If an insurer of a Medicare supplement policy or certificate obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, the request, requirement, or purchase shall not be considered a violation of subsection (8) of this section if the request, requirement, or purchase is not in violation of subsection (7) of this section.

Section 27~~[Section 26]~~. Incorporated by Reference. (1) The following material is corporate by reference:

(a) "HL-MS-1", July 2009 edition;

(b) "HL-MS-2", July 2009 edition;

(c) "HL-MS-3", July 2009 edition;

(d) "HL-MS-4", October 2009 edition;

(e) "HL-MS-5", May 2018~~[July 2009]~~ edition;

(f) "HL-MS-06", July 2009 edition;

(g) "HL-MS-07", July 2009 edition; ~~[and]~~

(h) "HL-MS-08", October 2009 edition; and

(i) "Plan Benefit Chart", April 2018 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

NANCY G. ATKINS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: June 14, 2018

FILED WITH LRC: June 15, 2018 at 9 a.m.

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.

**ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS**

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amended After Comments)**

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640, 532.260
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

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

- 1.2 News Media (Amended 6/10/14)
- 1.4 The Monitoring and Operation of Private Prisons (Amended 5/15/08)
- 2.1 Inmate Canteen (Amended 2/26/16)
- 2.12 Abandoned Inmate Funds (Amended 4/12/18)
- 3.1 Code of Ethics (Amended 12/10/13)
- ~~[3.5 Sexual Harassment and Anti-Harassment (Amended 12/10/13)]~~
- 3.9 Student Intern Placement Procedure (Amended 11/7/16)
- 3.10 Appearance and Dress for Nonuniformed Staff (Amended 1/12/18)
- 3.11 Drug Free Workplace Employee Drug Testing (Amended 12/10/13)
- 3.14 Employee Time and Attendance Requirements (Amended 6/14/16)
- 3.17 Uniformed Employee Dress Code (Amended 1/12/18)
- 3.22 Staff Sexual Offenses (Amended 12/10/13)
- 3.23 Internal Affairs Investigation (Amended ~~10/12/18~~~~Added 8/25/09~~)
- 5.1 Research, Surveys and Data Requests (Amended 3/14/18)
- 5.3 Program Evaluation and Measurement (Amended 6/9/15)
- 6.1 Open Records Law (Amended 5/14/07)
- 6.2 Inmate Record (Added 11/7/16)
- 8.2 Fire Safety (Amended 3/14/14)
- 8.7 Notification of Extraordinary Occurrence (Amended 3/14/14)
- 9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 6/9/15)
- 9.6 Contraband (Amended 2/26/16)
- 9.8 Search Policy (Amended 3/14/18)
- 9.13 Transport to Court - Civil Action (Amended 07/09/07)
- 9.18 Informants (Amended 9/13/10)
- 9.19 Found Lost or Abandoned Property (Amended 10/14/05)
- 10.2 Special Management Inmates (Amended 4/11/17)
- 10.3 Safekeepers and Contract Prisoners (Amended 1/12/18)
- 11.2 Dietary Procedures and Compliance (Amended 1/12/17)
- 11.4 Alternative Dietary Patterns (Amended 1/12/17)
- 13.1 Pharmacy Policy and Formulary (Amended 1/15/15)
- 13.2 Health Maintenance Services (Amended 2/26/16)
- 13.3 Medical Alert System (Amended 3/14/14)
- 13.5 Advance Healthcare Directives (Amended 6/14/16)
- 13.6 Sex Offender Treatment Program (Amended 11/7/16)
- 13.7 Involuntary Psychotropic Medication (Amended 10/14/05)
- 13.8 Substance Abuse Program (Amended 10/12/12)
- 13.9 Dental Services (Amended 10/14/05)
- 13.10 Serious Infectious Disease (Amended 3/14/14)

- 13.11 Do Not Resuscitate Order (Amended 8/9/05)
- 13.12 Suicide Prevention and Intervention Program (Added 8/25/09)
- 13.13 Behavioral Health Services (Amended 11/7/16)
- 13.15 Inmate Observer Program (Added 8/12/16)
- 14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
- 14.2 Personal Hygiene Items (Amended 8/20/13)
- 14.3 Marriage of Inmates (Amended 1/12/17)
- 14.4 Legal Services Program (Amended 3/14/14)
- 14.5 Claims Commission (Amended 4/12/18)
- 14.6 Inmate Grievance Procedure (Amended 3/14/18)
- 14.7 Sexual Abuse Prevention and Intervention Programs (Amended 4/12/18)
- 14.8 Lesbian, Gay, Bisexual, Transgender, and Intersex Offenders (Amended 1/12/18)
- 15.1 Hair, Grooming and ID Card Standards (Amended 1/12/18)
- 15.2 Rule Violations and Penalties (Amended 8/12/16)
- 15.3 Meritorious Good Time (Amended ~~10/12/18~~~~[4/7/16]~~)
- 15.4 Program Credit (Amended 6/12/12)
- 15.5 Restoration of Forfeited Good Time (Amended 2/26/16)
- 15.6 Adjustment Procedures and Programs (Amended 3/14/18)
- 15.7 Inmate Accounts (Amended 1/12/18)
- 15.8 Possession or Use of Unauthorized Substance and Substance Abuse Testing (Amended 4/12/18)
- 16.1 Inmate Visits (Added 8/12/16)
- 16.2 Inmate Correspondence (Amended 11/7/16)
- 16.3 Inmate Access to Telephones (Amended 10/12/12)
- 16.4 Inmate Packages (Amended 8/12/16)
- 16.5 Video Visitation (Added 8/12/16)
- 17.1 Inmate Personal Property (Amended 3/14/18)
- 17.2 Assessment Center Operations (Amended 6/9/15)
- 17.3 Controlled Intake of Inmates (Amended 3/14/14)
- 17.4 Administrative Remedies: Sentence Calculations (Amended 8/12/16)
- 18.1 Classification of the Inmate (Amended 3/14/18)
- 18.2 Central Office Classification Committee (Amended 1/12/18)
- 18.3 Confinement of Youthful Offenders (Added 6/9/15)
- 18.5 Custody Level and Security (Amended ~~7/19/18~~~~[4/12/18]~~)
- 18.7 Transfers (Amended 5/13/16)
- 18.9 Out-of-state Transfers (Amended 2/26/16)
- 18.11 Placement for Mental Health Treatment in CPTU or PCU (Amended 6/14/16)
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
- 18.13 Population Categories (Amended 4/12/18)
- 18.15 Protective Custody (Amended 1/12/18)
- 18.16 Information to the Parole Board (Amended 1/12/18)
- 18.17 Interstate Agreement on Detainers (Amended 07/09/07)
- 18.18 International Transfer of Inmates (Amended 5/14/07)
- 19.1 Governmental Services Program (Amended 10/12/12)
- 19.2 Sentence Credit for Work (Amended 2/26/16)
- 19.3 Inmate Wage/Time Credit Program (Amended ~~10/12/18~~~~[4/12/18]~~)
- 19.4 Work Release for State Inmates in Jails (Added 4/12/18)
- 20.1 Educational Programs and Educational Good Time (Amended 8/25/09)
- 21.1 Library Services (Added 3/14/14)
- 22.1 Privilege Trips (Amended 10/14/05)
- 22.2 Recreation and Inmate Activities (Added 3/14/14)
- 23.1 Religious Programs (Amended 3/14/18)
- 25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
- 25.3 Prerelease Program (Effective 11/15/06)
- 25.4 Inmate Furloughs (Added 4/12/18)
- 25.6 Community Service Center Program and Jail Placement (Amended ~~10/12/18~~~~[3/14/18]~~)
- 25.10 Administrative Release of Inmates (Amended 8/12/16)

- 25.11 Victim Services Notification (Amended 8/25/09)
 25.12 Home Incarceration Program (Added 8/12/16)
 25.13 Women's Medical Release: Pregnancy (Added 10/12/18 7/19/18)
 25.14 Reentry Center Program (Added 10/12/18)
 26.1 Citizen Involvement and Volunteer Service Program (Amended 1/12/18)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections website in the policies and procedures area at <https://corrections.ky.gov/Pages/default.aspx.501> KAR 6:020 Corrections policies and procedures

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: September 28, 2018

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

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds for the biennium.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amended After Comments)

895 KAR 1:001. Definitions for 895 KAR Chapter 1.

RELATES TO: KRS 205.520, 205.8451, 29 U.S.C. 701, 42 U.S.C. 1315, 1395dd, 1396a, 1396d, 9902, 12101, 18001, 20 C.F.R. Part 418, 42 C.F.R. Parts 435, 438, 440

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes definitions for 895 KAR Chapter 1.

Section 1. Definitions. (1) "ACA" means the Patient Protection and Affordable Care Act, 42 U.S.C. 18001 *et seq.*

(2) "ACA expansion adult" means a Kentucky HEALTH beneficiary who meets the requirements established by 42 C.F.R. 435.119.

(3) "Active months" means the number of months in which a Kentucky HEALTH beneficiary is not disenrolled or in a suspension status during a benefit period.

(4) "Alternative benefit plan" or "ABP" means the benefit package developed by the department and approved by the Centers for Medicare and Medicaid Services in accordance with 42 C.F.R. Part 440, Subpart C (440.300-440.395 and provided to ACA expansion adults.

(5) "Applicant" means an individual for which coverage under Kentucky HEALTH is requested.

(6) "Beneficiary" means an individual who is enrolled in one of

the following eligibility groups and subject to Kentucky HEALTH provisions under Title 895 KAR:

- (a) ACA expansion adult;
- (b) Parent and caretaker relative;
- (c) Transitional medical assistance;
- (d) Pregnant women; or
- (e) Former foster youth.

(7) "Benefit year" means the time period:

- (a) January 1 through December 31 of each calendar year; or
- (b) From the date of enrollment in Kentucky HEALTH through December 31 of that same calendar year.

(8)(a) **"Chronically homeless" means that an individual has been:**

1. Continuously homeless for the previous ninety (90) days; or

2. Homeless on at least four (4) occasions in the previous three (3) years where those occasions cumulatively total at least ninety (90) days.

(b) For the purposes of this subsection, "homeless" means that a person is sleeping overnight in a:

1. Place not meant for human habitation, including sleeping overnight outside or in a shelter or improvised shelter not intended for long-term human habitation such as a tent or functioning or nonfunctioning automobile not designed for long-term human habitation; or

2. Facility that is established or used with a primary purpose of providing shelter for persons who would otherwise sleep in a place not meant for human habitation.

(9) "Community engagement activities" means department approved activities to support community engagement and employment of Kentucky HEALTH beneficiaries, including:

- (a) Employment;
- (b) Education;
- (c) Job skills training;
- (d) Community service; or
- (e) Substance use disorder treatment.

(10)(9) "Conditionally eligible beneficiary" means an ACA expansion adult or a parent and caretaker relative who:

- (a) Has been determined to meet all Kentucky HEALTH eligibility criteria;
- (b) Has not made an initial premium payment; and
- (c) Is not currently eligible to receive Kentucky HEALTH benefits.

(11)(10) "Copay plan" means the cost sharing plan whereby beneficiaries:

- (a) Are charged a copayment according to the schedule of copays established in 907 KAR 1:604 and the Kentucky Medicaid state plan for every Kentucky HEALTH covered benefit received; and
- (b) Do not have access to a MyRewards account.

(12)(11) "Debt" means any unpaid premium amounts that MCOs may collect from a beneficiary, and which is neither a condition of eligibility nor required to cure a non-payment penalty.

(13)(12) "Declared disaster" means a flood, storm, earthquake, catastrophic event, declared emergency by the governor, or any other event or series of events designated by the governor as a disaster or natural disaster.

(14)(13) "Deductible account" means a state-funded account that:

- (a) Functions as an administrative tracking mechanism designed to expose beneficiaries to healthcare costs;.
- (b) Tracks the first \$1,000 of non-preventive care services received within a benefit year by a beneficiary; and
- (c) Includes a monthly statement sent to the beneficiary.

(15)(14) "Dental services" means services:

- (a) 1. That are purchased by a beneficiary from an enrolled Medicaid provider via a MyRewards account; and
- 2. Include cleanings, fillings, and root canal therapy; and
- (b) That do not include medical dental services including but not limited to the removal of benign and malignant lesions, removal of foreign bodies, wound suturing, or anesthesia related to medical dental services, which shall continue to be reimbursed pursuant to title 907 KAR.

(16)[(45)] "Department" means the Department for Medicaid Services or its designee.

(17) "Disenrolled" means:

(a) The removal of a beneficiary's name and information from any lists of currently eligible beneficiaries;

(b) The department or managed care organization will not pay for a beneficiary or previous beneficiary's Medicaid claims while the individual is disenrolled; and

(c) A beneficiary shall not receive Medicaid benefits until the beneficiary has reapplied to the Medicaid program in order to establish eligibility for Medicaid benefits.

(18) "Domestic violence and abuse" means behavior experienced by a victim or survivor that includes physical abuse, emotional or psychological abuse, sexual abuse, or financial abuse, which shall include using money or other financial tools to exert control[(16) "Domestic violence" has the same meaning as in KRS 403.720].

(19)[(47)] "Early and Periodic Screening, Diagnostic, and Treatment Services" or "EPSDT" means those services defined in 42 U.S.C. 1396d(r).

(20)[(48)] "Emergency medical condition" means a medical condition as established by 42 U.S.C. 1395dd.

(21)[(49)] "Emergency services" means covered services that are needed to evaluate or stabilize an emergency medical condition.

(22)[(20)] "Fast-track payment" means an advance premium dollar amount calculated by the department that an applicant may opt to pay to expedite coverage to the first day of the month in which the payment is made, which may be as early as the first day of the month of application.

(23)[(24)] "Federal poverty level" or "FPL" means the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(24)[(22)] "Former foster youth" means a beneficiary who:

(a) Is at least nineteen (19) years of age, but no more than twenty-six (26) years of age; and

(b) Was in foster care under the responsibility of the state or a Tribe within Kentucky or another state; and

(c) Was enrolled in Medicaid on the date of attaining age eighteen (18) or a higher age as elected by the state.

(25)[(23)] "Full-time employment" means employment that is at least 120 hours per calendar month.

(26)[(24)] "Healthy behavior activity" means an activity that is:

(a) Documented by a beneficiary;

(b) Reported as designated by the department;

(c) Approved by the department; and

(d) When completed allows for a beneficiary to accrue a balance in the beneficiary's MyRewards account.

(27)[(25)] "Household" means the composition and family size of a household as established by 42 C.F.R. 435.603(f).

(28)[(26)] "Household income" means the application of the MAGI of every individual included in the individual's household as set forth at 42 C.F.R. 435.603.

(29)[(27)] "Institutionalized" means:

(a) Meeting preadmission screening and resident review (PASRR) criteria established pursuant to 907 KAR 1:022 and 907 KAR 1:755 to reside[Residing] in:

1. A nursing facility;

2. An intermediate care facility for an individual with an intellectual disability; or

3. A medical institution;

(b) Receiving hospice services; or

(c) Receiving 1915(c) home and community based services.

(30)[(28)] "KCHIP" means the Commonwealth's Children's Health Insurance Program.

(31)[(29)] "Kentucky HEALTH" means the commonwealth's Section 1115 waiver demonstration program approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services as authorized by 42 U.S.C. 1315.

(32)[(30)] "Life-changing event" means the marriage of a beneficiary living in the household, a birth, a death of a member of the household, the end of a marriage of a beneficiary in the

household through divorce or annulment, or other type of major life-changing event as defined by 20 C.F.R. 1205.

(33)[(34)] "Managed care organization" or "MCO" means an entity for which the department has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(34)[(32)] "Medically frail" means a determination has been made that an ACA expansion adult, parent and caretaker relative or TMA beneficiary, in accordance with both 42 C.F.R. 440.315(f) and department developed criteria, has a:

(a) Disabling mental disorder;

(b) Serious mental illness;

(c) Chronic substance use disorder;

(d) Chronic homelessness;

(e) Serious and complex medical condition; or

(f) Physical, intellectual or developmental disability that significantly impairs the beneficiary's ability to perform one (1) or more activities of daily living as defined by KRS 194A.700.

(35)[(33)] "Medically necessary" means a covered service that is determined to be needed in accordance with 907 KAR 3:130.

(36)[(34)] "Modified Adjusted Gross Income" or "MAGI" means MAGI-based income as calculated in accordance with 42 C.F.R. 435.603(e).

(37)[(35)] "MyRewards account" or "MRA" means the account available to beneficiaries that can be utilized to purchase department approved services not covered by a beneficiary's benefit package and otherwise permitted in the special terms and conditions to be covered by the account.

(38)[(36)] "Nonemergency medical transportation" or "NEMT" means transportation services provided pursuant to 907 KAR 3:066 that are unrelated to an emergency medical condition.

(39)[(37)] "Non-payment penalty" means the six (6) month non-eligibility penalty period applied to beneficiaries to whom cost sharing requirements apply but who fail to make timely premium payments.

(40)[(38)] "Parent and caretaker relative" means a beneficiary who meets the requirements established by 42 C.F.R. 435.110.

(41)[(39)] "Past due premiums" means the total amount that:

(a) A beneficiary is required to pay to either avoid a non-payment penalty or to end a non-payment penalty prior to the expiration of the six (6) month penalty period; and

(b) Does not include debt.

(42)[(40)] "PATH" means the community engagement component of Kentucky HEALTH and stands for "Partnering to Advance Training and Health".

(43)[(41)] "PATH requirement" means the requirement that a beneficiary complete eighty (80) hours of community engagement activities each month to maintain eligibility in the Kentucky HEALTH program, unless the beneficiary meets an exceptions established in 895 KAR 1:020.

(44)[(42)] "Pregnant women" means beneficiaries who meet the requirements established by 42 C.F.R. 435.116.

(45)[(43)] "Premium assistance" means the Kentucky HEALTH benefit plan that:

(a) Subsidizes an individual's employer sponsored insurance plan minus their Kentucky HEALTH premium amount; and

(b) A beneficiary is required to participate in if the beneficiary is

1. Enrolled in Kentucky HEALTH for more than twelve (12) months;

2. Has been continuously employed by their employer for twelve (12) months, and

3. Has access to employer sponsored insurance.

(46)[(44)] "Premium plan" means the cost sharing plan whereby beneficiaries make required monthly premium payments.

(47)[(45)] "Protected disability" means a legally defined disability protected pursuant to 42 U.S.C. 12101, 29 U.S.C. 701 et. seq., or 42 U.S.C. 18116.

(48)[(46)] "Provider" is defined by KRS 205.8451(7).

(49)[(47)] "Random control group" means beneficiaries who are otherwise eligible for Kentucky HEALTH but are allocated, at random, to a control group through which they do not have the requirements of Kentucky HEALTH applied.

(50)[(48)] "Re-entry course" means an education class designated by the department to enable a beneficiary in a

suspension status or penalty period to meet the education requirement for early re-entry into Kentucky HEALTH or early reactivation of a MyRewards account.

(51)[(49)] "Special terms and conditions" or "STCs" means the agreement between the Centers for Medicare and Medicaid Services and the commonwealth regarding the rules and requirements that govern the operation of Kentucky HEALTH.

(52)[(50)] "State" or "Commonwealth" means the Commonwealth of Kentucky.

(53) "Suspended" means:

(a) A beneficiary is designated within the department's computer systems as being temporarily ineligible for Medicaid benefits; and

(b) The department or managed care organization will not pay for the beneficiary's Medicaid claims while the individual is temporarily ineligible due to a suspension.

(54) "Temporarily vulnerable" means that an individual is:

(a) A refugee, as defined by KRS 186.010(13)(c), during the first twelve (12) months after the refugee entered the United States; or

(b) A victim of domestic violence.

(55)[(54)] "Transitional medical assistance" or "TMA" means a beneficiary who meets the requirements established by 42 U.S.C. 1396r.

(56)[(52)] "Vision services":

(a)1. Means services purchased by a beneficiary via a MyRewards account from an enrolled Medicaid provider; and

2. Includes routine or preventative eye exams; and

(b) Does not include medical vision services including the removal of benign and malignant lesions or tumors, removal of foreign bodies, wound suturing, and anesthesia related to medical vision services.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at noon

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonthant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for administrative regulations located in Chapter 1 of Title 895 of the Kentucky Administrative Regulations. Chapter 1 establishes and implements the Kentucky HEALTH program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the definitions for administrative regulations located in Chapter 1 of Title 895.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the definitions for administrative regulations located in 895 KAR chapter 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing definitions for administrative regulations located in 895 KAR Chapter 1.

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

(a) How the amendment will change this existing administrative regulation: The Amended after Comments version will change this administrative regulation by including new definitions for "chronically homeless", "disenrolled", "domestic violence and abuse", "suspended", and "temporarily vulnerable". The definition of "institutionalized" has also been amended, and the previous

definition for "domestic violence" has been deleted.

(b) The necessity of the amendment to this administrative regulation: The Amended after Comments amendments are necessary for the department to make changes in response to some of the comments received during the public comment process.

(c) How the amendment conforms to the content of the authorizing statutes: 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 to qualify for federal Medicaid funds.

(d) How the amendment will assist in the effective administration of the statutes: The Amended after Comments amendments will assist in the effective administration of the statutes by allowing for the department to make changes in response to some of the comments received during the public comment process.

(3) List the type and number of beneficiaries, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation establishes definitions for the Kentucky HEALTH program. Beneficiaries will benefit due to the clarity of terms being defined in this administrative regulation.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the definitions are standard throughout the Kentucky HEALTH program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

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

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

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

(c) How much will it cost to administer this program for the first year? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over \$2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over \$2.2 billion dollars in state and federal funding over the five year waiver period.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amended After Comments)**

895 KAR 1:010. Eligibility for Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 U.S.C. 1315, 1396a, 42 C.F.R. 435.916, 438.56, 457.343

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes the eligibility requirements for Kentucky HEALTH.

Section 1. Eligibility Groups.

(1) Except for a beneficiary assigned to the random control group pursuant to 895 KAR 1:045, Section 2, a beneficiary that meets the eligibility standards established in this section and who is therefore eligible for participation in the Kentucky HEALTH program shall only receive services from the Medicaid program as established in Title 895 KAR.

(2) An individual shall be eligible for participation in Kentucky HEALTH if the individual:

(a) Is a resident of Kentucky;

(b) Is not enrolled in, or, for an ACA expansion adult, eligible for, enrollment in the federal Medicare program;

(c) Is not enrolled in a 1915(c) waiver, institutionalized, or

receiving hospice services; and

(d) Is eligible under any of the following Medicaid assistance categories:

1. Parent and caretaker relative;
2. Transitional medical assistance;
3. Former foster youth;
4. Pregnant women; or
5. ACA expansion adult.

(3)(a) An individual eligible for Kentucky HEALTH and who has access to an employer sponsored health insurance plan shall comply with any requirements established pursuant to 907 KAR 5:005 related to mandatory enrollment within the Kentucky integrated health insurance premium payment program.

(b) An individual who is eligible for Kentucky HEALTH, but does not meet mandatory enrollment requirements established pursuant to 907 KAR 5:005, may elect to enroll in the Kentucky integrated health insurance premium payment program established pursuant to 907 KAR 5:005 if the department determines the employer sponsored health insurance plan to be cost-effective pursuant to 907 KAR 5:005.

Section 2. Presumptive Eligibility Period.

(1) During the presumptive eligibility period as established in 907 KAR 20:050, a beneficiary who is eligible under the ACA expansion adult group shall receive benefits:

(a) As established in the Kentucky HEALTH alternative benefit plan approved by the Centers for Medicare and Medicaid Services; and

(b) In accordance with 895 KAR 1:035.

(2) A Kentucky HEALTH beneficiary in a suspension period or a non-eligibility period shall not be eligible for presumptive eligibility as established in 907 KAR 20:050.

Section 3. Transition to Kentucky HEALTH.

(1) An individual shall be enrolled in Kentucky HEALTH on the first day of the month of the Kentucky HEALTH eligibility determination if the individual:

(a) Is determined to be presumptively eligible pursuant to 907 KAR 20:050; and

(b) Subsequently applies for Kentucky HEALTH and is determined eligible for Kentucky HEALTH.

(2) A Kentucky HEALTH beneficiary transitioning to Kentucky HEALTH from a presumptive eligibility period who is required to pay premiums in accordance with 895 KAR 1:015 shall:

(a) Be enrolled in the copay plan and

(b) Have sixty (60) days from the date of the invoice from the MCO to make a payment and avoid a non-payment penalty.

Section 4. Requirements Relating to Annual Recertification.

(1)(a) The annual eligibility recertification process operated by the department shall be:

1. Consistent with 42 C.F.R. 435.916 for the renewal of Medicaid eligibility; and

2. If applicable, consistent with 42 C.F.R. 457.343 for the renewal of CHIP eligibility.

(b) For a beneficiary receiving premium assistance and who is covered by a parent or caretaker's employer-sponsored insurance, including children enrolled in either Medicaid or CHIP, the annual recertification shall be aligned with the parent or caretaker's employer sponsored insurance open enrollment period.

(2) A beneficiary shall comply with all requirements of the recertification process, including the requirement of providing the State with all necessary information or documentation to complete the process.

(3) Following a recertification process in which all requirements were not met, a beneficiary shall be:

(a) Disenrolled from Kentucky HEALTH; and

(b) Granted an additional ninety (90) day reconsideration period in which to submit recertification paperwork to be reenrolled in Kentucky HEALTH. Reenrollment shall be effective the first day of the month in which the recertification requirements were completed, unless the individual was subject to a suspension

during the recertification process.

(4)(a) Except as provided by paragraph (b) of this subsection, an individual who has failed to submit all required recertification information and documentation upon the expiration of the ninety (90) day reconsideration period established in subsection (3) of this section shall be subject to a non-eligibility period of six (6) months.

(b) A beneficiary shall be exempt from paragraph (a) of this subsection if the beneficiary is:

1. A pregnant woman;
2. Former foster youth; or
3. Determined to be medically frail, or temporarily vulnerable.

(5) An individual subject to the non-eligibility period shall have the opportunity to re-enter Kentucky HEALTH prior to the expiration of the six (6) month penalty period by completing the early re-entry requirements established in 895 KAR 1:020.

(6)(a) A beneficiary who is subject to the non-eligibility penalty period under this section may request a good cause exemption by providing verification of any of the following:

1. The individual was hospitalized, otherwise incapacitated, or has a protected disability, and, as a result, was unable to provide information necessary to complete the recertification during the recertification reporting period;

2. The individual has a protected disability, and the individual requested but was not provided reasonable modifications needed to complete the recertification process;

3. The individual has a protected disability and there were no reasonable modifications that would have enabled the individual to complete the recertification process;

4. A member of the individual's immediate family who was living in the home with the individual who failed to report the change in circumstances during the reporting period as required by Section 4 of this administrative regulation:

- a. Was institutionalized; or
- b. Died;

5. A member of the individual's immediate family who was living in the home with the individual who failed to complete the recertification process has a protected disability, and caretaking or other disability-related responsibilities resulted in the individual's inability to complete recertification;

6. The individual either obtained or lost private insurance coverage during the recertification reporting period;

7. The individual was evicted from a home or experienced homelessness during the recertification reporting period;

8. The individual was a victim of domestic violence during the recertification reporting period; or

9. The individual was the victim of a declared disaster that occurred during the recertification reporting period.

(b) If a good cause exemption is granted, the beneficiary:

1. May re-enroll prior to the expiration of the non-eligibility penalty period; and

2. Shall not be required to complete the early re-entry requirements established by 895 KAR 1:020.

Section 5. Requirements for a Beneficiary to Report a Change in Circumstance.

(1) A beneficiary shall report any change in circumstance that would affect eligibility under any MAGI or non-MAGI requirements within thirty (30) days of the change in circumstance.

(2) A beneficiary with a change in circumstance affecting eligibility shall be disenrolled:

(a) If the department determines the individual ineligible for all other bases of Medicaid eligibility; and

(b) After the department reviews the individual for eligibility for other insurance affordability programs in accordance with 42 C.F.R. 435.916(f).

(3)(a) Except as provided by paragraph (b) of this subsection, a beneficiary who failed to report a change within the time frames required by subsection (1) of this section and that failure resulted in the beneficiary receiving a benefit for which the beneficiary was not eligible shall be disenrolled and subject to a non-eligibility period of six (6) months,

(b) A beneficiary shall be exempt from paragraph (a) of this subsection if the beneficiary is:

1. A pregnant woman;

2. A former foster youth; or

3. Determined to be medically frail or temporarily vulnerable.

(4) A beneficiary who is subject to a non-eligibility period under this section shall have the opportunity to re-enter Kentucky HEALTH prior to the expiration of the six (6) month penalty period by completing the early re-entry requirements set forth at 895 KAR 1:020.

(5)[(a)] A beneficiary who is subject to disenrollment and a non-eligibility penalty period under this section may request a good cause exemption by providing verification of any good cause exemption established in Section 4(6) of this administrative regulation.

Section 6. Kentucky HEALTH Initial Eligibility Appeals – Premium Payment Required.

(1) If an applicant was determined ineligible for Kentucky HEALTH but subsequently receives a favorable decision on appeal under this chapter, and is a beneficiary of any group set forth in 895 KAR 1:015 for which premium payments are required as a condition of eligibility, upon resolution of the appeal, the beneficiary shall be:

(a) Enrolled in Kentucky HEALTH; and

(b) Required to make a premium payment within sixty (60) days of the date of initial invoice from the MCO.

(2) In accordance with subsection (1)(b) of this section, an individual who does not make the required premium payment within sixty (60) days of the date of invoice shall be subject to the non-payment penalty provisions established in 895 KAR 1:015.

Section 7. Continued Payment to Retain Benefits Pending Appeal.

(1) If a beneficiary is required to make premium payments, the beneficiary shall continue to make any monthly premium payments that become due during an appeal within sixty (60) days of the MCO's date of invoice in order to continue Kentucky HEALTH benefits.

(2) A beneficiary's premium payments submitted during the appeal process shall be subject to the following requirements:

(a) If the issue being appealed is recalculation of the beneficiary's required premium amount, the recalculated premium amount shall remain in effect as established in 895 KAR 1:015 while the appeal is pending; and

(b) If the recalculated premium determination is overturned on appeal, excess premium amounts paid, if any, shall be credited to the beneficiary's premium payment in the next administratively feasible month.

(3) A beneficiary shall receive continued benefits pending the outcome of an administrative hearing if the beneficiary requests in writing that plan benefits be maintained pending the administrative appeal and the action is not a result of the beneficiary's nonpayment of required premiums.

Section 8. Changing MCOs.

(1) Except as provided in subsections (2) or (3) of this section, a beneficiary shall remain enrolled with the same MCO during the beneficiary's benefit year.

(2) A beneficiary may change MCO upon request and without cause, only in the following circumstances:

(a) If the change is requested prior to the earlier of:

1. The date the beneficiary makes an initial fast-track payment or premium payment; or

2. The date the beneficiary has enrolled in Kentucky HEALTH after the sixty (60) day initial payment period has expired;

(b) The beneficiary is a pregnant woman or a former foster youth, in which case the beneficiary shall be allowed to change MCOs without cause for ninety (90) days after enrollment in Kentucky HEALTH; or

(c) During the beneficiary's annual open enrollment opportunity for the following benefit year.

(3) A beneficiary shall remain enrolled with the same MCO during the beneficiary's benefit year and may change MCOs upon request, for cause, as established in 907 KAR 17:010 and as

provided for at 42 C.F.R. 438.56(c)(1).

Section 9. MCO Requirements when a Beneficiary Changes MCO.

(1) Each MCO shall ensure that a beneficiary transferring from another MCO does not experience an interruption in care.

(2) For a beneficiary transitioning to a new MCO, the MCO from which the beneficiary is transferring shall refund any balance of the beneficiary's premium within thirty (30) days of the last date of the beneficiary's participation with the MCO.

(3) The MCO from which the beneficiary is transferring shall provide the beneficiary's deductible account balance to the new MCO.

Section 10. Cost Share Requirements and Limitations.

(1) An MCO shall not charge, collect, or impose cost sharing, including premiums, copayments, or coinsurance, for any covered service to a beneficiary who is pregnant.

(2) An MCO shall not charge, collect, or impose, and shall require that any network providers do not charge, collect, or impose cost sharing, including premiums, copayments, or coinsurance, to a beneficiary for covered services, except for the following:

(a) Copayments as set forth in the Kentucky Medicaid state plan for a beneficiary enrolled in the copay plan; and

(b) Premiums as established in 895 KAR 1:015.

(3) An MCO may attempt to collect any debt but shall not:

(a) Report the premium amount owed to a credit reporting agency;

(b) Place a lien on the beneficiary's or disenrolled individual's home;

(c) Refer the case to a debt collector;

(d) File a lawsuit; or

(e) Seek a court order to seize a portion of the beneficiary or disenrolled individual's earnings.

Section 11[14]. Federal approval and federal financial participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at noon

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes which individuals are eligible for the Kentucky HEALTH program, establishes a presumptive eligibility period for Kentucky HEALTH beneficiaries, annual recertification requirements, requirements for reporting a change in circumstances, an appeals process and additional appeals requirements for a beneficiary, and change of MCO and cost-sharing requirements

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish eligibility requirements and processes for the Kentucky HEALTH program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing eligibility requirements that allow for full receipt of federal funds and full

participation in the Medicaid Program for Kentucky HEALTH beneficiaries.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing a clear eligibility process for Kentucky HEALTH beneficiaries, providers, MCOs, and the department.

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

(a) How the amendment will change this existing administrative regulation: The Amended After Comments version will change this administrative regulation by establishing requirements relating to mandatory and elective participation in the integrated Kentucky health insurance premium payment program of 907 KAR 5:005, and making technical amendments identified through the public comment process.

(b) The necessity of the amendment to this administrative regulation: The Amended After Comments amendments are necessary for the department to make changes in response to some of the comments received during the public comment process.

(c) How the amendment conforms to the content of the authorizing statutes: 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 to qualify for federal Medicaid funds.

(d) How the amendment will assist in the effective administration of the statutes: The Amended After Comments amendments will assist in the effective administration of the statutes by allowing for the department to make changes in response to some of the comments received during the public comment process.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Beneficiaries will need to verify if they are eligible for participation in Kentucky HEALTH, recertify annually, report changes in circumstances that impact eligibility, and continue payments of premiums.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs experienced by beneficiaries will vary depending on income level, compliance with premium payment requirements, certification and documentation requirements, and PATH requirement, and the beneficiary's eligibility status.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Beneficiaries who meet eligibility requirements will be able to receive healthcare benefits via participation in the Kentucky HEALTH program as established in Title 895 KAR.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX

and state matching funds from general fund and restricted fund appropriations are utilized to fund this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in that pregnant women, former foster youth, and individuals who are determined to be medically frail or temporarily vulnerable are exempted from a non-eligibility period and pregnant women are not subject to cost sharing requirements for covered services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation establishes a premium and potential copay requirement for certain beneficiaries that fail to comply with the premium requirement.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

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

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

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

(c) How much will it cost to administer this program for the first year? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is

projected to save taxpayers over \$2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over \$2.2 billion dollars in state and federal funding over the five year waiver period.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amended After Comments)

895 KAR 1:015. Premium payments within the Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 U.S.C. 1315, 42 C.F.R. 447.56(f)

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes premium payment requirements and processes for beneficiaries and MCOs participating in the Kentucky HEALTH program.

Section 1. Required Premium Payments.

(1) Notwithstanding any provision of Title 907 KAR to the contrary, including 907 KAR 1:604, any premium payments or copay plan requirements established pursuant to this administrative regulation are mandatory for beneficiaries and shall be remitted as established pursuant to Section 3 of this administrative regulation.

(2) A beneficiary that makes monthly premium payments shall:

(a) Not incur any other cost sharing for their healthcare coverage; and

(b) Have access to a MyRewards account.

~~(3)~~~~(2)~~(a) Except as provided in Section 2 of this administrative regulation, a beneficiary with income above 100 percent FPL shall make required monthly premium payments to retain eligibility for Kentucky HEALTH.

(b) A beneficiary with income that is less than 100 percent FPL shall be exempt from the requirement to make a premium payment as a condition of Kentucky HEALTH eligibility.

~~(4)~~~~(3)~~(a) Except as provided by paragraph (b) of this subsection, a beneficiary, regardless of FPL, shall make premium payments as a condition to access the beneficiary's MyRewards account.

(b) A beneficiary that is eligible for Kentucky HEALTH on the basis of being a pregnant woman shall be exempt from the requirement to make premium payments as a condition of accessing the beneficiary's MyRewards account.

Section 2. Premium Amount, Calculations, and Changes.

(1)(a) Each household's monthly premium amount shall be an amount determined by the department and made available

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pursuant to a formula and a chart posted prominently on the department's Web site.

(b) If the adults within a household are members of different MCOs, a separate premium shall be charged to each adult member.

(2) A beneficiary's monthly premium shall not exceed four (4) percent of the aggregate household income, except that a beneficiary subject to the premium payment requirement shall be required to contribute a one (1) dollar monthly premium, at minimum, to access the beneficiary's MyRewards account.

(3)(a) In accordance with 42 C.F.R. 447.56(f), a household's combined premium and cost sharing requirements shall not exceed five (5) percent of the aggregate household income within a calendar quarter.

(b) Each beneficiary who is a member of a household that reaches the five (5) percent maximum cost sharing in a calendar quarter shall have their monthly premium reduced to one (1) dollar for the remainder of the calendar quarter to avoid non-payment penalties as established in Section 4 of this administrative regulation.

(4) After twenty-four (24) months of enrollment in Kentucky HEALTH, the monthly premium amount paid by a beneficiary whose income is above 100 percent of the FPL shall increase.

(5) The department shall notify each beneficiary of that beneficiary's premium payment requirements upon determination of eligibility for Kentucky HEALTH.

(6) As directed by the department, an MCO shall aggregate, accurately track, and forward all premium payments remitted by or on behalf of its members who are:

(a) Beneficiaries with a cost-sharing requirement; and

(b) Who are eligible on the basis of the MAGI.

(7) The department:

(a) Shall evaluate premium rates and amounts annually; and

(b) May change published rates on an annual basis.

(8) The department, or an MCO on behalf of the department, shall notify each beneficiary of any Kentucky HEALTH premium changes at least sixty (60) days prior to the effective date of the change.

(9) The department shall determine necessary adjustments to a beneficiary's premium amount in the following circumstances:

(a) At the beneficiary's annual recertification; or

(b) If made aware that the beneficiary's household income, household composition, or other eligibility factor has changed during the eligibility period.

(10) If an adjustment is necessary pursuant to subsection (9) of this section, the new premium payment amount shall be effective the first day of the next administratively feasible month following the calculation of the new premium amount.

Section 3. Entities Allowed to Make Premium Payment.

(1) A monthly premium payment may be made by:

(a) A beneficiary; or

(b) Any third party on the beneficiary's behalf, except any MCO.

(2)(a) A third-party payment submitted pursuant to this section shall be used for a beneficiary's premium obligations only.

(b) Any payment in excess of the required premium obligation for the remainder of the beneficiary's benefit year shall be refunded to the source of the payment.

(3) A provider or a provider-related entity making a premium payment on a beneficiary's behalf shall have criteria for providing premium payment assistance that does not distinguish between beneficiaries based on whether or not they receive or will receive services from the contributing provider or class of providers.

(4) A provider shall not include the cost of a payment established pursuant to this administrative regulation in the cost of care for purposes of Medicare and Medicaid cost reporting.

(5) A payment made pursuant to this section shall not be included as part of a Medicaid shortfall or uncompensated care.

Section 4. Non-payment Penalties.

(1) A conditionally eligible beneficiary who fails to make the first premium payment within sixty (60) days from the date of the

first invoice shall be subject to the penalties established in this subsection.

(a) A beneficiary with a household income above 100 percent of the FPL shall:

1. Not be enrolled in Kentucky HEALTH; and

2. Reapply for Kentucky HEALTH coverage, if the beneficiary elects to attempt to reenroll.

(b) A beneficiary with a household income at or below 100 percent of the FPL shall be:

1. Enrolled in Kentucky HEALTH in a copay plan; and

2. Subject to the non-payment penalty provisions established in subsection (2)(b) of this section.

(2) A beneficiary who fails to make an ongoing premium payment within sixty (60) days from the date of the premium invoice or who voluntarily withdraws from Kentucky HEALTH to avoid making a premium payment or incurring debt as a result of non-payment shall be subject to the penalties established in this subsection.

(a) If the beneficiary's household income is above 100 percent of the FPL, the beneficiary shall:

1. Be disenrolled from Kentucky HEALTH;

2. Not be able to reenroll in Kentucky HEALTH for a period of six (6) months, unless the beneficiary completes all requirements for early re-entry as established in 895 KAR 1:020;

3. Receive a one-time balance deduction from the beneficiary's MyRewards account **of twenty-five (25) dollars** as established in 895 KAR 1:030; and

4. Have a suspension of the beneficiary's MyRewards account until the beneficiary is re-enrolled in Kentucky HEALTH, unless the beneficiary meets the requirements for re-entry or reactivation of MyRewards account as established in 895 KAR 1:030.

(b) A beneficiary with a household income at or below 100 percent of the FPL, in accordance with subsection(1)(b) of this section, shall:

1.a. Be enrolled in the copay plan; and

b. Make copays for all covered services equal to the copays established in the Kentucky Medicaid state plan in Title 907 KAR;

2. Receive a one-time balance deduction from the beneficiary's MyRewards account **of twenty-five (25) dollars** as established in 895 KAR 1:030; and

3. Have a suspension of the beneficiary's MyRewards account, until either of the following occurs:

a. The beneficiary completes the requirements for re-entry or reactivation of a MyRewards account as set forth at 895 KAR 1:030 to reactivate the beneficiary's MyRewards account prior to the expiration of the six (6) month penalty period, or

b. After the expiration of the six (6) month penalty period, the beneficiary makes one (1) premium payment to reactivate coverage in the premium plan.

(c) A beneficiary in a penalty period shall be permitted to end or avoid the non-payment penalty prior to the expiration of the six (6) month penalty period without completing the early re-entry requirements established in 895 KAR 1:020 by providing verification of any of the following:

1. The beneficiary was hospitalized, otherwise incapacitated, or has a protected disability, and, as a result, was unable to make a premium payment during the sixty (60) day payment period;

2. a. The beneficiary has a protected disability; and

b. The beneficiary requested but was not provided reasonable modifications needed to make a premium payment;

3.a. The beneficiary has a protected disability; and

b. There were no reasonable modifications that would have enabled the beneficiary to make a premium payment;

4. A member of the beneficiary's immediate family who was living in the home with the beneficiary who failed to make a premium payment:

a. Was institutionalized during the reporting period; or

b. Died during the reporting period;

5.a. A member of the beneficiary's immediate family who was living in the home with the beneficiary who failed to make a premium payment has a protected disability; and

b. Caretaking or other responsibilities related to the disability resulted in the beneficiary's inability to make the premium

payment;

6. The beneficiary either obtained or lost private insurance coverage during the reporting period;

7. The beneficiary was evicted from a home or experienced homelessness during the sixty (60) day payment period;

8. The beneficiary was a victim of domestic violence during the sixty (60) day payment period; or

9. The beneficiary was the victim of a declared disaster that occurred during the sixty (60) day payment period.

Section 5. Groups with Premium Payment as Optional.

(1) A beneficiary in the following eligibility groups shall have the option to make monthly premium payments to access a MyRewards account as established in 895 KAR 1:030:

(a) A beneficiary who is a former foster youth; or

(b) A beneficiary who is medically frail or temporarily vulnerable.

(2)(a) A beneficiary who, under this section or section 1 of this administrative regulation, has the option of making premium payments shall not be subject to

1. Disenrollment for non-payment; or

2. Copayments for services.

(b) A beneficiary who, under this section or Section 1 of this administrative regulation, has the option of making premium payments who fails to make an ongoing premium payment within sixty (60) days from the date of the premium invoice shall have the beneficiary's MyRewards account suspended for six (6) months, with the option to reactivate the MyRewards account prior to the expiration of the six (6) month penalty period by taking a re-entry course.

Section 6. Federal approval and federal financial participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at noon

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes premium payment requirements and processes to be followed by beneficiaries and MCOs participating in the Kentucky HEALTH program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to outline premium payment requirements and processes for beneficiaries and MCOs participating in the Kentucky HEALTH program pursuant to an approved federal 1115 waiver.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing premium payment requirements that will allow for full participation in the Kentucky HEALTH program by beneficiaries and MCOs pursuant to an approved federal 1115 waiver.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing clear premium payment requirements for beneficiaries and MCOs.

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

(a) How the amendment will change this existing administrative regulation: The Amended After Comments version of this administrative regulation contains the exact amount of the deduction from a MyRewards account for premium nonpayment.

(b) The necessity of the amendment to this administrative regulation: The Amended After Comments amendments are necessary to clarify the exact amount of the deduction from a MyRewards account for premium nonpayment.

(c) How the amendment conforms to the content of the authorizing statutes: 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 to qualify for federal Medicaid funds.

(d) How the amendment will assist in the effective administration of the statutes: The Amended After Comments amendments will assist in the effective administration of the statutes by allowing for the department to make changes in response to some of the comments received during the public comment process.

(3) List the type and number of beneficiaries, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Beneficiaries will need to follow the premium payment requirements and submit premium payments as outlined in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Beneficiaries will pay a varying premium payment based on income relative to the FPL.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Beneficiaries who meet premium payment requirements will be able to receive healthcare benefits via participation in the Kentucky HEALTH program as outlined in Title 895 KAR.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was applied to beneficiaries who make more than 100% FPL and less than 100% FPL in relation to a requirement to make a premium as a condition of eligibility. In

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addition, pregnant women are not required to make a premium payment. Former foster youth and individuals who are medically frail or otherwise temporarily vulnerable will have an option to make premium payments to access a MyRewards account.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438
2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation establishes a premium and potential co-pay requirement and other penalties for certain beneficiaries that fail to comply with the premium requirement.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

- (1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services
- (2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.
- (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
 - (c) How much will it cost to administer this program for the first year? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over \$2.2 billion dollars in state and federal funding over the five year waiver period.
 - (d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over \$2.2 billion dollars in state and federal funding over the five year waiver period.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations (Amended After Comments)

895 KAR 1:020. PATH requirement for the Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 U.S.C. 1315
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes the Partnering to Advance Training and Health (PATH) requirements for the Kentucky HEALTH program.

Section 1. Beneficiaries Required to Meet the PATH Requirement.

(1) A beneficiary shall complete the monthly PATH requirement if the beneficiary is:

- (a) At least nineteen (19) years of age and less than sixty-five (65) years of age;
- (b) Eligible under one (1) of the following Medicaid assistance categories:

1. ACA Expansion Adult;
2. Parent and Caretaker Relative; or
3. Transitional Medical Assistance; and

(c) Not exempt from the PATH requirement pursuant to Section 4 of this administrative regulation.

(2) A beneficiary required to meet the PATH requirement shall not receive the suspension required by Section 3 of this administrative regulation if a good cause exemption is granted. A good cause exemption shall be granted if:

- (a) The beneficiary:
 1. Has a protected disability; and
 2. Was unable to meet the PATH requirement for the month in which the good cause exemption is sought for reasons related to that disability;
- (b) The beneficiary:
 1. Has an immediate family member living in the beneficiary's home with a protected disability; and
 2. Was unable to meet the PATH requirement for the month in which the good cause exemption is sought for reasons related to the disability of that family member;
- (c) During the month in which the good cause exemption is sought, the beneficiary or an immediate family member who was living in the home with the beneficiary experienced:
 1. An inpatient hospitalization or a serious medical event involving treatment at a hospital; or
 2. A serious illness;
- (d) The beneficiary experienced the birth or death of a family member living with the beneficiary during the month in which the good cause exemption is sought;
- (e) The beneficiary experienced severe inclement weather, such as a snowstorm, an ice storm, a warned winter storm, or other warned weather event, which includes a declared disaster, during the month in which the good cause exemption is sought; or
- (f) During the month in which the good cause exemption is sought, the beneficiary experienced:
 1. A family emergency; or
 2. A life-changing event.

Section 2. PATH Requirement Timeframe, Qualifying Activities, and Deemed Compliance.

(1)(a) A beneficiary shall be given a three (3) month notice period before being subject to the PATH requirement if the beneficiary:

1. Was not required to meet the PATH requirement within the previous five (5) years; and

2. Does not qualify for an exemption established in Section 4 of this administrative regulation.

(b) A beneficiary shall be required to meet the PATH requirement effective on:

1. The first day of the month following enrollment in Kentucky HEALTH; or

2. The first day of the month following expiration of the three (3) month notice period required by paragraph (a) of this subsection.

(2) A beneficiary who is required to meet the PATH requirement shall be deemed to satisfy the PATH requirement with no additional PATH reporting obligations if the beneficiary:

(a)1. Is enrolled in the Supplemental Nutrition Assistance Program (SNAP); and

2. Meets, or is exempt from meeting, the requirements of the SNAP employment initiative;

(b)1. Is enrolled in Temporary Assistance for Needy Families (TANF); and

2. Meets, or is exempt from meeting, the requirements of the TANF employment initiative;

(c) Is enrolled in the Kentucky Medicaid Premium Assistance program; or

(d) Is employed full time.

(3) Except as provided by subsection (2) of this section, a beneficiary who is subject to the PATH requirement shall use the Web site www.citizenconnect.ky.gov to:

(a) Report and track community engagement activities;

(b) Document completion of a re-entry course; and

(c) Request an exemption pursuant to Section 1(2) or 4 of this administrative regulation.

Section 3. Failure to Meet PATH Requirement.

(1) In the month immediately following the month in which a beneficiary fails to meet the PATH requirement, the beneficiary shall have the opportunity to avoid a suspension from eligibility for Kentucky HEALTH for failing to comply with the PATH requirement by:

(a) Being current on required hours for the current month; and

(b) Either:

1. Making up all deficit PATH hours not completed in the prior month; or

2. Completing a re-entry course.

(2)(a) Except as provided by paragraph (b)(a) of this subsection, failure to comply with the PATH requirement shall result in a beneficiary receiving a suspension from the Kentucky HEALTH program. The suspension shall:

1. Not end until the beneficiary completes the requirements in paragraph (b) of this subsection or until the beneficiary successfully recertifies for Kentucky HEALTH eligibility for the next benefit year; and

2. Begin on the first day of the second month immediately following the month in which the beneficiary failed to meet the PATH requirement.

(b) A beneficiary shall be able to reactivate eligibility on the first day of the month following completion of either:

1. Eighty (80) hours of community engagement activities within a thirty (30) day time period; or

2. A re-entry course.

(3) A beneficiary who received a suspension from Kentucky HEALTH benefits for failure to comply with the PATH requirement over the twelve (12) month period between benefit year certification dates shall:

(a) Be terminated from Kentucky HEALTH; and

(b) Submit a new application to receive Kentucky HEALTH benefits, following a delay of no less than one (1) month.

Section 4. PATH Exempt Groups.

(1) A beneficiary shall be exempt from the PATH requirement if the beneficiary is:

(a) A former foster youth;

(b) A pregnant woman;

(c) Medically frail or temporarily vulnerable;

(d) A full-time student;

(e) Diagnosed with a serious chronic medical condition, validated by a medical professional pursuant to department guidance and review that would prevent the beneficiary from complying; or

(f) A primary caregiver of:

1. A minor dependent child under age nineteen (19) or

2. A dependent adult who is disabled.

(2) The exemption authorized by subsection (1)(f) of this section shall be limited to one (1) exemption per household.

Section 5. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at noon

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the PATH requirement, establishes penalties for failure to comply with the PATH requirement, and clarifies which beneficiaries are exempt from the PATH requirement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and implement the requirements and processes for beneficiaries subject to the PATH requirement that will allow for those beneficiaries to fully participate in the Kentucky HEALTH program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing requirements and processes relating to the PATH requirement that will allow for full participation in the Kentucky HEALTH program by a beneficiary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing clear PATH requirements for a beneficiary to follow in order to fully participate in the Kentucky HEALTH program.

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

(a) How the amendment will change this existing administrative regulation: The Amended After Comments version will change this administrative regulation by making technical amendments identified through the public comment process

(b) The necessity of the amendment to this administrative regulation: The Amended After Comments amendments are necessary for the department to make changes in response to some of the comments received during the public comment process.

(c) How the amendment conforms to the content of the authorizing statutes: 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 to qualify for federal Medicaid funds.

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(d) How the amendment will assist in the effective administration of the statutes: The Amended After Comments amendments will assist in the effective administration of the statutes by allowing for the department to make changes in response to some of the comments received during the public comment process.

(3) List the type and number of a beneficiaries, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Beneficiaries will need to meet the PATH requirement and submit information as outlined in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities should experience no additional costs as a result of compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Beneficiaries who meet the PATH requirement will be able to receive healthcare benefits via participation in the Kentucky HEALTH program as outlined in Title 895 KAR.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was applied in that former foster youth, pregnant women, individuals who are medically frail or temporarily vulnerable, full-time students, beneficiaries diagnosed with an acute medical condition that prevents compliance, or primary caregivers of a minor dependent child or a dependent adult are exempted from the PATH requirement.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is

intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation establishes a PATH and potential co-pay requirement for certain beneficiaries that fail to comply with the PATH requirement. This administrative additionally establishes a potential suspension if a PATH requirement is not met.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

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

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

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

(c) How much will it cost to administer this program for the first year? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over \$2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over \$2.2 billion dollars in state and federal funding over the five year waiver period.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amended After Comments)

895 KAR 1:030. Establishment and use of the MyRewards program.

RELATES TO: KRS 205.520, 42 U.S.C. 1315, 42 C.F.R. 489.24

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services

has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes the MyRewards account requirements for the Kentucky HEALTH program.

Section 1. Purpose of MyRewards Account.

(1) The MyRewards account shall be a Kentucky HEALTH incentive in which a beneficiary with an active account may use it to access items and services pursuant to subsection (2) of this section that are not covered in the beneficiary's benefit package, as established in 895 KAR 1:035.

(2) Except as provided by subsections (3) and (4) of this section, items and services available through the MyRewards account shall include:

- (a) Vision services; and
 - (b) Dental services.
- (3) The department shall:

(a)[1-] Review additional items and services for availability to users of a MyRewards account; and

(b)[2-] Prominently post any approved items or services to its Web site.

(4) Services available in subsection (2) of this section through the beneficiary's MyRewards account shall be limited in scope to services that would be covered under the Kentucky Medicaid state plan if the beneficiary was not receiving the Kentucky HEALTH alternative benefit plan benefit package.

Section 2. Requirements for Maintaining an Active MyRewards Account.

(1)(a) To maintain an active MyRewards account, a beneficiary shall make monthly premium payments.

(b) The requirement to make a monthly premium payment to maintain an active MyRewards account shall include each beneficiary who is:

- 1. A former foster youth;
- 2. An individual determined to be medically frail or temporarily vulnerable; or
- 3. A beneficiary who has met the five (5) percent cost sharing limit established in 895 KAR 1:015.

(c) The requirement to make a monthly premium payment to maintain an active MyRewards account shall not apply to a beneficiary who is a pregnant woman.

(2) Only a beneficiary with an active, non-suspended MyRewards account shall be able to utilize the account to access services established in Section 1 of this administrative regulation.

Section 3. Accruals Within a MyRewards account.

(1)(a) A MyRewards account shall not be subject to any annual limit.

(b) A beneficiary shall continuously accrue balances for completion of activities listed in subsection (2) of this section if:

- 1. The account remains active; and
- 2. The beneficiary is not otherwise suspended or disenrolled.

(2) A beneficiary shall have the opportunity to accrue balances in the MyRewards account in the following circumstances:

- (a) If the beneficiary completes a healthy behavior activity;
- (b) If an individual in the household accesses preventive services, except that preventive services for children shall be accrued differently for the child and the household;
- (c) At the end of a benefit year in which a beneficiary did not make any non-emergent visits to an emergency department;
- (d) If the beneficiary completes and reports department approved community engagement activities in excess of the hours required of the beneficiary pursuant to the PATH requirement established in 895 KAR 1:020; or

(e) If the beneficiary completes a department approved education course.

(3) A beneficiary who has a suspended MyRewards account shall accrue balances for completion of an activity listed in subsection (2) of this section if the MyRewards account is unsuspended within sixty (60) calendar days of completing the approved activity.

(4) A beneficiary may accrue funds in the MyRewards account through deductible account rollover as established in 895 KAR 1:040.

Section 4. Deductions.

(1) A beneficiary with an active MyRewards account shall have the account balance reduced, up to a maximum negative balance of \$150 for:

(a)[(1)] Failure to make a required premium payment within sixty (60) days of the date of invoice, resulting in a non-payment penalty as established in 895 KAR 1:015; or

(b)[(2)] A non-emergent use of the emergency department. Non-emergent use of the emergency department shall exist if:

1. [(a)] The beneficiary did not need emergency services;

2. [(b)] A medical screening conducted pursuant to 42 C.F.R. [CFR] 489.24 was completed by the emergency department; [;] and

3. [(c)] The beneficiary failed to contact the nurse hotline operated by the MCO with which the beneficiary is enrolled within twenty-four (24) hours prior to utilizing the emergency department.

(2)(a) A MyRewards account deduction of twenty-five (25) dollars shall occur for each incident of premium non-payment.

(b) A MyRewards account deduction shall be assessed for non-emergent use of an emergency department as follows:

1. First occurrence, twenty (20) dollars;

2. Second occurrence, fifty (50) dollars; and

3. Third and each subsequent occurrence, seventy-five (75) dollars.

Section 5. Payout of Account.

(1) A former beneficiary who disenrolls from Kentucky HEALTH by obtaining commercial insurance and who remains commercially insured for a minimum of eighteen (18) months may apply to receive a payout of up to half of that beneficiary's remaining MyRewards account balance up to \$500, subject to the following requirements:

(a) The former beneficiary shall provide attestation of commercial insurance; and

(b) The former beneficiary shall be without any type of Medicaid assistance in the commonwealth for at least eighteen (18) consecutive months following the date of disenrollment from Kentucky HEALTH.

(2) A MyRewards account shall be closed after the payout requested by a former beneficiary under this section.

Section 6. Establishment of Early Reentry or Early Reactivation Opportunity.

(1) A beneficiary who is subject to a six (6) month penalty period under 895 KAR 1:010 or 895 KAR 1:015 shall be given the opportunity to re-enter Kentucky HEALTH or reactivate the beneficiary's MyRewards account, as applicable, prior to the expiration of the six (6) month penalty period.

(2) The opportunity to re-enter Kentucky HEALTH or reactivate the beneficiary's MyRewards account, as applicable, prior to the expiration of the six (6) month penalty period shall only be available to an individual one (1) time per benefit year per penalty reason type.

Section 7. Requirements for Re-entry. A beneficiary seeking to re-enter Kentucky HEALTH or reactivate the beneficiary's MyRewards account set forth in this administrative regulation, as applicable, prior to the expiration of the six (6)-month penalty period shall:

(1) Complete a re-entry course;

(2) Pay any premium payment required for the first month of coverage to restart benefits; and

(3) Pay any past due premiums owed for each month in which the individual received healthcare coverage through Kentucky HEALTH during the sixty (60) day payment period prior to the effective date of the applicable six (6) month penalty period.

Section 8. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at noon

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the MyRewards account requirements, including for accruals, deductions, account payout, early re-entry and re-activation following a suspension, and general account re-entry and reactivation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and implement the MyRewards program and account for individual beneficiaries that are participating in the Kentucky HEALTH program or who otherwise elect to utilize a MyRewards program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing requirements and processes relating to the MyRewards program, which will enhance and allow for full participation in the Kentucky HEALTH program by individual beneficiaries and those who otherwise elect to utilize a MyRewards program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the MyRewards program and its requirements and processes, which will allow for individual beneficiaries and those who otherwise elect to participate in the MyRewards program to fully participate in the Kentucky HEALTH program pursuant to an approved federal 1115 waiver.

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

(a) How the amendment will change this existing administrative regulation: The Amended After Comments version of this administrative regulation contains the exact amount of deductions for premium nonpayment or non-emergent use of the emergency department.

(b) The necessity of the amendment to this administrative regulation: The Amended After Comments amendments are necessary to clarify the exact amount of the deduction from a MyRewards account for premium nonpayment or non-emergent use of the emergency department.

(c) How the amendment conforms to the content of the authorizing statutes: 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 to qualify for federal Medicaid funds.

(d) How the amendment will assist in the effective administration of the statutes: The Amended After Comments amendments will assist in the effective administration of the statutes by allowing for the department to make changes in

response to some of the comments received during the public comment process.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Beneficiaries will need to comply with any relevant premium payment, PATH requirement, or any cost sharing limits to participate in the MyRewards program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Beneficiaries should experience no additional costs as a result of compliance with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, beneficiaries will be able to use a MyRewards account for purchase of items and services such as vision services, dental services, and additional state approved services. Qualifying beneficiaries may also eventually receive a MyRewards account payout if certain conditions are met.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was only applied in the sense that a beneficiary who is a pregnant woman is not required to make a monthly premium payment to maintain an active MyRewards account.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal

mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

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

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

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

(c) How much will it cost to administer this program for the first year? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over \$2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over \$2.2 billion dollars in state and federal funding over the five year waiver period.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amended After Comments)

895 KAR 1:050. Enrollment and reimbursement for providers in the Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 U.S.C. 1315

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration

waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes the enrollment and reimbursement requirements for providers that provide covered and non-covered services to beneficiaries participating in the Kentucky HEALTH program.

Section 1. Provider Enrollment Requirements.

(1) A provider shall be automatically eligible for Kentucky HEALTH provider participation if the provider is currently enrolled as a Medicaid provider~~[or as a provider with an MCO]~~ to provide Medicaid services to Kentucky Medicaid recipients.

(2) ~~A[To enroll as a provider under Title 895 KAR, the]~~ provider shall comply with all Medicaid enrollment procedures and requirements established in Title 907 KAR.

Section 2. Provider Reimbursement.

(1)~~[A provider shall be reimbursed at the reimbursement rate established by the MCO for the MCO covered services.~~

(2)] A provider shall be reimbursed for services covered by 895 KAR 1:030 Section 1, through the beneficiary's MyRewards account on a fee-for-service basis. A claim for services covered by the MyRewards account shall not be submitted to the beneficiary's MCO.

(2) [(3)] A provider shall not receive reimbursement under title 895 KAR for services provided to an individual if:

(a) The individual is not eligible for participation in the Kentucky HEALTH program pursuant to 895 KAR 1:010; or

(b) The individual is suspended or otherwise not enrolled in Kentucky HEALTH on the date the service is provided.

Section 3. Non-covered Services Reimbursed via MyRewards Account.

(1) A provider who seeks to receive reimbursement for an otherwise non-covered service that is reimbursable via a beneficiary's MyRewards account established by 895 KAR 1:030 shall be at risk for the cost of the service provided, if:

(a)1. The provider fails to place a hold on funds in the account; and

2. Funds are not available at the time services are billed;

(b) The beneficiary's MyRewards account was inactive or suspended at the time the service was rendered; or

(c) The hold on the funds placed by the provider subsequently expired due to the provider's failure to submit a claim within thirty (30) days of the date of service.

(2) A provider may bill a beneficiary with an inactive or suspended MyRewards account for services not covered by the beneficiary's benefit plan as established in 895 KAR 1:030 or 895 KAR 1:025 if the services are for:

(a) Vision; or

(b) Dental.

Section 4. MCO Payment.

(1)(a) Except as provided in paragraph (b) of this subsection, a provider shall:

1. Accept MCO reimbursement as payment in full for services rendered; and

2. Not collect from a beneficiary any portion of the provider's charge for a covered service that is not reimbursed by the MCO.

(b) A provider shall collect the copays required by the Kentucky Medicaid state plan, for beneficiaries in the copay plan.

(2) A provider may seek beneficiary reimbursement for non-covered services, including services received by the beneficiary during a suspension or other penalty period, if the following four (4) conditions are met:

(a) The provider has an established policy for billing all patients for services not covered by a third party and does not bill only Medicaid or Kentucky HEALTH patients;

(b) The patient is advised prior to receiving a non-covered service that Kentucky HEALTH will not pay for the service;

(c) The patient agrees to be personally responsible for the payment; and

(d) The agreement is made in writing between the provider and the patient, detailing both the service and the amount to be paid by the patient.

Section 5. Third party liability. A provider shall comply with KRS 205.622.

Section 6. Use of Electronic Signatures.

(1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which a beneficiary has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each beneficiary using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the beneficiary has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 7. Auditing Authority. The department or MCO in which a beneficiary is enrolled shall have the authority to audit any:

(1) Claim;

(2) Health record; or

(3) Documentation associated with any claim or health record, including any activity related to a beneficiary's use of a MyRewards account.

Section 8. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at noon

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the enrollment and reimbursement requirements for providers that provide covered and non-covered services to beneficiaries participating in the Kentucky HEALTH program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for providers that will provide covered and non-covered services to the beneficiaries participating in the Kentucky HEALTH program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms

to the content of the authorizing statutes by establishing the requirements and processes by which providers will be able to provide covered and non-covered services to Kentucky HEALTH beneficiaries.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing processes and requirements by which providers will be able to provide covered and non-covered services to Kentucky HEALTH beneficiaries.

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

(a) How the amendment will change this existing administrative regulation: The Amended After Comments version of the administrative regulation clarify the enrollment and credentialing process, and remove a subsection that required provider reimbursement at the MCO established rate.

(b) The necessity of the amendment to this administrative regulation: The Amended After Comments amendments are necessary to clarify provider enrollment, and to allow for provider and MCO rate negotiations.

(c) How the amendment conforms to the content of the authorizing statutes: 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 to qualify for federal Medicaid funds.

(d) How the amendment will assist in the effective administration of the statutes: The Amended After Comments amendments will assist in the effective administration of the statutes by allowing for the department to make changes in response to some of the comments received during the public comment process.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers will need to follow existing enrollment procedures and requirements in Title 907 KAR. For non-covered services, a provider may bill a MyRewards account via established procedures. Additional procedures outlining the step that must occur before a provider can establish additional beneficiary liability shall also be followed.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, providers will attain the ability to receive reimbursement for covered and certain non-covered services provided to beneficiaries in the Kentucky HEALTH program.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund

appropriations are utilized to fund this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the requirements established herein apply to all regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560 KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Different responsibilities established include establishing how providers accept payment for non-covered services by a MyRewards account.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

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

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

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

(c) How much will it cost to administer this program for the first year? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over \$2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky

HEALTH is projected to save taxpayers over \$2.2 billion dollars in state and federal funding over the five year waiver period.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Certificate of Need (Amended After Comments)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2018 Update to the 2017-2019 State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "2018 Update to the 2017-2019 State Health Plan", October 15, 2018[November 2017], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, Division of Certificate of Need[Health Policy], 275 East Main Street, 5E-A[4WE], Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVE DAVIS, Inspector General

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at noon

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Molly Lewis, 502-564-9592, molly.lewis@ky.gov; or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2018 Update to the 2017-2019 State Health Plan, which shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by incorporating by reference the 2018 Update to the 2017-2019 State Health Plan,

which shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a. KRS 216B.015(28) requires that the State Health Plan be prepared triennially and updated annually.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The State Health Plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

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

(a) How the amendment will change this existing administrative regulation: The amendment incorporates by reference the 2018 Update to the 2017-2019 State Health Plan. Changes in the Amended After Comments version include:

The identifying information on the front page was changed to reflect the new version's date;

The Table of Contents was changed to reflect new page numbers as a result of the other changes and to align titles;

Revise Acute Care Bed Review Criteria to delete Review Criterion 4, which allowed existing licensed hospitals verified as trauma centers and operating beds pursuant to an emergency CON to apply for a CON to provide the emergency services on a permanent basis and be found consistent with the State Health Plan;

Revise Special Care Neonatal Bed Definitions and Review Criteria to clarify that Advanced Level II is not a recognized provider type;

Revise Special Care Neonatal Bed Review Criteria to allow hospitals with Level II neonatal beds operating at functional capacity for a year to apply to establish up to eight (8) Level II beds and be found consistent with the State Health Plan;

Revise Special Care Neonatal Bed Review Criteria to clarify the intent to provide hospitals with existing acute care bed capacity the flexibility to convert acute care beds to meet the needs of complex neonatal beds. (This clarification distinguishes this existing criterion ("through conversion") from the new criterion, which addressed establishing Level II special care neonatal beds);

Revise Psychiatric Bed Review Criteria to limit review criterion addressing an existing psychiatric hospital's conversion of existing beds from beds of any licensure type to tuberculosis beds;

Revise Psychiatric Services for Children and Adolescents Review Criteria to require the application for new psychiatric beds to include an inventory of all facilities with children or adolescent psychiatric beds in the ADD and the number of beds, rather than an inventory of current services in the ADD (which did not specify the type of services so was overly broad)

Revise Psychiatric Residential Treatment Facility Review Criteria to delete the 145 bed cap for Level II PRTFs;

Revise Psychiatric Residential Treatment Facility Review Criteria to delete criteria allowing psychiatric hospitals applying to use converted existing bed capacity to a Level II PRTF to be consistent with State Health Plan;

Revise Long Term Care Review Criteria Definitions and Review Criteria to delete references and application to Specialized Long Term Care programs;

Revise Long Term Care Review Criteria to delete review criteria allowing existing acute care hospitals qualified to establish post-acute nursing facilities limited exclusively to specific patient population and model of care notwithstanding the need calculation for the county;

Revise Long Term Care Review Criteria to add review criteria specifically addressing existing facilities operating pursuant to emergency certificate of need authorization to apply for permanent authorization to provide services restricted to the limited purpose of alleviating the emergency specific to ventilator dependent patients that require long-term ventilator services and be consistent with the State Health Plan notwithstanding the need calculation for the county;

Revise Home Health Agency Definition to reflect statutory

definition in KRS 216.935(2);

Revise Home Health Agency Long-Term Care Review Criteria to limit review criteria allowing existing hospitals and nursing facilities experiencing challenges with patient discharge to establish a home health agency limited to patients discharged from that facility and be consistent with the State Health Plan notwithstanding the need calculation for the county;

Revise Cardiac Catheterization Services Review Criteria for establishing a comprehensive catheterization program by further defining qualifications for the applicant hospital and its relationship to a Kentucky academic medical center;

Revise Cardiac Catheterization Services Review Criteria to allow mobile catheterization services to convert to fixed site catheterization services;

Delete review criteria for Magnetic Resonance Imaging from the State Health Plan;

Revise Positron Emission Tomography Equipment Review Criteria to add review criterion to allow the establishment and expansion of mobile services with arrangements and support of a hospital in the service area;

Revise Ambulance Services Definition and Review Criteria to revise the definition section, cross-reference the applicable statutory and regulatory provisions, clarify geographic service area requirements for applicants, and delete the review criterion addressing application components and review prioritization for Class II or Class III services;

Revise the Acute Care Hospital Review Criterion 2.e. to change "or" to "and";

Revise the Nursing Facility Beds Definition to remove a reference to Plan provisions for continuing care retirement communities; and

Additional nonsubstantive changes were made throughout the State Health Plan to comply with the drafting and formatting requirements of KRS Chapter 13A. These nonsubstantive changes include the following types of changes:

Correcting a Web site address;

Changing "recent" to "recently" in the phrase "most recent published";

Changing "which" to "that";

Changing "its" to "the applicant's";

Correcting a cross-reference;

Changing "applications" to "an application" and other singular-plural changes;

Changing "outlined" to "established";

Dividing a compound sentence into two sentences for clarity;

Defining an acronym; and

Adjusting punctuation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the State Health Plan, which is used to determine whether certificate of need applications are consistent with the State Health Plan. Additionally, the Amended After Comments changes were necessary to respond to comments received during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by incorporating by reference the 2018 Update to the 2017-2019 State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the 2018 Update to the 2017-2019 State Health Plan, which will be used to determine whether certificate of need applications are consistent with the State Health Plan.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certificate of need applicants and affected parties requesting hearings. Annually, approximately 115 certificate of need applications are filed.

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

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: Entities that submit certificate of need applications will be subject to the criteria set forth in the 2018 Update to the 2017-2019 State Health Plan.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that submit certificate of need applications will be subject to the revised criteria set forth in the 2018 Update to the 2017-2019 State Health Plan.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new funding will be needed to implement the provision of the amended administrative regulation.

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

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

(9) TIERING: Is tiering applied? Yes, tiering is used as there are different CON review criteria for each licensure category addressed in the State Health Plan.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General, and may impact any government owned or controlled health care facilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amended After Comments)

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

RELATES TO: KRS 194A.005(1), 211.180(1), 211.842-211.852, 211.990(4), 10 C.F.R. Part 61, 40 C.F.R. 261, 42 U.S.C. 2011 - 2297g-4[, Pub.L. 96-573, Pres. EO 11988]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.844(1), [211.846, 211.852]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844(1) requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes procedures, criteria, terms, and conditions upon which the cabinet issues licenses for the land disposal of radioactive wastes received from other persons.

Section 1. Definitions.

(1) "Agreement state" means a state that the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state. "Active maintenance" means a significant activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in Section 18 and Section 19 of this administrative regulation are met. This term includes ongoing activities, such as the pumping and treatment of water from a disposal unit, or one (1) time measures, such as replacement of a disposal unit cover. This term does not include custodial activities, such as repair of fencing, repair or replacement of monitoring equipment, revegetation, minor additions to soil cover, minor repair of disposal unit covers, and general disposal site upkeep such as mowing grass.

(2) "Buffer zone" means a portion of the disposal site that is controlled by the licensee and that lies under the disposal units and between the disposal units and the boundary of the site.

(3) "Chelating agent" means:

(a) Amine polycarboxylic acids, such as EDTA, DTPA, or hydroxy-carboxylic acids; and (b) Polycarboxylic acids, such as citric acid, carboxylic acid, or gluconic acid.

(4) "Commencement of construction" means clearing of land, excavation, or other substantial action that would adversely affect the environment of a land disposal facility. This term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.

(5) "Custodial agency" means an agency of the government designated to act on behalf of the government owner of the disposal site.

(6) "Disposal" means the isolation of radioactive wastes from the biosphere inhabited by man and his food chains by emplacement in a land disposal facility.

(7) "Disposal site" means that portion of a land disposal facility that is used for disposal of waste. It consists of disposal units and a buffer zone.

(8) "Disposal unit" means a discrete portion of the disposal site

into which waste is placed for disposal. For near-surface disposal the unit is usually a trench.

(9) "Engineered barrier" means a manmade structure or device that is intended to improve the land disposal facility's ability to meet the performance objectives in this administrative regulation.

(10) "Explosive material" means a chemical compound, mixture, or device that produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

(11) "Hazardous waste" means those wastes designated as hazardous by U.S. Environmental Protection Agency regulations in 40 C.F.R. Part 261.

(12) "Hydrogeologic unit" means a soil or rock unit or zone that by virtue of its porosity or permeability, or lack thereof, has a distinct influence on the storage or movement of ground water.

(13) "Inadvertent intruder" means a person who might occupy the disposal site after closure and engage in normal activities, such as agriculture, dwelling construction,

or other pursuits in which an individual might be unknowingly exposed to radiation from the waste.

(14) "Intruder barrier" means: (a) A sufficient depth of cover over the waste that inhibits contact with waste and helps to ensure that radiation exposures to an inadvertent intruder shall meet the performance objectives set forth in this administrative regulation; or

(b) Engineered structures that provide equivalent protection to the inadvertent intruder.

(15) "Land disposal facility" means the land, buildings, or equipment intended to be used for the disposal of radioactive wastes. A "geologic repository" as defined by C.F.R. Parts 60 or 63 is not considered a land disposal facility.

(16) "Monitoring" means observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.

(17) "Near-surface disposal facility" means a land disposal facility in which radioactive waste is disposed of within approximately the upper thirty (30) meters of the earth's surface.

(18) "Pyrophoric liquid" means a liquid that ignites spontaneously in dry or moist air at or below 130 degrees Fahrenheit (fifty-four and five-tenths (54.5) degrees Centigrade). A pyrophoric solid is a solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily and if ignited burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

(19) "Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

(20) "Stability" means structural stability.

(21) "Surveillance" means monitoring and observation of the disposal site for purposes of visual detection of need for maintenance, custodial care, evidence of intrusion, and compliance with other license and regulatory requirements.

(22) "Waste" means those low-level radioactive wastes that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as in the Low-level Radioactive Waste Policy Act, Pub.L. 96-573, that is, radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in Section 11e.(2) of the Atomic Energy Act, 42 U.S.C. 2011-2297g-4 (uranium or thorium tailings and waste)].

Section 2. Applicability. This administrative regulation shall apply to a licensee. Except as established in subsections (1) through (4) of this section, the licensee shall comply with 10 C.F.R. Part 61.

(1) The licensee shall not be subject to:

(a) 10 C.F.R. 61.4;

(b) 10 C.F.R. 61.5;

(c) 10 C.F.R. 61.8;

(d) 10 C.F.R. 61.16;

(e) 10 C.F.R. 61.20;

(f) 10 C.F.R. 61.23 (i) and (j);

(g) 10 C.F.R. 61.70;

(h) 10 C.F.R. 61.71;

(i) 10 C.F.R. 61.72;

(j) 10 C.F.R. 61.73;

(k) 10 C.F.R. 61.83; or

(l) 10 C.F.R. 61.84.

(2) Each application for a specific license shall be filed pursuant to 902 KAR 100:040.

(3) Reference to the NRC, the Commission, or an agreement state shall be deemed to reference the ["]Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch, the NRC or an agreement state.["]shall be used in lieu of federal references to the "Commission" and the "NRC."

(4) The report required by 10 C.F.R. 61.80(h) and (i) shall be directed to the manager, Radiation Health Branch, at:

(a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(b) (502) 564-1492: Facsimile;

(c) (502) 564-3700: Telephone, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(d) (800) 255-2587: Telephone, for hours except those established in paragraph (c) of this subsection. [person prescribing land disposal that involves disposal in the uppermost portion of the earth, approximately thirty (30) meters, of radioactive waste received from another person except:

(1) Disposal of "by-product material" as defined by 902 KAR 100:040 in quantities greater than 10,000 kilograms and containing more than five (5) millicuries of radium-226; or

(2) Disposal of licensed material as provided for in 902 KAR 100:021.

Section 3. License Required. (1) A person shall not receive, possess, or dispose of waste received from another person at a land disposal facility unless authorized by a license issued by the cabinet as provided by this administrative regulation and 902 KAR 100:021.

(2) Each person shall file an application with the cabinet as provided by 902 KAR 100:040, Section 4, and obtain a license as provided in this administrative regulation before commencing construction of a land disposal facility. Failure to comply with this requirement shall be grounds for denial of a license.

Section 4. Content of Application. In addition to the requirements of set forth in 902 KAR 100:040, Section 5, an application to receive from others, possess, or dispose of wastes shall consist of general information, specific technical information, institutional information, and financial information as set forth in Sections 5 through 9 of this administrative regulation.

Section 5. General Information. The general information shall include each of the following:

(1) Identity of the applicant including:

(a) The full name, address, telephone number, and description of the business or occupation of the applicant;

(b) If the applicant is a partnership, the name and address of each partner and the principal location where the partnership does business;

(c) If the applicant is a corporation or an unincorporated association, the state where it is incorporated or organized and the principal location where it does business and the names and addresses of its directors and principal officers; and

(d) If the applicant is acting as an agent or representative of another person in filing the application, all information required by this subsection shall be supplied with respect to the other person.

(2) Qualifications of the applicant.

(a) The organizational structure of the applicant, both off-site and on-site, including a description of lines of authority and assignments of responsibilities, whether in the form of administrative directives, contract provisions, or otherwise;

(b) The technical qualifications, including training and

experience, of the applicant and members of the applicant's staff to engage in the proposed activities. Minimum training and experience requirements for personnel filling key positions described in paragraph (a) of this subsection shall be provided;

(c) A description of the applicant's personnel training program; and

(d) The plan to maintain an adequate complement of trained personnel to carry out waste receipt, handling, and disposal operations in a safe manner.

(3) A description of:

(a) The location of the proposed disposal site;

(b) The general character of the proposed activities;

(c) The types and quantities of radioactive waste to be received, possessed, or disposed of;

(d) Plans for use of the land disposal facility for purposes other than disposal of radioactive wastes; and

(e) The proposed facilities and equipment.

(4) Proposed schedules for construction, receipt of waste, and first emplacement of waste at the proposed land disposal facility.

Section 6. Specific Technical Information. The specific technical information shall include the following information needed for demonstration that the performance objectives and the applicable technical requirements of this administrative regulation shall be met:

(1) A description of the natural and demographic disposal site characteristics as determined by disposal site selection and characterization activities. The description shall include geologic, geotechnical, hydrologic, meteorologic, climatologic, and biotic features of the disposal site and vicinity;

(2) A description of the design features of the land disposal facility and the disposal units. For near-surface disposal, the description shall include those design features related to:

(a) Infiltration of water;

(b) Integrity of covers for disposal units;

(c) Structural stability of backfill, wastes, and covers;

(d) Contact of wastes with standing water;

(e) Disposal site drainage;

(f) Disposal site closure and stabilization;

(g) Elimination to the extent practicable of long-term disposal site maintenance;

(h) Inadvertent intrusion; occupational exposures;

(i) Disposal site monitoring; and

(j) Adequacy of the size of the buffer zone for monitoring and potential mitigative measures;

(3) A description of the principal design criteria and their relationship to the performance objectives;

(4) A description of the design basis natural events or phenomena and their relationship to the principal design criteria;

(5) A description of codes and standards that the applicant has applied to the design and that will apply to construction of the land disposal facilities;

(6) A description of the construction and operation of the land disposal facility. The description shall include, at a minimum, the:

(a) Methods of construction of disposal units;

(b) Waste emplacement;

(c) Procedures for and areas of waste segregation;

(d) Types of intruder barriers;

(e) On-site traffic and drainage systems;

(f) Survey control program;

(g) Methods and areas of waste storage; and

(h) Methods to control surface water and ground water access to the wastes. The description shall also include the methods to be employed in the handling and disposal of wastes containing chelating agents or other nonradiological substances that might affect meeting the performance objectives of this administrative regulation;

(7) A description of the disposal site closure plan, including those design features that are intended to facilitate disposal site closure and to eliminate the need for ongoing active maintenance;

(8) An identification of the known natural resources at the disposal site whose exploitation could result in inadvertent intrusion into the low-level wastes after removal of active institutional

control;

(9) A description of the kind, amount, classification, and specifications of the radioactive material proposed to be received, possessed, or disposed of at the land disposal facility;

(10) A description of the quality control program for the determination of natural disposal site characteristics and for quality control during the design, construction, operation, and closure of the land disposal facility and the receipt, handling, and emplacement of waste. Audits and managerial controls shall be included;

(11) A description of the radiation safety program for control and monitoring of radioactive effluents to ensure compliance with the performance objective in Section 18 of this administrative regulation and occupational radiation exposure to ensure compliance with the requirements of 902 KAR 100:020 and to control contamination of personnel, vehicles, equipment, buildings, and the disposal site. Both routine operations and accidents shall be addressed. The program description shall include procedures, instrumentation, facilities, and equipment;

(12) A description of the environmental monitoring program to provide data to evaluate potential health and environmental impacts and the plan for taking corrective measures if migration of radionuclides is indicated; and

(13) A description of the administrative procedures that the applicant shall apply to control activities at the land disposal facility.

Section 7. Technical Analyses. The specific technical information shall also include the following analyses needed to demonstrate that the performance objectives of these administrative regulations shall be met:

(1) Pathways analyzed in demonstrating protection of the general population from releases of radioactivity shall include air, soil, ground water, surface water, plant uptake, and exhumation by burrowing animals. The analyses shall clearly:

(a) Identify and differentiate between the roles performed by the natural disposal site characteristics and design features in isolating and segregating the wastes; and

(b) Demonstrate that there is reasonable assurance that the exposures to humans from the release of radioactivity shall not exceed the limits set forth in Section 18 of this administrative regulation;

(2) Analyses of the protection of individuals from inadvertent intrusion shall include demonstration that there is reasonable assurance the waste classification and segregation requirements shall be met and that adequate barriers to inadvertent intrusion shall be provided;

(3) Analyses of the protection of individuals during operations shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage, or disposal of waste. The analyses shall provide reasonable assurance that exposures shall be controlled to meet the requirements of 902 KAR 100:020; and

(4) Analyses of the long-term stability of the disposal site and the need for ongoing active maintenance after closure shall be based upon analyses of active natural processes such as erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal areas and adjacent soils, and surface drainage of the disposal site. The analyses shall provide reasonable assurance that there shall not be a need for ongoing active maintenance of the disposal site following closure.

Section 8. Institutional Information. The institutional information submitted by the applicant shall include:

(1) A certification by the Commonwealth of Kentucky, or federal agency that owns the disposal site, that the Commonwealth of Kentucky or federal agency is prepared to accept transfer of the license if the provisions of Section 15 of this administrative regulation are met, and shall assume responsibility for custodial care after site closure and postclosure observation and maintenance; and

(2) If the proposed disposal site is on land not owned by the Commonwealth of Kentucky or federal government, the applicant shall submit evidence that arrangements have been made for

assumption of ownership in fee by the Commonwealth of Kentucky or federal agency before the cabinet issues a license.

Section 9. Financial Information. The financial information shall be sufficient to demonstrate that the financial qualifications of the applicant are adequate to carry out the activities for which the license is sought and meet other financial assurance requirements of this administrative regulation.

Section 10. Standards for Issuance of a License. A license for the receipt, possession, or disposal of waste containing or contaminated with radioactive material shall be issued by the cabinet upon finding that:

(1) The issuance of the license shall not constitute an unreasonable risk to the health and safety of the public;

(2) The applicant is qualified by reason of training and experience to carry out the disposal operations requested in a manner that protects health and minimizes danger to life and property;

(3) The applicant's proposed disposal site; disposal design; land disposal facility operations; including equipment, facilities, procedures, disposal site closure, and postclosure institutional care are adequate to protect the public health and safety in that they provide reasonable assurance that the general population shall be protected from releases of radioactivity as specified in the performance objective in Section 18 of this administrative regulation;

(4) The applicant's proposed disposal site; disposal site design; land disposal facility operations; including equipment, facilities, procedures, disposal site closure, and postclosure institutional control are adequate to protect the public health and safety in that they shall provide reasonable assurance that individual inadvertent intruders are protected in accordance with the performance objective in Section 19 of this administrative regulation;

(5) The applicant's proposed disposal facility operations, including equipment, facilities, and procedures, are adequate to protect the public health and safety in that they shall provide reasonable assurance that the standards for radiation protection set out in 902 KAR 100.019 shall be met;

(6) The applicant's proposed disposal site, disposal site design, land disposal facility operations, disposal site closure, and postclosure institutional care are adequate to protect the public health and safety in that they shall provide reasonable assurance that long-term stability of the disposed waste and the disposal site shall be achieved and shall eliminate to the extent practicable the need for ongoing active maintenance of the disposal site following closure;

(7) The applicant's demonstration provides reasonable assurance that the applicable technical requirements of this administrative regulation shall be met;

(8) The applicant's proposal for institutional control provides reasonable assurance that the care shall be provided for the length of time found necessary to ensure the findings in Subsection (3) through (6) of this section and that the institutional control meets the requirements of Section 27 of this administrative regulation; and

(9) The information on financial assurances meets the requirements of this administrative regulation.

Section 11. Conditions of Licenses. (1) A license issued under this administrative regulation, or a right thereunder, may be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, through transfer of control of the license to a person. A transfer, assignment, or disposition shall occur only if the cabinet finds, after securing full information, that the transfer is in accordance with the provisions of the Act. The cabinet shall provide the approval or denial in writing in the form of a license amendment.

(2) The licensee shall submit a written statement under oath upon request of the cabinet, before termination of the license, and to enable the cabinet to determine if the license shall be modified, suspended, or revoked.

(3) The license shall be terminated only on the full

implementation of the final closure plan as approved by the cabinet, including postclosure observation and maintenance.

(4) The licensee shall be subject to the provisions of the Act, 902 KAR Chapter 100, and orders of the cabinet. The terms and conditions of the license shall be subject to amendment, revision, or modification.

(5) Each person licensed by the cabinet as authorized by this administrative regulation shall confine possession and use of materials to the locations and purposes authorized in the license.

(6) The licensee shall not dispose of waste until the cabinet has inspected the land disposal facility and has found it to be in conformance with the description, design, and construction described in the application for a license.

(7) The cabinet may incorporate in a license at issuance, or thereafter, by 902 KAR Chapter 100 or order, additional requirements and conditions with respect to the licensee's receipt, possession, and disposal of waste necessary in order to:

(a) Protect health or to minimize danger to life or property; and

(b) Require reports and the keeping of records and to provide for inspections of activities under the license as necessary or appropriate to effectuate the purposes of the Act and 902 KAR Chapter 100.

(8) The authority to dispose of wastes expires on the date stated in the license. An expiration date on a license applies only to the aboveground activities and to the authority to dispose of waste. Failure to renew the license shall not relieve the licensee of responsibility for carrying out site closure, postclosure observation, and transfer of the license to the site owner.

Section 12. Application for Renewal or Closure. (1) An application for renewal or an application for closure shall be filed at least ninety (90) days prior to license expiration.

(2) An application for renewal of a license shall be filed in accordance with Sections 4 through 9 of this administrative regulation. An application for closure shall be filed in accordance with Section 13 of this administrative regulation. Information contained in previous applications, statements, or reports filed with the cabinet under the license may be incorporated by reference if the references are clear and specific.

(3) In a case in which a licensee has filed an application in proper form for renewal of a license, the license shall not expire until the cabinet has taken action on the application for renewal.

(4) In determining if a license shall be renewed, the cabinet shall apply the criteria set forth in Section 10 of this administrative regulation.

Section 13. Contents of Application for Closure. (1) Prior to final closure of the disposal site, or as otherwise directed by the cabinet, the applicant shall submit an application to amend the license for closure. This closure application shall include a final revision and specific details of the disposal site closure plan included as part of the license application submitted under Section 6(7) of this administrative regulation that includes each of the following:

(a) Additional geologic, hydrologic, or other data pertinent to the long-term containment of emplaced wastes obtained during the operational period;

(b) The results of tests, experiments, or other analyses relating to backfill of excavated areas; closure and sealing; waste migration and interaction with emplacement media; or other tests, experiments, or analysis pertinent to the long-term containment of emplaced waste within the disposal site;

(c) Proposed revision of plans for:

1. Decontamination or dismantlement of surface facilities;

2. Backfilling of excavated areas; or

3. Stabilization of the disposal site for postclosure care; and

(d) Significant new information regarding the environmental impact of closure activities and long-term performance of the disposal site.

(2) Upon review and consideration of an application to amend the license for closure submitted in accordance with subsection (1) of this section, the cabinet shall issue an amendment authorizing closure if there is reasonable assurance that the long-term

performance objectives of this administrative regulation shall be met.

Section 14. Postclosure Observation and Maintenance. (1) The licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal site until the site closure is complete and the license is transferred by the cabinet in accordance with Section 15 of this administrative regulation.

(2) Responsibility for the disposal site shall be maintained by the licensee for at least five (5) years.

(3) A shorter or longer time period for postclosure observation and maintenance may be established and approved as part of the site closure plan, based on site-specific conditions.

Section 15. Transfer of License. Following closure and the period of postclosure observation and maintenance, the licensee may apply for an amendment to transfer the license to the disposal site owner. The license shall be transferred if the cabinet finds:

(1) The closure of the disposal site has been made in conformance with the licensee's disposal site closure plan, as amended and approved as part of the license;

(2) Reasonable assurance has been provided by the licensee that the performance objectives of this administrative regulation are met;

(3) Funds and necessary records for care shall be transferred to the disposal site owner;

(4) The postclosure monitoring program is operational for implementation by the disposal site owner; and

(5) The Commonwealth of Kentucky or federal agency that shall assume responsibility for institutional control of the disposal site is prepared to assume responsibility and ensure that the institutional requirements found necessary under Section 10(8) of this administrative regulation shall be met.

Section 16. Termination of License. (1) Following a period of institutional control needed to meet the requirements found necessary under Section 10 of this administrative regulation, the licensee may apply for an amendment to terminate the license.

(2) This application shall be reviewed in accordance with the provisions of 902 KAR 100:040, Section 4.

(3) A license shall be terminated only if the cabinet finds:

(a) The institutional control requirements found necessary under Section 10(8) of this administrative regulation have been met;

(b) Additional requirements resulting from new information developed during the institutional control period have been met; and

(c) Permanent monuments or markers warning against intrusion have been installed.

Section 17. General Requirement. Land disposal facilities shall be sited, designed, operated, closed, and controlled after closure so that reasonable assurance exists that exposures to individuals are within the limits established in the performance objectives in Section 18 through Section 21 of this administrative regulation.

Section 18. Protection of the General Population from Releases of Radioactivity. A concentration of radioactive material that may be released to the general environment in groundwater, surface water, air, soil, plants, or animals shall not result in an annual dose exceeding an equivalent of twenty-five (25) millirems to the whole body, seventy-five (75) millirems to the thyroid, and twenty-five (25) millirems to any other organ of a member of the public. Reasonable effort shall be made to maintain releases of radioactivity in effluents to the general environment as low as it is reasonably achievable.

Section 19. Protection of Inadvertent Intrusion. Design, operation, and closure of the land disposal facility shall ensure protection of an individual inadvertently intruding into the disposal site and occupying the site or contacting the waste any time after active institutional controls over the disposal site are removed.

Section 20. Protection of Individuals During Operations. Operations at the land disposal facility shall be conducted in compliance with the standards for radiation protection set out in 902 KAR 100:019, except for releases of radioactivity in effluents from the disposal facility, which shall be governed by Section 18 of this administrative regulation. Every reasonable effort shall be made to maintain radiation exposures as low as is reasonably achievable.

Section 21. Stability of the Disposal Site After Closure. The disposal facility shall be sited, designed, used, operated, and closed to achieve long-term stability of the disposal site and to eliminate to the extent practicable the need for ongoing active maintenance of the disposal site following closure so that only surveillance, monitoring, or minor custodial care are required.

Section 22. Disposal Site Suitability Requirements for Land Disposal. Disposal site suitability for near-surface disposal. The following are the minimum characteristics a disposal site shall have to be acceptable for use as a near-surface disposal facility:

(1) The primary emphasis in disposal site suitability is isolation of wastes, and the disposal site features that ensure that the long-term performance objectives are met.

(2) The disposal site shall be capable of being characterized, modeled, analyzed, and monitored.

(3) Within the region where the facility is to be located, a disposal site shall be selected so that projected population growth and future developments are not likely to affect the ability of the disposal facility to meet the performance objectives of this administrative regulation.

(4) Areas shall be avoided having known natural resources that, if exploited, would result in failure to meet the performance objectives of this administrative regulation.

(5) The disposal site shall be generally well drained and free of areas of flooding or frequent ponding. Waste disposal shall not take place in a 100-year flood plain, coastal high-hazard area, or wetland, as defined in U.S. Executive Order 11988, Flood plain Management Guidelines.

(6) Upstream drainage areas shall be minimized to decrease the amount of run-off that could erode or inundate waste disposal units.

(7)(a) The disposal site shall provide sufficient depth to the water table that ground water intrusion, perennial or otherwise, into the waste shall not occur.

(b) The cabinet shall consider an exception to this requirement to allow disposal below the water table if it can be conclusively shown that disposal site characteristics may result in molecular diffusion being the predominant means of radionuclide movement and the rate of movement may result in the performance objectives being met.

(c) In no case shall waste disposal be permitted in the zone of fluctuation of the water table.

(8) The hydrogeologic unit used for disposal shall not discharge ground water to the surface within the disposal site.

(9) Areas shall be avoided if tectonic processes, such as faulting, folding, seismic activity, or vulcanism may occur with a frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of this administrative regulation or may preclude defensible modeling and prediction of long-term impacts.

(10) Areas shall be avoided if surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with a frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of this administrative regulation, or may preclude defensible modeling and prediction of long-term impacts.

(11) The disposal site shall not be located where nearby facilities or activities could adversely impact the ability of the site to meet the performance objectives of this administrative regulation or significantly mask the environmental monitoring program.

Section 23. Disposal Site Design for Land Disposal. Disposal site design for near-surface disposal.

(1) Site design features shall be directed toward long-term isolation and avoidance of the need for continuing active maintenance after site closure.

(2) The disposal site design and operation shall be compatible with the disposal site closure and stabilization plan and lead to disposal site closure that provides reasonable assurance that the performance objectives shall be met.

(3) The disposal site shall be designed to complement and improve the ability of the disposal site's natural characteristics to assure that the performance objectives shall be met.

(4) Covers shall be designed to minimize water infiltration, to direct percolating or surface water away from the disposed waste, and to resist degradation by surface geologic processes and biotic activity.

(5) Surface features shall direct surface water drainage away from disposal units at velocities and gradients that shall not result in erosion that shall require ongoing active maintenance in the future.

(6) The disposal site shall be designed to minimize the contact of water with waste during storage, the contact of standing water with waste during disposal, and the contact of percolating or standing water with wastes after disposal.

Section 24. Land Disposal Facility Operation and Disposal Site Closure; Near-surface Disposal Facility Operation and Disposal Site Closure.

(1) Wastes designated as Class A in 902 KAR 100:021 shall be segregated from other wastes by placing in disposal units that are sufficiently separated from disposal units for the other waste classes so that an interaction between Class A wastes and other wastes shall not result in the failure to meet the performance objectives of this administrative regulation. This segregation is not necessary for Class A wastes if they meet the stability requirements in 902 KAR 100:021, Section 7(2).

(2) Wastes designated as Class C in 902 KAR 100:021 shall be disposed of so that the top of the waste is a minimum of five (5) meters below the top surface of the cover or shall be disposed of with intruder barriers that are designed to protect against an inadvertent intrusion for at least 500 years.

(3) Except as provided in subsection (1) of this section, only waste classified as Class A, B, or C shall be acceptable for near-surface disposal. All waste shall be disposed of in accordance with requirements of subsections (4) through (11) of this section.

(4) Wastes shall be emplaced in a manner that maintains the package integrity during emplacement, minimizes the void spaces between packages, and allows the void spaces to be filled.

(5) Void spaces between waste packages shall be filled with earth or other material to reduce future subsidence within the fill.

(6) Waste shall be placed and covered in a manner that limits the radiation dose rate at the surface of the cover to levels that at a minimum shall permit the licensee to comply with all provisions of 902 KAR 100:019, Sections 10 and 11, if the license is transferred as authorized by Section 15 of this administrative regulation.

(7) The boundaries and locations of each disposal unit shall be accurately located and mapped by means of a land survey.

(8) Near-surface disposal units shall be marked in a way that the boundaries of each unit can be easily defined.

(9) Three (3) permanent survey marker control points, referenced to United States Geological Survey (USGS) or National Geodetic Survey (NGS) survey control stations, shall be established on the site to facilitate surveys.

(10) The USGS or NGS control stations shall provide horizontal and vertical controls as checked against USGS or NGS record files.

(11) A buffer zone of land shall be maintained between any buried waste and the disposal site boundary and beneath the disposed waste. The buffer zone shall be of adequate dimensions to carry out environmental monitoring activities specified in Section 25 of this administrative regulation and take mitigative measures if needed.

(12) Closure and stabilization measures set forth in the approved site closure plan shall be carried out as each disposal unit is filled and covered.

(13) Active waste disposal operations shall not have an adverse effect on completed closure and stabilization measures.

(14) Only wastes containing or contaminated with radioactive materials shall be disposed of at the disposal site.

(15) A proposal for disposal of waste that is not generally acceptable for near-surface disposal because the waste form and disposal methods need to be different, and in general more stringent than those specified for Class C waste, may be submitted to the cabinet for approval.

Section 25. Environmental Monitoring. (1)(a) If a license application is submitted, the applicant shall have conducted a preoperational monitoring program to provide basic environmental data on the disposal site characteristics.

(b) The applicant shall obtain information about the ecology, meteorology, climate, hydrology, geology, geochemistry, and seismology of the disposal site.

(c) For those characteristics that are subject to seasonal variation, data shall cover at least a twelve (12) month period.

(2)(a) During the land disposal facility site construction and operation, the licensee shall maintain an environmental monitoring program.

(b) Measurements and observations shall be made and recorded to provide data to evaluate the potential health and environmental impacts during both the construction and the operation of the facility and to enable the evaluation of long-term effects and the need for mitigative measures.

(c) The monitoring system shall be capable of providing early warning of releases of radionuclides from the disposal site before they leave the site boundary.

(3) After the disposal site is closed, the licensee responsible for postoperational surveillance of the disposal site shall maintain a monitoring system based on the operating history and the closure and stabilization of the disposal site. The monitoring system shall be capable of providing early warning of releases of radionuclides from the disposal site before they leave the site boundary.

(4) The licensee shall have plans for taking corrective measures if the environmental monitoring program detects migration of radionuclides that would indicate that the performance objectives may not be met.

Section 26. Alternative Requirements for Design and Operations. The cabinet may, upon request or on its own initiative, authorize provisions other than those set forth in Sections 23 through 25 of this administrative regulation for the segregation and disposal of waste and for the design and operation of a land disposal facility on a specific basis if it finds reasonable assurance of compliance with the performance objectives of this administrative regulation.

Section 27. Institutional Requirements. (1) Land ownership. Disposal of radioactive waste received from other persons may be permitted only on land owned, in fee, by the Commonwealth of Kentucky or federal government.

(2) Institutional control:

(a) The land owner or custodial agency shall carry out an institutional control program to physically control access to the disposal site following transfer of control of the disposal site from the disposal site operator.

(b) The institutional control program shall also include, in part, carrying out an environmental monitoring program at the disposal site, periodic surveillance, minor custodial care, and other requirements as determined by the cabinet in accordance with 10 C.F.R. 61.59, and administration of funds to cover the costs for these activities.

(c) The period of controls shall be determined by the cabinet in accordance with 10 C.F.R. 61.59, but controls may not be relied upon for more than 100 years following transfer of control of the disposal site to the owner.

Section 28. Alternative Requirements for Waste Classification and Characteristics. The cabinet licensing a low-level disposal facility may, upon request or on its own initiative, authorize other

provisions for the classification and characteristics of waste on a specific basis if, after evaluation of the specific characteristics of the waste, disposal site, or method of disposal, it finds reasonable assurance of compliance with the performance objectives specified in this administrative regulation.

Section 29. Applicant Qualifications and Assurances. Each applicant shall show that he either possesses the necessary funds or has reasonable assurance of obtaining the necessary funds or, by a combination of the two (2), to cover the estimated costs of conducting all licensed activities over the planned operating life of the project, including costs of construction and disposal.

Section 30. Funding for Disposal Site Closure and Stabilization. (1) The applicant shall provide assurances prior to the commencement of operations that sufficient funds shall be available to carry out disposal site closure and stabilization, including:

(a) Decontamination or dismantlement of land disposal facility structures;

(b) Closure and stabilization of the disposal site so that following transfer of the disposal site to the site owner, the need for ongoing active maintenance shall be eliminated to the extent practicable and only minor custodial care, surveillance, and monitoring shall be required; and

(c) Assurances shall be based on cabinet-approved cost estimates reflecting the cabinet-approved plan for disposal site closure and stabilization. The applicant's cost estimates shall take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.

(2) In order to avoid unnecessary duplication and expense, the cabinet may accept financial sureties that have been consolidated with earmarked financial or surety arrangements established to meet requirements of other federal or state agencies or local governing bodies for the decontamination, closure, and stabilization. If the cabinet accepts these arrangements they shall be adequate to satisfy these requirements and that the portion of the surety that covers the closure of the disposal site that shall be clearly identified and committed for use in accomplishing these activities.

(3) The licensee's surety mechanism shall be submitted annually for review by the cabinet to assure that sufficient funds are available for completion of the closure plan, assuming that the work has to be performed by an independent contractor.

(4) The amount of surety liability shall change in accordance with the predicted cost of future closure and stabilization. Factors affecting closure and stabilization cost estimates include:

(a) Inflation;

(b) Increases in the amount of disturbed land;

(c) Changes in engineering plans;

(d) Closure and stabilization that has already been accomplished; and

(e) Other conditions affecting costs. This shall yield a surety that is at least sufficient at all times to cover the costs of closure of the disposal units that are expected to be used before the next license renewal.

(5)(a) The term of the surety mechanism shall be open unless it can be demonstrated that another arrangement would provide an equivalent level of assurance.

1. This assurance shall be provided with a surety mechanism written for a specified period of time (for example, five (5) years) yet which shall be automatically renewed unless the party who issues the surety notifies the cabinet and the beneficiary (the site owner) and the principal (the licensee) not less than ninety (90) days prior to the renewal date of the intention not to renew.

2. In this situation the licensee shall submit a replacement surety within thirty (30) days after notification of cancellation.

(b) If the licensee fails to provide a replacement surety acceptable to the cabinet, the site owner may collect on the original surety.

(6)(a) Proof of forfeiture shall not be necessary to collect the surety so that if the licensee could not provide an acceptable replacement surety within the required time, the surety shall be

automatically collected prior to its expiration.

(b) The conditions described in this section shall be clearly stated on a surety instrument that is not open-ended, and shall be agreed to by all parties. Liability under the surety mechanism shall remain in effect until the closure and stabilization program has been completed and approved by the cabinet and the license has been transferred to the site owner.

(7)(a) Financial surety arrangements acceptable to the cabinet include:

1. Surety bonds;

2. Cash deposits;

3. Certificates of deposit;

4. Deposits of government securities;

5. Escrow accounts;

6. Irrevocable letters or lines of credit;

7. Trust funds; and

8. Combinations of the above.

(b) Self-insurance, or an arrangement that essentially constitutes pledging the assets of the licensee, shall not satisfy the surety requirement for private sector applicants because this does not provide additional assurance other than that which already exists through license requirements.

Section 31. Financial Assurances for Institutional Controls. (1) Prior to the issuance of the license, the applicant shall provide for cabinet review and approval or denial a copy of a binding arrangement, such as a lease, between the applicant and the disposal site owner that ensures that sufficient funds shall be available to cover the costs of monitoring and required maintenance during the institutional control period. The binding arrangement shall be reviewed periodically by the cabinet to ensure that changes in inflation, technology, and disposal facility operations are reflected in the arrangements.

(2) Subsequent changes to the binding arrangement specified in subsection (1) of this section relevant to institutional control shall be submitted to the cabinet for approval or denial.

Section 32. Maintenance of Records, Reports, and Transfers. (1) Each licensee shall maintain records and make reports in connection with the licensed activities as required by the conditions of the license or by 902 KAR Chapter 100 or orders of the cabinet.

(2)(a) A record required by 902 KAR Chapter 100 or by license conditions shall be maintained for a period specified by the appropriate administrative regulation in 902 KAR Chapter 100 or by license condition.

(b) If a retention period is not otherwise specified, these records shall be maintained and transferred to the officials specified in subsection (5) of this section as a condition of license termination unless the cabinet otherwise authorizes disposition.

(3)(a) A record that shall be maintained as required by this section shall be the original, a reproduced copy, or microform if this reproduced copy or microform is capable of producing copy that is clear and legible at the end of the required retention period.

(b)1. The record may also be stored in electronic media with the capability of producing legible, accurate, and complete records during the retention period.

2. Records such as letters, drawings, and specifications shall include all pertinent information such as stamps, initials, and signatures.

(c) The licensee shall maintain adequate safeguards against tampering with and loss of records.

(4) If there is a conflict between the cabinet's administrative regulations, license condition, or other written cabinet approval or authorization pertaining to the retention period for the same type of record, the longest retention period specified shall take precedence.

(5) In addition to the requirements of subsections (1) through (4) of this section, copies of records of the location and the quantity of radioactive wastes contained in the disposal site shall be transferred upon license termination to the chief executive of the nearest municipality, the chief executive of the county in which the facility is located, the county zoning board or land development and planning agency, the Governor of the Commonwealth of

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Kentucky, other Kentucky local agencies, and federal governmental agencies as designated by the cabinet when the license is terminated.

(6) Following receipt and acceptance of a shipment of radioactive waste, the licensee shall record:

(a) The date that the shipment is received at the disposal facility;

(b) The date of disposal of the waste;

(c) A traceable shipment manifest number;

(d) A description of any engineered barrier or structural overpack provided for disposal of the waste;

(e) The location in the disposal site;

(f) The condition of the waste packages as received;

(g) Any discrepancies between materials listed on the manifest and those received;

(h) The volume of pallets, bracing, or other shipping or onsite generated materials that are contaminated, and are disposed of as contaminated or suspect materials; and

(i) Any evidence of leaking or damaged packages or radiation or contamination levels in excess of limits specified in U.S. Department of Transportation and 902 KAR Chapter 100.

(7) The licensee shall briefly describe repackaging operations of the waste packages included in the shipment, plus other information required by the cabinet as a license condition.

(8) The licensee shall retain these records until the cabinet transfers or terminates the license that authorizes the activities established in this section.

(9) Each licensee authorized to dispose of radioactive waste received from other persons shall file a copy of its financial report or a certified financial statement annually with the cabinet in order to update the information base for determining financial qualifications.

(10)(a) Each licensee authorized to dispose of waste materials received from other persons, authorized by this administrative regulation, shall submit an annual report to the cabinet. Reports shall be submitted by the end of the first calendar quarter of each year for the preceding year.

(b) The reports shall include:

1. Specification of the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in airborne effluents during the preceding year;

2. The results of the environmental monitoring program;

3. A summary of licensee disposal unit survey and maintenance activities;

4. A summary, by waste class, of activities and quantities of radionuclides disposed of;

5. Instances in which observed site characteristics were significantly different from those described in the application for a license; and

6. Other information the cabinet may require to protect public health and safety.

(c) The report shall specifically cover instances in which the quantities of radioactive materials released during the reporting period, monitoring results, or maintenance performed are significantly different from those expected in the materials previously reviewed as part of the licensing action.

(11)(a) In addition to the other requirements of this section, the licensee shall store or have stored, manifest and other information pertaining to receipt and disposal of radioactive waste in an electronic recordkeeping system.

(b) The manifest information that shall be stored electronically is:

1. That required in 902 KAR 100:021, Sections 9 and 10, with the exception of shipper and carrier telephone numbers and shipper and consignee certifications; and

2. The information required in subsection (6) of this section.

(c) As specified in license conditions, the licensee shall report the stored information, or subsets of the information, on a computer-readable medium.

Section 33. Tests at Land Disposal Facilities. Each licensee shall perform, or allow the cabinet to perform, any tests appropriate or necessary for the administration of this administrative regulation,

including, in part, tests of:

(1) Radioactive wastes and facilities used for the receipt, storage, treatment, handling, or disposal of radioactive wastes;

(2) Radiation detection and monitoring instruments; and

(3) Other equipment and devices used in connection with the receipt, possession, handling, treatment, storage, or disposal of radioactive waste.

Section 34. Cabinet Inspections of Land Disposal Facilities. (1) Each licensee shall:

(a) Afford to the cabinet at all reasonable times opportunity to inspect radioactive waste not yet disposed of and the premises, equipment, operations, and facilities in which radioactive wastes are received, possessed, handled, treated, stored, or disposed;

(b) Provide the cabinet with the necessary equipment to meet the activities, such as monitoring, surveying, and recordkeeping as required by this section; and

(c) Make available to the cabinet for inspection, upon notice, records kept by it as required by this administrative regulation.

(2) Authorized representatives of the cabinet may copy and take away copies of any record required to be kept by this administrative regulation.]

JEFFREY D. HOWARD, JR., M.D., Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at noon

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures, criteria, terms and conditions upon which the cabinet issues licenses for the land disposal of radioactive wastes received from other persons.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect the public from improper land disposal of radioactive wastes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.844 requires the cabinet to provide by administrative regulation the requirements for the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all those engaged in the disposal of radioactive materials are properly licensed to do so as well as ensures proper procedures for land disposal are followed.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being further amended in response to comments received in order to ensure full compatibility with the Nuclear Regulatory Commission (NRC).

(b) The necessity of the amendment to this administrative regulation: As an agreement state with NRC, Kentucky is required to have state regulations compatible with the regulations promulgated by NRC. This amended after comment administrative regulation establishes compatibility with the federal regulation, except where exclusions are allowed. The necessity for additional compatibility language was realized during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides the technical requirements for handling and disposal of radioactive waste as required by KRS 211.844.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure all

entities engaged in land disposal of radioactive waste are properly licensed to do so, and are following the correct procedures for such disposal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Radiation Health Branch within the Department for Public Health is the only entity affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: There will be no new actions required to be in compliance with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There is no anticipated change in cost for the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By adopting 10 C.F.R. Part 61, the state will eliminate any unnecessary training or licensing requirement for regulated entities.

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

(a) Initially: This program is already operating. There is no cost to implement this administrative regulation.

(b) On a continuing basis: This program is already operating. There is no cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment does not affect funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? No, tiering is not applied as all entities engaged in the land disposal of radioactive waste must meet the same standards.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Radiation Health Branch in the Department for Public Health will be impacted by this administrative regulation as it contains reference to the federal regulation. There are no new requirements.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 211.844 requires the Cabinet to provide by administrative regulation for the disposal of radioactive waste. 10 C.F.R. Part 61 establishes the procedures, criteria, and terms and conditions for land disposal of radioactive waste.

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

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

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not add costs to the agency.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not add costs to the agency.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954 as amended, the Energy Policy Act of 2005 and 10 C.F.R. Part 61.

2. State compliance standards. This regulation adopts the federal procedures, criteria, and terms and conditions, for the issuance of a license for land disposal of radioactive waste.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires state regulations to be compatible with the equivalent federal regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no different, stricter, or additional responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety

(Amended After Comments)

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

RELATES TO: KRS 194A.005(1), 211.180(1), 211.842-211.852, 211.990(4), 10 C.F.R. Part 71, 73.2, 73.37, 49 C.F.R. 173.403, 42 U.S.C. 2011[39 C.F.R. 111.1, 49 C.F.R. 107, 170-189]
STATUTORY AUTHORITY: KRS[43B.470,] 194A.050(1), 211.090(3), 211.844(1)

NECESSITY, FUNCTION, AND CONFORMITY:[KRS 194A.050(1) ~~requires the secretary to promulgate those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.~~] KRS 211.844(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations[regulation] for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes requirements for packaging and transportation of radioactive material.

Section 1. Definitions. (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Armed escort" is defined by 10 C.F.R. 73.2.

(3) "Cabinet" is defined by KRS 194A.005(1).

(4) "Highway route controlled quantity" is defined by 49 C.F.R. 173.403

(5) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902

KAR 100:040 and this administrative regulation:

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement state [Applicability. Applies to a licensee authorized by a specific or general license issued by the cabinet to receive, possess, use, or transfer radioactive material, when: (a) The licensee delivers that material to a carrier for transport;

(b) Transports the material outside the site of usage as specified in the cabinet license; or

(c) Transports the material on public highways.

(2) This administrative regulation shall not authorize the possession of radioactive material].

Section 2. Applicability. This administration regulation shall apply to a licensee. The licensee shall comply with 10 C.F.R. Part 71 except as established in subsections (1) through (3) of this section.

(1) The licensee shall not be subject to the following:

(a) 10 C.F.R. 71.2;

(b) 10 C.F.R. 71.6;

(c) 10 C.F.R. 71.11;

(d) 10 C.F.R. 71.14(b);

(e) 10 C.F.R. 71.19;

(f) 10 C.F.R. 71.31;

(g) 10 C.F.R. 71.33;

(h) 10 C.F.R. 71.35;

(i) 10 C.F.R. 71.37;

(j) 10 C.F.R. 71.38;

(k) 10 C.F.R. 71.39;

(l) 10 C.F.R. 71.41;

(m) 10 C.F.R. 71.43;

(n) 10 C.F.R. 71.45;

(o) 10 C.F.R. 71.51;

(p) 10 C.F.R. 71.55;

(q) 10 C.F.R. 71.59;

(r) 10 C.F.R. 71.61;

(s) 10 C.F.R. 71.63;

(t) 10 C.F.R. 71.64;

(u) 10 C.F.R. 71.65;

(v) 10 C.F.R. 71.70;

(w) 10 C.F.R. 71.71;

(x) 10 C.F.R. 71.73;

(y) 10 C.F.R. 71.74;

(z) 10 C.F.R. 71.75;

(aa) 10 C.F.R. 71.77;

(bb) 10 C.F.R. 71.85 (a)-(c);

(cc) 10 C.F.R. 71.91(b);

(dd) 10 C.F.R. 71.101(c)(2), (d) and (e); or

(ee) 10 C.F.R. 71.107-125.

(2) Each application for a specific license shall be filed pursuant to 902 KAR 100:040.

(3) Reference to the "Commission", [or] "NRC", or an agreement state shall be deemed to be a reference to the "Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch", the NRC, or an agreement state except as established in the following:

(a) 10 C.F.R. 71.17; and

(b) 10 C.F.R. 71.88.

(4) Reference to the Commission, NRC, Nuclear Regulatory Commission, United States Nuclear Regulatory Commission, or Administrator of the appropriate Regional Office in 10 C.F.R. Part 71 shall be deemed to be reference to the Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch, except when used in the following:

(a) 10 C.F.R. 71.5(b);

(b) 10 C.F.R. 71.10;

(c) 10 C.F.R. 71.17(c)(3) and (e);

(d) 10 C.F.R. 71.85(c);

(e) 10 C.F.R. 71.88(a)(4);

(f) 10 C.F.R. 71.93(c);

(g) 10 C.F.R. 71.95; and

(h) 10 C.F.R. 71.97(c)(3)(iii) and (f) [Requirement for a license. A person shall not deliver radioactive material to a carrier for transport, or transport radioactive material, unless:

(1) Authorized in a general or specific license issued by the cabinet; or

(2) Exempted pursuant to Section 3 of this administrative regulation].

Section 3. Transport of highway route controlled quantities. (1) Advanced notification shall be provided in accordance with 10 C.F.R. 71.97 prior to the transport, or delivery to a carrier for transport, of highway route controlled quantities.

(2) All licensees of the cabinet, NRC, or another Agreement state shall arrange for armed escort when transporting materials through the Commonwealth.

(3) Armed escort may be provided by either the Kentucky State Police (KSP) or private security firm meeting the requirements of 10 C.F.R. 73.37.

(4) The cabinet may require advanced notice of and armed escort for other quantities of radioactive materials for the protection of public health and safety.

(5) Payment for escort provided by KSP shall be made in accordance with 902 KAR 100.012. Section 4. [Exemptions. (1) A licensee is exempt from all the requirements of this administrative regulation with respect to shipment or carriage of the following low-level materials:

(a) Natural material and ores containing naturally occurring radionuclides that are not intended to be processed for use of these radionuclides, if the activity concentration of the material does not exceed ten (10) times the values specified in 10 C.F.R. 71, Appendix A; and

(b) Materials for which the activity concentration is not greater than the activity concentration values, or for which the consignment activity is not greater than the limit for an exempt consignment found in 10 C.F.R. 71, Appendix A.

(2) A physician licensed by the Commonwealth to dispense drugs in the practice of medicine shall be exempt from Section 4 of this administrative regulation with respect to transport by the physician of radioactive material for use in the practice of medicine. However, a physician operating under this exemption shall be licensed pursuant to 902 KAR 100:072 or equivalent regulations of the NRC or an agreement state.]

Section 4. Notice to Employees. The KR-441 "Notice to Employees" shall be posted instead of the NRC Form 3 as specified in 10 C.F.R. Part 71. [Transportation of Licensed Material. (1) Each licensee who transports licensed material outside of the confines of his plant or other place of use specified in the cabinet license, or if transport is on a public highway, or who delivers licensed material to a carrier for transport, shall:

(a) Comply with the applicable requirements, appropriate to the mode of transport, of the regulations of the U.S. Department of Transportation in 49 C.F.R. 107, 171 through 180, and 390 through 397; and

(b) Assure that special instructions needed to open the package safely are sent to, or have been made available to, the consignee for the consignee's use in accordance with 902 KAR 100:049, Section 28(5).

(2) If the regulations of the U.S. Department of Transportation (DOT) are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the Department of Transportation regulations, specified in subsection (1)(a) of this section, to the same extent as if the shipment was subject to the DOT regulations.]

Section 5. Incorporation by Reference. (1) KR-441 "Notice to Employees" 9/18, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Public Health Protection and Safety, Radiation Health Branch, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to

4:30 p.m. ~~General Licenses for Carriers. (1) A general license shall be issued to a common or contract carrier, not exempt under Section 3 of this administrative regulation, to receive, possess, transport, and store radioactive material in the regular course of carriage for another, or storage incident to the transportation and storage, if the transportation and storage is in accordance with the applicable requirements, appropriate to the mode of transport, of the U.S. Department of Transportation relating to the loading and storage of packages, placarding of the transporting vehicle, and incident reporting.~~

~~(2) A general license shall be issued to a private carrier to transport radioactive material, if the transportation is in accordance with the applicable requirements, appropriate to the mode of transport, of the U.S. Department of Transportation relating to the loading and storage of packages, placarding of the transporting vehicle, and incident reporting.~~

~~(3) The notification of incidents referred to in the U.S. Department of Transportation requirements identified in subsection (1) of this section shall be filed with, or made to, the cabinet.~~

~~(4) A person authorized by a general license described in this section, who transports radioactive material, is exempt from the requirements of 902 KAR 100:049 and 902 KAR 100:165.~~

~~Section 6. General License: NRC Approved Packages. (1) A general license shall be issued to a licensee of the cabinet to transport or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance (CoC), or other approval has been issued by the NRC.~~

~~(2) The general license shall apply only to a licensee who:~~

~~(a) Has a quality assurance program approved by the NRC as satisfying the provisions of 10 C.F.R. 71.101 through 137;~~

~~(b) Has a copy of the certificate of compliance, or other approval of the package, and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment;~~

~~(c) Complies with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of this administrative regulation and 10 C.F.R. 71.0 through 71.11, 71.81 through 71.100, and 71.101 through 71.137; and~~

~~(d) Submits in writing to Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, using an appropriate method listed in 10 C.F.R. 71.1(a), before the licensee's first use of the package, the licensee's name and license number and the package identification number specified in the package approval.~~

~~(3) The general license identified in subsection (1) of this section shall apply only if the package approval authorizes use of the package under the general license.~~

~~(4) For a Type B or fissile material package, the design of which was approved by the NRC before April 1, 1996, the general license shall be subject to additional restrictions contained in Section 7 of this administrative regulation.~~

~~Section 7. Previously Approved Type B Packages. (1) A Type B package previously approved by the NRC, but not designated as B(U) or B(M) in the NRC Certificate of Compliance, may be used under the general license of Section 6 of this administrative regulation, with the following limitations:~~

~~(a) Fabrication of the packaging was satisfactorily completed before August 31, 1986, as demonstrated by its model number, in accordance with NRC regulations;~~

~~(b) The package shall not be used for a shipment to a location outside the United States after August 31, 1986, except under multilateral approval by the U.S. Department of Transportation, as defined in 49 C.F.R. 173.403; and~~

~~(2) A serial number that uniquely identifies each package that conforms to the approved design is assigned to, and legibly and durably marked on, the outside of each package.~~

~~(3) A Type B(U) package, a Type B(M) package, an LSA material package, or a fissile material package, previously~~

~~approved by the NRC but without the designation "85" in the identification number of the NRC Certificate of Compliance, may be used under the general license of Section 6 of this administrative regulation, with the following conditions:~~

~~(a) Fabrication of the package shall have been satisfactorily completed by April 1, 1999, as demonstrated by its model number, in accordance with NRC regulations, 10 C.F.R. 71;~~

~~(b) A package used for shipment to a location outside the United States shall be subject to multilateral approval by the U.S. Department of Transportation, as defined in 49 C.F.R. 173.403; and~~

~~(c) A serial number that uniquely identifies each package that conforms to the approved design shall be assigned to, and legibly and durably marked on the outside of, each package.~~

~~Section 8. General License: DOT Specification Container. (1) A general license shall be issued to a licensee of the cabinet to transport, or to deliver to a carrier for transport, licensed material in a specification container for fissile material, or for a Type B quantity of radioactive material, as specified in 49 C.F.R. Parts 173 and 178.~~

~~(2) The general license shall apply only to a licensee who:~~

~~(a) Has a quality assurance program approved by the cabinet as satisfying the requirements of 10 C.F.R. 71.101 through 71.137;~~

~~(b) Has a copy of the specification; and~~

~~(c) Complies with the terms and conditions of the specification, and the applicable requirements of this administrative regulation and 10 C.F.R. 71.0 through 71.11, 71.81 through 71.100, and 71.101 through 71.137.~~

~~(3) The general license shall be subject to the limitation that the specification container shall not be used for a shipment to a location outside the United States except by multilateral approval, as defined in 49 C.F.R. 173.403.~~

~~(4) This section expires October 1, 2008.~~

~~Section 9. General License: Use of Foreign Approved Package. (1)(a) A general license shall be issued to a licensee of the cabinet to transport, or to deliver to a carrier for transport, licensed material in a package, the design of which has been approved in a foreign national competent authority certificate and revalidated by the U.S. Department of Transportation as meeting the applicable requirements of 49 C.F.R. 171.12.~~

~~(b) Except as provided in this section, the general license shall apply only to a licensee who has a quality assurance program approved by the NRC as satisfying the applicable provisions of 10 C.F.R. 71.101 through 71.137.~~

~~(2) The general license shall apply only to shipments made to or from locations outside the United States.~~

~~(3) The general license shall apply to a licensee who:~~

~~(a) Has copies of the applicable certificate, the revalidation, the drawings, and other documents referenced in the certificate relating to the:~~

~~1. Use and maintenance of the packaging; and~~

~~2. Actions to be taken prior to shipment; and~~

~~(b) Complies with the terms and conditions of the certificate and revalidation, and with the applicable requirements of this administrative regulation and 10 C.F.R. 71.0 through 71.11, 71.81 through 71.100, and 71.101 through 71.137.~~

~~(4) With respect to the quality assurance provisions of 10 C.F.R. 71.101 through 71.137, the licensee shall be exempt from design, construction, and fabrication considerations.~~

~~Section 10. Preliminary Determinations. Before the first use of a packaging for the shipment of radioactive material:~~

~~(1) The licensee shall ascertain that there are no cracks, pinholes, uncontrolled voids, or other defects that may significantly reduce the effectiveness of the packaging;~~

~~(2) If the maximum normal operating pressure will exceed thirty-five (35) kilopascal (five (5) lbf/in²) gauge, the licensee shall test the containment system at an internal pressure at least fifty (50) percent higher than the maximum normal operating pressure to verify the capability of that system to maintain its structural integrity at that pressure; and~~

(3) The licensee shall mark the packaging, conspicuously and durably, with its model number, serial number, gross weight, and a package identification number assigned by the NRC. Before applying the model number, the licensee shall determine that the packaging has been fabricated in accordance with the design approved by the NRC.

Section 11. Routine Determinations. Before making a shipment of licensed material, the licensee shall ensure that the package with its contents satisfies the applicable requirements of this administrative regulation and of the license. The licensee shall determine that:

- (1) The package is proper for the contents to be shipped;
- (2) The package is in unimpaired physical condition except for superficial defects, such as marks or dents;
- (3) Each closure device of the packaging, including any required gasket, is properly installed and secured and free of defects;
- (4) A system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;
- (5) A pressure relief device is operable and set in accordance with written procedures;
- (6) The package has been loaded and closed in accordance with written procedures;
- (7) For fissile material, any moderator or neutron absorber, if required, is present and in proper condition;
- (8) A structural part of the package that could be used to lift or tie down the package during transport is rendered inoperable for that purpose unless it satisfies design requirements specified by 10 C.F.R. 71.45;
- (9) The level of nonfixed, or removable, radioactive contamination on the external surfaces of each package offered for shipment is ALARA, and within the limits specified by the U.S. Department of Transportation in 49 C.F.R. 173.443;
- (10) External radiation levels around the package and around the vehicle, if applicable, shall not exceed the limits specified in 49 C.F.R. 71.47 during transportation;
- (11) Accessible package surface temperatures shall not exceed the limits specified in 10 C.F.R. 71.43(g) at any time during transportation.

Section 12. Air Transport of Plutonium. In addition to the requirements of a general license and exemptions stated in this administrative regulation or included by citation of U.S. Department of Transportation regulations, as may be applicable, the licensee shall assure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless:

- (1) The plutonium is contained in a medical device designed for individual human application;
- (2) The plutonium is contained in a material in which the specific activity is less than or equal to the activity concentration values for plutonium specified in 10 C.F.R. 71, Appendix A and in which the radioactivity is essentially uniformly distributed;
- (3) The plutonium is shipped in a single package containing no more than an A_2 quantity of plutonium in an isotope or form and is shipped in accordance with Section 4 of this administrative regulation;
- (4) The plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the NRC; or
- (5) For a shipment of plutonium by air which is subject to subsection (4) of this section, the licensee shall, through special arrangement with the carrier, require compliance with 49 C.F.R. 175.704, applicable to the air transport of plutonium;
- (6) Nothing in this section shall be interpreted as removing or diminishing the requirements of 10 C.F.R. 73.24.

Section 13. Advance Notification of Transport of Irradiated Reactor Fuel and Nuclear Waste. (1)(a) Before the transport of nuclear waste outside of the confines of the licensee's facility or other place of use or storage, or before the delivery of nuclear

waste to a carrier for transport, a licensee shall provide advance notification of the transport to the governor, or governor's designee, of each state through which the waste will be transported.

(b) Advance notification shall be required for shipments of irradiated reactor fuel in quantities less than that subject to advance notification requirements in 10 C.F.R. 73.37(f).

(2) Advance notification shall also be required for licensed material, other than irradiated fuel, if:

(a) The nuclear waste is required to be in Type B packaging for transportation;

(b) The nuclear waste is being transported to, through, or across a state boundary to a disposal site, or to a collection point for transport to a disposal site; and

(c) The quantity of licensed material in a single package exceeds the least of the following:

1. 3,000 times the A_1 value of the radionuclides as specified in 10 C.F.R. 71, Appendix A for special form radioactive material;
2. 3,000 times the A_2 value of the radionuclides as specified in 10 C.F.R. 71 Appendix A for normal form radioactive material; or
3. 27,000 curies (1000 TBq).

(3) Each advance notification shall be in writing and contain the following information:

(a) The name, address, and telephone number of the shipper, carrier, and receiver of the shipment;

(b) A description of the nuclear waste contained in the shipment as required by 49 C.F.R. 172.202 and 172.203(d);

(c) The point of origin of the shipment and the seven (7) day period during which departure of the shipment is estimated to occur;

(d) The seven (7) day period during which arrival of the shipment at state boundaries is estimated to occur;

(e) The destination of the shipment, and the seven (7) day period during which arrival of the shipment is estimated to occur; and

(f) A point of contact with a telephone number for current shipment information.

(4) The notification shall be made in writing to the office of each appropriate governor or governor's designee and to the cabinet.

(a) A notification delivered by mail shall be postmarked at least seven (7) days before the beginning of the seven (7) day period during which departure of the shipment is estimated to occur.

(b) A notification delivered by messenger shall reach the office of the governor, or governor's designee, at least four (4) days before the beginning of the seven (7) day period during which departure of the shipment is estimated to occur. A copy of the notification shall be retained by the licensee for three (3) years.

(5) The licensee who finds that schedule information previously furnished will not be met, shall telephone a responsible individual in the office of the governor, or governor's designee, and the cabinet and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain for three (3) years a record of the name of the individual contacted.

(6) A licensee who cancels a nuclear waste shipment, for which advance notification has been sent, shall send a cancellation notice to the governor, or governor's designee, of each appropriate state and to the cabinet. The licensee shall state in the notice that it is a cancellation and shall identify the advance notification that is being cancelled. A copy of the notice shall be retained by the licensee for three (3) years.

Section 14. Exemption from Classification as Fissile Material. Fissile material meeting the requirements of at least one (1) of the subsections (1) through (6) of this section are exempt from classification as fissile material and from the fissile material package standards of 10 C.F.R. 71.55 and 71.59, but are subject to all other requirements of this administrative regulation, except as noted. (1) Individual package containing two (2) grams or less fissile material;

(2) Individual or bulk packaging containing fifteen (15) grams or less of fissile material provided the package has at least 200 grams of solid nonfissile material for every gram of fissile material. Lead, beryllium, graphite, and hydrogenous material enriched in

deuterium may be present in the package but shall not be included in determining the required mass for solid nonfissile material;

(3)(a) Low concentrations of solid fissile material commingled with solid nonfissile material, if:

1. There is at least 2,000 grams of solid nonfissile material for every gram of fissile material; and

2. There is no more than 180 grams of fissile material distributed within 360 kilograms of contiguous nonfissile material.

(b) Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but shall not be included in determining the required mass of solid nonfissile material.

(4) Uranium enriched in uranium-235 to a maximum of one (1) percent by weight, and with total plutonium and uranium content of up to one (1) percent of the mass of uranium-235, provided that the mass of any beryllium, graphite, and hydrogenous material enriched in deuterium constitutes less than five (5) percent of the uranium mass;

(5) Liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of two (2) percent by mass, with a total plutonium and uranium-233 content not exceeding two one-thousands (0.002) percent of the mass of uranium, and with a minimum nitrogen to uranium atomic ratio (N/U) of two (2). The material shall be contained in at least a DOT Type A package.

(6) Packages containing, individually, a total plutonium mass of not more than 1,000 grams, of which not more than twenty (20) percent by mass may consist of plutonium-239, plutonium-241, or any combination of these radionuclides.

Section 15. General License: Fissile Material. (1) A general license is issued to any licensee of the cabinet to transport fissile material, or to deliver fissile material to a carrier for transport, if the material is shipped in accordance with this section of this administration regulation. The fissile material need not be contained in a package which meets the standards of 10 C.F.R. 71.41 through 71.65 and 71.71 through 71.77, however, the material shall be contained in a Type A package. The Type A package shall also meet the DOT requirements of 49 C.F.R. 173.417(a).

(2) The general license shall apply only to a licensee who has a quality assurance program approved by the U.S. Nuclear Regulatory Commission as satisfying the provisions of 10 C.F.R. 71.101 through 71.137.

(3) The general license shall apply only when a package's contents:

(a) Contain less than a Type A quantity of radioactive material; and

(b) Contain less than 500 total grams of beryllium, graphite, or hydrogenous material enriched in deuterium.

(4) The general license shall apply only to packages containing fissile material that are labeled with a Criticality Safety Index (CSI) that:

(a) Has been determined in accordance with subsection (5) of this section;

(b) Has a value less than or equal to ten (10); and

(c) For a shipment of multiple packages containing fissile material, the sum of the CSIs shall be less than or equal to fifty (50), for shipment on a nonexclusive use conveyance, and less than or equal to 100, for shipment on an exclusive use conveyance.

(5)(a) The value for the CSI shall be greater than or equal to the number calculated by the following equation:

$$CSI = 10 \left(\frac{\text{grams of U-235}}{X} + \frac{\text{grams of U-233}}{Y} + \frac{\text{grams of Pu}}{Z} \right)$$

(b) The calculated CSI shall be rounded up to the first decimal place;

(c) The values of X, Y, and Z used in the CSI equation shall be taken from 10 C.F.R. Tables 71-1 or 71-2, as appropriate;

(d) If 10 C.F.R. Table 71-2 is used to obtain the value of X, then the values of the terms in the equation for uranium-233 and plutonium shall be assumed to be zero (0); and

(e) 10 C.F.R. Table 71-1 values for X, Y, and Z shall be used

to determine the CSI if:

1. Uranium-233 is present in the package;

2. The mass of plutonium exceeds one (1) percent of the mass of uranium-235;

3. The uranium is of unknown uranium-235 enrichment or greater than twenty-four (24) percent enrichment; or

4. Substances having a moderating effectiveness (an average hydrogen density greater than water), such as certain hydrocarbons, oils or plastics, are present in any form, except as polyethylene used for packaging or wrapping.

Section 16. General License: Plutonium-beryllium Special Form Material. (1) A general license is issued to any licensee of the cabinet to transport fissile material in the form of plutonium-beryllium (Pu-Be) special form sealed sources, or to deliver Pu-Be sealed sources to a carrier for transport, if the material is shipped in accordance with this section of this administrative regulation. This material need not be contained in a package which meets the standards of 10 C.F.R. 71.41 through 71.65 and 71.71 through 71.77, however, the material shall be contained in a Type A package. The Type A package shall also meet the DOT requirements of 49 C.F.R. 173.417(a).

(2) The general license shall apply only to a licensee who has a quality assurance program approved by the U.S. Nuclear Regulatory Commission as satisfying the provisions of 10 C.F.R. 71 Subpart H.

(3) The general licensee applies only if a package's contents:

(a) Contain less than a Type A quantity of radioactive material; and

(b) Contain less than 1,000 grams of plutonium, provided that plutonium-239, plutonium-241, or any combination of these radionuclides, constitutes less than 240 grams of the total quantity of plutonium in the package.

(4) The general license applies only to packages labeled with a CSI that:

(a) Have been determined in accordance with subsection (5) of this section;

(b) Have a value less than or equal to 100; and

(c) For a shipment of multiple packages containing Pu-Be sealed sources, the sum of the CSIs shall be less than or equal to fifty (50), for shipment on a nonexclusive use conveyance and less than or equal to 100, for shipment on an exclusive use conveyance.

(5)(a) The value for the CSI shall be greater than or equal to the number calculated by the following equation:

$$\left(\frac{\text{grams of Pu-239} + \text{grams of Pu-241}}{24} \right)$$

CSI = 10 and:

(b) The calculated CSI shall be rounded up to the first decimal place.

Section 17. External Radiation Standards for all Packages. (1) Except as provided in subsection (2) of this section, a package of radioactive materials offered for transportation shall be designed and prepared for shipment so that under conditions normally incident to transportation the radiation level shall not exceed 200 millirem/hour (mrem/h) (2 millisieverts/h) (2 mSv/h) at any point on the external surface of the package, and the transport index shall not exceed ten (10).

(2) A package that exceeds the radiation level limits specified in subsection (1) of this section shall be transported by exclusive use shipment only, and the radiation levels for the shipment shall not exceed the following during transportation:

(a) 200 mrem/h (2 mSv/h) on the external surface of the package, unless the following conditions are met, in which case the limit is 1,000 mrem/h (10 mSv/h);

1. The shipment is made in a closed transport vehicle;

2. The package is secured within the vehicle so that its position remains fixed during transportation; and

3. There are no loading or unloading operations between the beginning and end of the transportation;

(b) 200 mrem/h (2 mSv/h) at any point on the outer surface of the vehicle, including the top and underside of the vehicle, or in case of a flat-bed style vehicle, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load or enclosure, if used, and on the lower external surface of the vehicle; and

(c) 1. Ten (10) mrem/h (0.1 mSv/h) at any point eighty (80) inches (2 meters) from the outer lateral surface of the vehicle, excluding the top and underside of the vehicle; or

2. In the case of a flat-bed style vehicle, at any point six and six tenths (6.6) feet (2 meters) from the vertical planes projected by the outer edges of the vehicle, excluding the top and underside of vehicle; and

(d) Two (2) mrem/h (0.02 mSv/h) in any normally occupied space, except that this provision shall not apply to private carriers, if exposed personnel under their control wear radiation dosimetry devices as required by 902 KAR 100:019, Section 13.

(3) For shipments made under the provisions of subsection (2) of this section, the shipper shall provide specific written instructions to the carrier for maintenance of the exclusive use shipment controls. The instructions shall be included with the shipping paper information.

(4) The written instructions required for exclusive use shipments shall be sufficient so that, if followed, they will cause the carrier to avoid actions that will unnecessarily delay delivery or unnecessarily result in increased radiation levels or radiation exposure to transport workers or members of the general public.

Section 18. Assumption as to Unknown Properties. If the isotopic abundance, mass, concentration, degree of moderation, or other pertinent property of fissile material in any package is not known, the licensee shall package the fissile material as if the unknown properties have credible values that will cause the maximum neutron multiplication.

Section 19. Opening Instructions. Before delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to safely open the package have been sent to, or otherwise made available to, the consignee for the consignee's use in accordance with 902 KAR 100:019, Section 28(5).

Section 20. Quality Assurance Requirements. (1) The requirements in Sections 20 through 28 shall apply to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging important to safety. As used in this administrative regulation, quality assurance comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service.

(2) Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements.

(3) The licensee, certificate holder, and applicant for a CoC are responsible for the quality assurance requirements as they apply to design, fabrication, testing, and modification of packaging.

(4) A licensee is responsible for the quality assurance provision that applies to its use of a packaging for the shipment of licensed material subject to this administrative regulation.

(5) A licensee, certificate holder, and applicant for a CoC shall:

(a) Establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of 10 C.F.R. 71.101 through 71.137 and satisfying any specific provisions that are applicable to the licensee's activities including procurement of packaging; and

(b) Execute the applicable criteria in a graded approach to an extent that is commensurate with the quality assurance requirement's importance to safety.

(6) A licensee shall, before the use of a package for the shipment of licensed material subject to this administrative regulation, obtain U.S. Nuclear Regulatory Commission approval of its quality assurance program. Using an appropriate method listed

in 10 C.F.R. 71.1(a), a licensee shall file a description of its quality assurance program, including a discussion of which requirements of this administrative regulation are applicable and how they will be satisfied, by submitting the description to: Attention: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

(7) A program for transport container inspection and maintenance limited to radiographic exposure devices, source changers, or packages transporting these devices and meeting the requirements of 902 KAR 100:100, Section 9(3) shall satisfy the requirements of Section 6(2)(a) and subsection (5) of this section.

Section 21. Quality Assurance Organization. (1) The licensee, certificate holder, and applicant for a Certificate of Compliance (CoC) shall be responsible for the establishment and execution of the quality assurance program. The licensee, certificate holder, and applicant for a CoC may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part of the quality assurance program, but shall retain responsibility for the program. These activities shall include performing the functions associated with attaining quality objectives and the quality assurance functions.

(2) The quality assurance functions shall:

(a) Assure an appropriate quality assurance program is established and effectively executed; and

(b) Verify, by procedures such as checking, auditing, and inspection, that activities affecting the functions that are important to safety have been correctly performed.

(3) The persons and organizations performing quality assurance functions shall have sufficient authority and organizational freedom to:

(a) Identify quality problems;

(b) Initiate, recommend, or provide solutions; and

(c) Verify implementation of solutions.

(4) While the term "licensee" is used, the requirements in this section shall be applicable to whatever design, fabrication, assembly, and testing of the package is accomplished with respect to a package before the time a package approval is issued.

Section 22. Quality Assurance Program. (1) The licensee, certificate holder, and applicant for a Certificate of Compliance (CoC) shall establish, at the earliest practicable time consistent with the schedule for accomplishing the activities, a quality assurance program that complies with the requirements of 10 C.F.R. 71.101 through 71.137. The licensee, certificate holder, and applicant for a CoC shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which the packaging is used. The licensee, certificate holder, and applicant for a CoC shall identify the material and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.

(2) The licensee, certificate holder, and applicant for a CoC, through its quality assurance program, shall provide control over activities affecting the quality of the identified materials and components to an extent consistent with their importance to safety, and as necessary to assure conformance to the approved design of each individual package used for the shipment of radioactive material. The licensee, certificate holder, and applicant for a CoC shall assure that activities affecting quality are accomplished under suitably controlled conditions. Controlled conditions shall include the use of appropriate equipment; suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and assurance that all prerequisites for the given activity have been satisfied. The licensee, certificate holder, and applicant for a CoC shall take into account the need for special controls, processes, test equipment, tools, and skills to attain the required quality, and the need for verification of quality by inspection and test.

(3) The licensee, certificate holder, and applicant for a CoC shall base the requirements and procedures of its quality

assurance program on the following conditions concerning the complexity and proposed use of the package and its components:

- (a) The impact of malfunction or failure of the item to safety;
- (b) The design and fabrication complexity or uniqueness of the item;
- (c) The need for special controls and surveillance over processes and equipment;
- (d) The degree to which functional compliance can be demonstrated by inspection or test; and
- (e) The quality history and degree of standardization of the item.

(4) The licensee, certificate holder, and applicant for a CoC shall provide for indoctrination and training of personnel performing activities affecting quality, as necessary, to assure that suitable proficiency is achieved and maintained.

(5) The licensee, certificate holder, and applicant for a CoC shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall review regularly the status and adequacy of that part of the quality assurance program they are executing.

Section 23. Handling, Storage, and Shipping Control. The licensee, certificate holder, and applicant for a CoC shall establish measures to control, in accordance with instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to be used in packaging to prevent damage or deterioration. If necessary for particular products, special protective environments, such as inert gas atmosphere, and specific moisture content and temperature levels shall be specified and provided.

Section 24. Inspection, Test and Operating Status. (1) The licensee, certificate holder, and applicant for a CoC shall establish measures to indicate, by the use of markings such as stamps, tags, labels, routing cards, or other suitable means, the status of inspections and tests performed upon individual items of the packaging. These measures shall provide for the identification of items that have satisfactorily passed required inspections and tests, where necessary to preclude inadvertent by passing of the inspections and tests.

(2) The licensee shall establish measures to identify the operating status of components of the packaging, such as tagging valves and switches, to prevent inadvertent operation.

Section 25. Nonconforming Materials, Parts, or Components. The licensee, certificate holder, and applicant for a CoC shall establish measures to control materials, parts, or components that do not conform to the licensee's requirements to prevent their inadvertent use or installation. These measures shall include, as appropriate, procedures for identification, documentation, segregation, disposition, and notification to affected organizations. Nonconforming items shall be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.

Section 26. Corrective Action. The licensee, certificate holder, and applicant for a CoC shall establish measures to assure that conditions adverse to quality, such as deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected. If a significant condition adverse to quality exists, the measures shall assure that the cause of the condition is determined and corrective action taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken shall be documented and reported to appropriate levels of management.

Section 27. Quality Assurance Records. (1) The licensee, certificate holder, and applicant for a CoC shall maintain sufficient written records to describe the activities affecting quality. The records shall include the instructions, procedures, and drawings required by 10 C.F.R. 71.111 to prescribe quality assurance activities and shall include closely related specifications such as required qualifications of personnel, procedures, and equipment.

(2) The records shall include the instructions or procedures that establish a records retention program that is consistent with applicable regulations and designates factors such as duration, location, and assigned responsibility.

(3) The licensee, certificate holder, and applicant for a CoC shall retain these records for three (3) years beyond the date when the licensee, certificate holder, applicant for a CoC last engage in the activity for which the quality assurance program was developed. If any portion of the written procedures or instructions is superseded, the licensee, certificate holder, and applicant for CoC shall retain the superseded material for three (3) years after it is superseded.

Section 28. Audits. (1) The licensee, certificate holder, and applicant for a CoC shall carry out a comprehensive system of planned and periodic audits to verify compliance with all aspects of the quality assurance program and to determine the effectiveness of the program.

(2) The audits shall be performed in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the areas being audited.

(3) Audited records shall be documented and reviewed by management having responsibility in the area audited.

(4) Follow-up action, including reaudit of deficient areas, shall be taken as indicated.

Section 29. Determination of A₁ and A₂. Values of A₁ and A₂ shall be determined as described in 10 C.F.R. 71 Appendix A.]

JEFFREY D. HOWARD, JR., M.D., Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, 502) 564-3970, julied.brooks@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for licensure for the packaging and transportation of radioactive material.

(b) The necessity of this administrative regulation: This administrative regulation outlines the requirements for those entities packaging and transporting radioactive materials to ensure materials are transported in a safe manner to prevent any unnecessary exposure to radioactive materials.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.844(1) requires the secretary to provide by administrative regulation the registration and licensing of the possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste; and to protect the public from unnecessary radiation exposure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures that all those who participate in the packaging and transportation of radioactive materials are properly licensed for the class of radioactive material and mode of transportation of radioactive materials. The proper packaging and transportation of radioactive materials helps to protect the public from unnecessary radiation exposures.

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

(a) How the amendment will change this existing administrative regulation: This amendment adopts by reference the applicable Nuclear Regulatory Commission (NRC) regulations for packaging and transporting radioactive materials which eliminates any

discrepancies between state and federal licensing requirements. This administrative regulation is being further amended in response to comments received in order to ensure full compatibility with the Nuclear Regulatory Commission (NRC).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as the agreement between NRC and the Commonwealth requires the Radiation Health Branch to be compatible with NRC regulations. This amended after comment administrative regulation establishes compatibility with the federal regulation, except where exclusions are allowed. The necessity for additional compatibility language was realized during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the authorizing statutes, which require the secretary to adopt regulations for the registration and licensing of the possession of any source of ionizing or electronic product radiation necessary to protect the public from unnecessary radiation exposure.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures all entities licensed for the packaging and transportation of radioactive materials are in full compliance with state and national regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 200 specific licensees of the cabinet and all licensees of the NRC or another agreement state who perform activities within the Commonwealth under reciprocal recognition pursuant to 902 KAR 100:065.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Affected entities are required to be in compliance with NRC regulations so there will be no new actions required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There is no cost of compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will be in full compliance with NRC regulations.

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

(a) Initially: This program is already operating. There is no cost to implement this amendment.

(b) On a continuing basis: This program is already operating. There is no cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment does not affect funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this regulation.

(9) TIERING: Is tiering applied? No. This administrative regulation affects all radioactive materials licensees subject to 902 KAR Chapter 100 regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Radiation Health Branch in the Department for Public Health administers this program.

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

regulation. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 211.844(1) requires the Cabinet to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. 10 C.F.R. Part 71 establishes the requirements for packaging, preparation for shipment and transportation of licensed material.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation does not add costs to the agency.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not add cost to the agency.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954, as amended, the Energy Policy Act of 2005 and 10 C.F.R. Part 71.

(2) State compliance standards. This regulation adopts the federal standards for packaging and transportation of radioactive materials.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires state regulations to be compatible with the equivalent federal regulations.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no different, stricter, or additional responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amended After Comments)

902 KAR 100:072. Medical use of byproduct material[Use of radionuclides in the health arts].

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. Part 35, 45 C.F.R. Part 46, 42 U.S.C. 2021

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.844(1), [40 C.F.R. 35]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes

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requirements and provisions for the use of byproduct[radioactive] material in the healing arts, for issuance of licenses authorizing the medical use of byproduct[radioactive] material and for specific licensees to possess, use, and transfer byproduct[radioactive] material for medical uses.

Section 1. Definitions. (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement state.

Section 2. Applicability. This administrative regulation establishes requirements for the medical use of byproduct material and for issuance of specific licensees authorizing the use of this material to possess, use or transfer radioactive material for licenses of broad scope. Except as established in subsections (1) through (4) of this section, the licensee shall comply with 10 C.F.R. Part 35. (1) The licensee shall not be subject to:

(a) 10 C.F.R. 35.8;

(b) 10 C.F.R. 35.11(c)(1);

(c) 10 C.F.R. 35.13(a)(1);

(d) 10 C.F.R. 35.4001; or

(e) 10 C.F.R. 35.4002.

(2) Application for specific license. Each application for a specific license shall be filed pursuant to 902 KAR 100:040.

(3) **Reference to the NRC, the Commission, or an agreement state shall be deemed to reference the "[Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch, the NRC, or an agreement state.]" shall be used in lieu of federal references to the "Commission" and the "NRC."**

(4) Notifications and reports required by 10 C.F.R. 35.14, 35.3045, 35.3047, and 35.3067 shall be directed to the manager, Radiation Health Branch, at:

(a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(b) (502) 564-1492: Facsimile;

(c) (502) 564-3700: Telephone, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(d) (800) 255-2587: Telephone, for hours except those established in paragraph (c) of this subsection. Implementation. (1) A licensee shall implement the provisions in this administrative regulation on or before October 24, 2005, with the exception of the requirements listed in subsection (2) of this section.

(2) A licensee shall implement the training requirements in Sections 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, and 77 of this administrative regulation on or before October 25, 2007.

(3) Prior to October 25, 2007, a licensee shall satisfy the training requirements of this administrative regulation for a radiation safety officer, an authorized medical physicist, an authorized nuclear pharmacist, or an authorized user by complying with either:

(a) The appropriate training requirements in Sections 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, and 77 of this administrative regulation; or

(b) The appropriate training requirements in Section 78 of this administrative regulation.

(4) If a license condition exempted a licensee from a provision of this administrative regulation on October 24, 2005, then the license condition continues to exempt the licensee from the provision of 902 KAR 100:072.

(5) If a requirement in this administrative regulation differs from the requirement in an existing license condition, the requirement in

this administrative regulation shall govern.

(6) A licensee shall continue to comply with any license condition that requires it to implement procedures required by Sections 49, 55, 56, and 57 of this administrative regulation until there is a license amendment or renewal that modifies the license condition.

Section 2. License Required. (1) A person may manufacture, produce, acquire, receive, possess, prepare, use, or transfer radioactive material for medical use only in accordance with a specific license issued by the cabinet, the U.S. Nuclear Regulatory Commission, or another agreement state, or as allowed in subsection (2)(a) or (b) of this section.

(2) A specific license is not required for an individual who:

(a) Receives, possesses, uses, or transfers radioactive material in accordance with the administrative regulations in this chapter under the supervision of an authorized user as provided in Section 12 of this administrative regulation unless prohibited by license condition; or

(b) Prepares unsealed radioactive material for medical use in accordance with the administrative regulations in this chapter under the supervision of an authorized nuclear pharmacist or authorized user as provided in Section 12 of this administrative regulation unless prohibited by license condition.

Section 3. Maintenance of Records. Each record required by this administrative regulation shall be legible throughout the retention period specified by each section. The record shall be the original or a reproduced copy or a microform if the copy or microform is authenticated by authorized personnel and the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications shall include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

Section 4. Application for License, Amendment, or Renewal.

(1) An application shall be signed by the applicant's or licensee's management.

(2) An application for a license for medical use of radioactive material as described in Sections 30, 31, 33, 37, 45, 46 and 62 of this administrative regulation and shall be made by:

(a) Filing an original and one (1) copy of Form RPS-7, Application for Radioactive Material License, that includes the facility diagram, equipment, and training and experience qualifications of the radiation safety officer, authorized user, authorized medical physicist, and authorized nuclear pharmacist; and

(b) Submitting procedures required by Sections 49, 55, 56, and 57, of this administrative regulation as applicable.

(3) A request for a license amendment or renewal shall be made by:

(a) Submitting an original and one (1) copy of either:

1. Form RPS-7, Application for Radioactive Material License; or

2. A letter requesting the amendment or renewal; and

(b) Submitting procedures required by Sections 49, 55, 56, and 57 of this administrative regulation as applicable.

(4) In addition to the requirements in subsections (2) and (3) of this section, an application for a license or amendment for medical use of radioactive material as described in Section 62 of this administrative regulation shall also include information regarding any radiation safety aspects of the medical use of the material that is unique to the evolving technology.

(a) The applicant shall also provide specific information on:

1. Radiation safety precautions and instructions;

2. Methodology for measurement of dosages or doses to be administered to patients or human research subjects; and

3. Calibration, maintenance, and repair of instruments and equipment necessary for radiation safety.

~~(b) The applicant or licensee shall provide information requested by the cabinet as necessary to complete its review of the application.~~

~~(5) An applicant that satisfies the requirements specified in 902 KAR 100:052 of this chapter may apply for a Type A specific license of broad scope.~~

~~Section 5. License Amendments. A licensee shall apply for and receive a license amendment:~~

~~(1) Before the licensee receives, prepares, or uses radioactive material for a type of use that is permitted under this chapter, but that is not authorized on the licensee's current license issued under this chapter;~~

~~(2) Before the licensee permits anyone to work as an authorized user, authorized nuclear pharmacist, or authorized medical physicist under the license, except:~~

~~(a) For an authorized user, an individual who meets the requirements in Sections 63, 68(1), 69(1), 70(1), 71(1), 72(1), 74(1), 76(1), 77(1), 78(2)(a), 78(3)(a), 78(4)(a), 78(7)(a), 78(9)(a), and 78(10)(a) of this administrative regulation;~~

~~(b) For an authorized nuclear pharmacist, an individual who meets the requirements in Sections 63 and 66(1) or 78(12)(a);~~

~~(c) For an authorized medical physicist, an individual who meets the requirements in Sections 63 and 65(1) or 78(11)(a) or (b) of this administrative regulation;~~

~~(d) An individual who is identified as an authorized user, an authorized nuclear pharmacist, or authorized medical physicist:~~

~~1. On a cabinet, an agreement state, or U.S. Nuclear Regulatory Commission license or other equivalent permit or license recognized by the cabinet that authorizes the use of radioactive material in medical use or in the practice of nuclear pharmacy;~~

~~2. On a permit issued by the cabinet, an agreement state, or U.S. Nuclear Regulatory Commission specific license of broad scope that is authorized to permit the use of radioactive material in medical use or in the practice of nuclear pharmacy;~~

~~3. On a permit issued by a U.S. Nuclear Regulatory Commission master material licensee that is authorized to permit the use of radioactive material in medical use or in the practice of nuclear pharmacy; or~~

~~4. By a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists.~~

~~(3) Before it changes radiation safety officers, except as provided in Section 10(3) of this administrative regulation;~~

~~(4) Before it receives radioactive material in excess of the amount or in a different form, or receives a different radionuclide than is authorized on the license;~~

~~(5) Before it adds to or changes the areas of use identified in the application or on the license, except for areas of use where radioactive material is used only in accordance with either Section 30 or 31 of this administrative regulation;~~

~~(6) Before it changes the address of use identified in the application or on the license; or~~

~~(7) Before it revises procedures required by Sections 49, 55, 56 and 57 of this administrative regulation as applicable, where the revision reduces radiation safety; and~~

~~(8) Before conducting research involving human research subjects using radioactive material.~~

~~Section 6. Notifications. (1) A licensee shall provide the cabinet a copy of the board certification, the cabinet, U.S. Nuclear Regulatory Commission or agreement state license, the permit issued by a U.S. Nuclear Regulatory Commission master material licensee, the permit issued by a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state licensee of broad scope, or the permit issued by a U.S. Nuclear Regulatory Commission master material license broad scope permittee for each individual no later than thirty (30) days after the date that the licensee permits the individual to work as an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist under Section 5(2)(a) through (d) of this administrative regulation.~~

~~(2) A licensee shall notify the cabinet by letter no later than thirty (30) days after:~~

~~(a) An authorized user, an authorized nuclear pharmacist, a radiation safety officer, or an authorized medical physicist permanently discontinues performance of duties under the license or has a name change;~~

~~(b) The licensee's mailing address changes;~~

~~(c) The licensee's name changes, but the name change does not constitute a transfer of control of the license as described in 902 KAR 100:040, Section 6(2) of this chapter; or~~

~~(d) The licensee has added to or changed the areas of use identified in the application or on the license if radioactive material is used in accordance with either Section 30 or 31 of this administrative regulation.~~

~~(3) The licensee shall mail the documents required in this section to the Cabinet for Health and Family Services, Radiation Health Branch, Manager, 275 East Main Street, Mailstop HS1C-A, Frankfort, Kentucky 40621.~~

~~Section 7. Exemptions Regarding Type A Specific Licenses of Broad Scope. A licensee possessing a Type A specific license of broad scope for medical use, issued under 902 KAR 100:052 of this chapter, is exempt from:~~

~~(1) Section 4(4) of this administrative regulation regarding the need to file an amendment to the license for medical use of radioactive material, as described in Section 62 of this administrative regulation;~~

~~(2) The provisions of Section 5(2) of this administrative regulation;~~

~~(3) The provisions of Section 5(5) of this administrative regulation regarding additions to or changes in the areas of use at the addresses identified in the application or on the license;~~

~~(4) The provisions of Section 6(1) of this administrative regulation;~~

~~(5) The provisions of Section 6(2)(a) of this administrative regulation for an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist;~~

~~(6) The provisions of Section 6(2)(d) of this administrative regulation regarding additions to or changes in the areas of use identified in the application or on the license if radioactive material is used in accordance with either Section 30 or 31 of this administrative regulation; and~~

~~(7) The provisions of Section 36(1) of this administrative regulation.~~

~~Section 8. License Issuance. (1) The cabinet shall issue a license for the medical use of radioactive material if:~~

~~(a) The applicant has filed RPS-7 Application for Radioactive Material License in accordance with the instructions in Section 4 of this administrative regulation;~~

~~(b) The applicant has paid any applicable fee as provided in 902 KAR 100:012 of this chapter;~~

~~(c) The cabinet finds the applicant equipped and committed to observe the safety standards established by the cabinet in this Chapter for the protection of the public health and safety; and~~

~~(d) The applicant meets the requirements of 902 KAR 100:040, 100:041, 100:042, and 100:045 of this chapter.~~

~~(2) The cabinet shall issue a license for mobile medical service if the applicant:~~

~~(a) Meets the requirements in subsection (1) of this section; and~~

~~(b) Assures that individuals or human research subjects to whom unsealed radioactive material or radiation from implants containing radioactive material will be administered may be released following treatment in accordance with Section 27 of this administrative regulation.~~

~~Section 9. Specific Exemptions. The cabinet may, as established in 10 C.F.R. 35.19, upon application of any interested person or upon its own initiative, grant exemptions from the administrative regulations in this chapter that it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.~~

~~Section 10. Authority and Responsibilities for the Radiation~~

Protection Program. (1) In addition to the radiation protection program requirements of 902 KAR 100:019 of this administrative regulation, a licensee's management shall approve in writing:

(a) Requests for a license application, renewal, or amendment before submittal to the cabinet;

(b) Any individual before allowing that individual to work as an authorized user, authorized nuclear pharmacist, or authorized medical physicist; and

(c) Radiation protection program changes that do not require a license amendment and are permitted in under Section 11 of this administrative regulation.

(2) A licensee's management shall appoint a radiation safety officer, who agrees, in writing, to be responsible for implementing the radiation protection program. The licensee, through the radiation safety officer, shall ensure that radiation safety activities are being performed in accordance with licensee-approved procedures and regulatory requirements.

(3) For up to sixty (60) days each year, a licensee may permit an authorized user or an individual qualified to be a radiation safety officer, under Sections 63 and 64, of this administrative regulation to function as a temporary radiation safety officer and to perform the functions of a radiation safety officer, as provided in subsection (7) of this section, if the licensee takes the actions required in subsections (2), (5), (7), and (8) of this section and notifies the cabinet in accordance with Section 6 of this administrative regulation.

(4) A licensee may simultaneously appoint more than one (1) temporary radiation safety officer in accordance with subsection (3) of this section, if needed to ensure that the licensee has a temporary radiation safety officer that satisfies the requirements to be a radiation safety officer for each of the different types of uses of radioactive material permitted by the license.

(5) A licensee shall establish the authority, duties, and responsibilities of the radiation safety officer in writing.

(6) A licensee authorized for two (2) or more different types of uses of radioactive material under Sections 33, 37, and 46 of this administrative regulation or two (2) or more types of units under Section 46 of this administrative regulation shall establish a Radiation Safety Committee to oversee all uses of radioactive material permitted by the license. The committee shall include an authorized user of each type of use permitted by the license, the radiation safety officer, a representative of the nursing service, and a representative of management who is neither an authorized user nor a radiation safety officer. The committee may include other members the licensee considers appropriate.

(7) A licensee shall provide the radiation safety officer sufficient authority, organizational freedom, time, resources, and management prerogative to:

(a) Identify radiation safety problems;

(b) Initiate, recommend, or provide corrective actions;

(c) Stop unsafe operations; and

(d) Verify implementation of corrective actions.

(8) A licensee shall retain a record of actions taken under subsections (1), (2), and (5) of this section as follows:

(a) A licensee shall retain a record of actions taken by the licensee's management in accordance with subsection (1) of this section, for five (5) years. The record shall include a summary of the actions taken and a signature of licensee management.

(b) The licensee shall retain a copy of both authority, duties, and responsibilities of the radiation safety officer, as required in subsection (5) of this section, and a signed copy of each radiation safety officer's agreement to be responsible for implementing the radiation safety program, as required in subsection (5) of this section, for the duration of the license. The records shall include the signature of the radiation safety officer and licensee management.

Section 11. Radiation Protection Program Changes. (1) A licensee may revise its radiation protection program without cabinet approval if:

(a) The revision does not require a license amendment under Section 5 of this administrative regulation;

(b) The revision is in compliance with 902 KAR Chapter 100

and the license;

(c) The revision has been reviewed and approved by the radiation safety officer and licensee management; and

(d) The affected individuals are instructed on the revised program before the changes are implemented.

(2) A licensee shall retain a record of each radiation protection program change made in accordance with subsection (1) of this section for five (5) years. The record shall include a copy of the old and new procedures, the effective date of the change, and the signature of the licensee management that reviewed and approved the change.

Section 12. Supervision. (1) A licensee that permits the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user, as allowed by Section 2(2)(a) of this administrative regulation shall:

(a) In addition to the requirements in 902 KAR 100:165, instruct the supervised individual in the licensee's written radiation protection procedures, written directive procedures, administrative regulations of this chapter, and license conditions with respect to the use of radioactive material; and

(b) Require the supervised individual to follow the instructions of the supervising authorized user for medical uses of radioactive material, written radiation protection procedures established by the licensee, written directive procedures, administrative regulations of this chapter, and license conditions with respect to the medical use of radioactive material.

(2) A licensee that permits the preparation of radioactive material for medical use by an individual under the supervision of an authorized nuclear pharmacist or physician who is an authorized user, as allowed by Section 2(2)(b) of this administrative regulation shall:

(a) In addition to the requirements in 902 KAR 100:165, instruct the supervised individual in the preparation of radioactive material for medical use, as appropriate to that individual's involvement with radioactive material; and

(b) Require the supervised individual to follow the instructions of the supervising authorized user or authorized nuclear pharmacist regarding the preparation of radioactive material for medical use, written radiation protection procedures established by the licensee, the administrative regulations of this chapter, and license conditions.

(3) A licensee that permits supervised activities under subsections (1) and (2) of this section is responsible for the acts and omissions of the supervised individual.

Section 13. Written Directives. (1) A written directive shall be dated and signed by an authorized user before the administration of I-131 sodium iodide greater than 1.11 Megabecquerels (MBq) (Thirty (30) microcuries (μCi)); any therapeutic dosage of unsealed radioactive material or any therapeutic dose of radiation from radioactive material:

(a) If, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive shall be acceptable. The information contained in the oral directive shall be documented as soon as possible in writing in the patient's record.

(b) A written directive shall be prepared within forty-eight (48) hours of the oral directive.

(2) The written directive shall contain the patient or human research subject's name and the following information:

(a) For any administration of quantities greater than 1.11 MBq (30 μCi) of sodium iodide I-131: the dosage;

(b) For an administration of a therapeutic dosage of unsealed radioactive material other than sodium iodide I-131: the radioactive drug, dosage, and route of administration;

(c) For gamma stereotactic radiosurgery: the total dose, treatment site, and values for the target coordinate settings per treatment for each anatomically distinct treatment site;

(d) For teletherapy: the total dose, dose per fraction, number of fractions, and treatment site;

(e) For high dose rate remote afterloading brachytherapy: the radionuclide, treatment site, dose per fraction, number of fractions,

and total dose; or

(f) For all other brachytherapy, including low, medium, and pulsed dose rate remote afterloaders:

1. Before implantation: treatment site, the radionuclide, and dose; and

2. After implantation but before completion of the procedure: the radionuclide, treatment site, number of sources, and total source strength and exposure time (or the total dose).

(3) A written revision to an existing written directive may be made if the revision is dated and signed by an authorized user before the administration of the dosage of unsealed radioactive material, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next fractional dose.

(a) If, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive shall be acceptable. The oral revision shall be documented as soon as possible in the patient's record.

(b) A revised written directive shall be signed by the authorized user within forty-eight (48) hours of the oral revision.

(4) The licensee shall retain a copy of the written directive as required by this section for three (3) years.

Section 14. Procedures for Administrations Requiring a Written Directive. (1) For any administration requiring a written directive, the licensee shall develop, implement, and maintain written procedures to provide high confidence that:

(a) The patient's or human research subject's identity is verified before each administration; and

(b) Each administration is in accordance with the written directive.

(2) At a minimum, the procedures required by subsection (1) of this section shall address the following items that are applicable to the licensee's use of radioactive material:

(a) Verifying the identity of the patient or human research subject;

(b) Verifying that the administration is in accordance with the treatment plan, if applicable, and the written directive;

(c) Checking both manual and computer-generated dose calculations; and

(d) Verifying that any computer-generated dose calculations are correctly transferred into the consoles of therapeutic medical units authorized by Section 46 or 62 of this administrative regulation.

(3) A licensee shall retain a copy of the procedures required under subsection (1) for the duration of the license.

Section 15. Report and Notification of Medical Events. (1) A licensee shall report any event, except for an event that results from patient intervention, in which the administration of radioactive material or radiation from radioactive material results in:

(a) A dose that differs from the prescribed dose or dose that would have resulted from the prescribed dosage by more than 0.05 Sv (5 rem) effective dose equivalent, five-tenths (0.5) Sv (50 rem) to an organ or tissue, or five-tenths (0.5) Sv (50 rem) shallow dose equivalent to the skin; and

1. The total dose delivered differs from the prescribed dose by twenty (20) percent or more;

2. The total dosage delivered differs from the prescribed dosage by twenty (20) percent or more or falls outside the prescribed dosage range; or

3. The fractionated dose delivered differs from the prescribed dose, for a single fraction, by fifty (50) percent or more.

(b) A dose that exceeds 0.05 Sv (5 rem) effective dose equivalent, five-tenths (0.5) Sv (50 rem) to an organ or tissue, or five-tenths (0.5) Sv (50 rem) shallow dose equivalent to the skin from any of the following:

1. An administration of a wrong radioactive drug containing radioactive material;

2. An administration of a radioactive drug containing radioactive material by the wrong route of administration;

3. An administration of a dose or dosage to the wrong

individual or human research subject;

4. An administration of a dose or dosage delivered by the wrong mode of treatment; or

5. A leaking sealed source.

(c) A dose to the skin or an organ or tissue other than the treatment site that exceeds by five-tenths (0.5) Sv (fifty (50) rem) to an organ or tissue and fifty (50) percent or more of the dose expected from the administration defined in the written directive (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site).

(2) A licensee shall report any event resulting from intervention of a patient or human research subject in which the administration of radioactive material or radiation from radioactive material results or will result in unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

(3) The licensee shall notify the cabinet by telephone no later than the next calendar day after discovery of the medical event. The commercial telephone number of the Cabinet for Health and Family Services, Radiation Health Branch is (502) 564-3700. The twenty-four (24) hour emergency number is (800) 255-2587.

(4) The licensee shall submit a written report to the Cabinet for Health and Family Services, Radiation Health Branch, Manager, 275 East Main Street, Mailstop HS1C-A, Frankfort, Kentucky 40621, within fifteen (15) days after discovery of the medical event.

(a) The written report shall include:

1. The licensee's name;

2. The name of the prescribing physician;

3. A brief description of the event;

4. Why the event occurred;

5. The effect, if any, on the individual who received the administration;

6. What actions, if any, have been taken or are planned to prevent recurrence; and

7. Certification that the licensee notified the individual (or the individual's responsible relative or guardian), and if not, why not.

(b) The report shall not contain the individual's name or any other information that could lead to identification of the individual.

(5)(a)1. The licensee shall provide notification of the event to the referring physician and also notify the individual who is the subject of the medical event no later than twenty-four (24) hours after its discovery, unless the referring physician personally informs the licensee either that he or she will inform the individual or that, based on medical judgment, telling the individual would be harmful. The licensee shall not be required to notify the individual without first consulting the referring physician. If the referring physician or the affected individual cannot be reached within twenty-four (24) hours, the licensee shall notify the individual as soon as possible thereafter.

2. The notification of the individual who is the subject of the medical event may be made instead to that individual's responsible relative or guardian;

(b) If a verbal notification is made, the licensee shall inform the individual, or appropriate responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide this written description if requested; and

(c) The licensee shall not delay any appropriate medical care for the individual including any necessary remedial care as a result of the medical event, because of any delay in notification.

(6) Aside from the notification requirement, this section shall not affect any rights or duties of licensees and physicians in relation to each other, to individuals affected by the medical event, or to that individual's responsible relatives or guardians.

(7) A licensee shall:

(a) Annotate a copy of the report provided to the cabinet with the:

1. Name of the individual who is the subject of the event; and

2. Social Security number or other identification number, if one (1) has been assigned, of the individual who is the subject of the event; and

(b) Provide a copy of the annotated report to the referring physician, if other than the licensee, no later than fifteen (15) days after the discovery of the event.

~~Section 16. Report and Notification of a Dose to an Embryo/fetus or a Nursing Child. (1) A licensee shall report any dose to an embryo/fetus that is greater than fifty (50) mSv (five (5) rem) dose equivalent that is a result of an administration of radioactive material or radiation from radioactive material to a pregnant individual unless the dose to the embryo/fetus was specifically approved, in advance, by the authorized user.~~

~~(2) A licensee shall report any dose to a nursing child that is a result of an administration of radioactive material to a breast-feeding individual that:~~

~~(a) Is greater than fifty (50) mSv (five (5) rem) total effective dose equivalent; or~~

~~(b) Has resulted in unintended permanent functional damage to an organ or a physiological system of the child, as determined by a physician.~~

~~(3) The licensee shall notify the cabinet by telephone no later than the next calendar day after discovery of a dose to the embryo/fetus or nursing child that requires a report in subsections (1) or (2) of this section. The commercial telephone number of the Cabinet for Health and Family Services, Radiation Health Branch is (502) 564-3700. The twenty-four (24) hour emergency number is (800) 255-2587.~~

~~(4) The licensee shall submit a written report to the Cabinet for Health and Family Services, Radiation Health Branch, Manager, 275 East Main Street, Mailstop HS1C-A, Frankfort, Kentucky 40621, within fifteen (15) days after discovery of a dose to the embryo/fetus or nursing child that requires a report in subsections (1) or (2) in this section.~~

~~(a) The written report shall include:~~

~~1. The licensee's name;~~

~~2. The name of the prescribing physician;~~

~~3. A brief description of the event;~~

~~4. Why the event occurred;~~

~~5. The effect, if any, on the embryo or fetus or the nursing child;~~

~~6. What actions, if any, have been taken or are planned to prevent recurrence; and~~

~~7. Certification that the licensee notified the pregnant individual or mother (or the mother's or child's responsible relative or guardian), and if not, why not.~~

~~(b) The report shall not contain the individual's or child's name or any other information that could lead to identification of the individual or child.~~

~~(5)(a)1. The licensee shall provide notification of the event to the referring physician and also notify the pregnant individual or mother, both hereafter referred to as the mother, no later than twenty-four (24) hours after discovery of an event that would require reporting under subsection (1) or (2) of this section, unless the referring physician personally informs the licensee either that he or she will inform the mother or that, based on medical judgment, telling the mother would be harmful. The licensee shall not be required to notify the mother without first consulting with the referring physician. If the referring physician or mother cannot be reached within twenty-four (24) hours, the licensee shall make the appropriate notifications as soon as possible thereafter.~~

~~2. The notification may be made to the mother's or child's responsible relative or guardian instead of the mother. If a verbal notification is made, the licensee shall inform the mother, or the mother's or child's responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide this written description if requested; and~~

~~(b) The licensee shall not delay any appropriate medical care for the embryo or fetus or for the nursing child, including any necessary remedial care as a result of the event, because of any delay in notification.~~

~~(6) A licensee shall:~~

~~(a) Annotate a copy of the report provided to the cabinet with the:~~

~~1. Name of the pregnant individual or the nursing child who is the subject of the event; and~~

~~2. Social Security number or other identification number, if one~~

~~(1) has been assigned, of the pregnant individual or the nursing child who is the subject of the event; and~~

~~(b) Provide a copy of the annotated report to the referring physician, if other than the licensee, no later than fifteen (15) days after the discovery of the event.~~

~~Section 17. Provisions for the Protection of Human Research Subjects. (1) A licensee may conduct research involving human research subjects only if it uses the radioactive materials specified on its license for the uses authorized on its license.~~

~~(2) If the research is conducted, funded, supported, or regulated by another federal agency that has implemented the Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46, the licensee shall, before conducting research:~~

~~(a) Obtain review and approval of the research from an Institutional Review Board, as defined and described in the Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46; and~~

~~(b) Obtain informed consent, as defined and described in the Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46, from the human research subject.~~

~~(3) If the research will not be conducted, funded, supported, or regulated by another federal agency that has implemented the Federal Policy, the licensee, shall before conducting research, apply for and receive a specific amendment to its cabinet medical use license. The amendment request shall include a written commitment that the licensee shall, before conducting research:~~

~~(a) Obtain review and approval of the research from an Institutional Review Board, as defined and described in the Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46; and~~

~~(b) Obtain "informed consent", as defined and described in the Federal Policy, from the human research subject.~~

~~(4) This section shall not relieve the licensees from complying with the other requirements in this administrative regulation.~~

~~Section 18. Report of a Leaking Source. A licensee shall file a report within five (5) days if a leak test required by Section 24, of this administrative regulation reveals the presence of 185-Bq (0.005 µCi) or more of removable contamination. The report shall be filed with the Cabinet for Health and Family Services, Radiation Health Branch, Manager, 275 East Main Street, Frankfort, Kentucky 40621. The written report shall include the model number and serial number, if assigned, of the leaking source; the radionuclide and its estimated activity; the results of the test; the date of the test; and the action taken.~~

~~Section 19. Quality Control of Diagnostic Equipment. A licensee shall establish written quality control procedures for diagnostic equipment used for radionuclide studies.(1) As a minimum, the procedures shall include:~~

~~(a) Quality control procedures recommended by equipment manufacturers; or~~

~~(b) Procedures submitted by the licensee and approved by the cabinet.~~

~~(2) The licensee shall conduct quality control procedures in accordance with written procedures.~~

~~Section 20. Possession, Use, and Calibration of Instruments Used to Measure the Activity of Unsealed Radioactive Material. (1) For direct measurements performed in accordance with Section 22, of this administrative regulation a licensee shall possess and use instrumentation to measure the activity of unsealed radioactive material before it is administered to each patient or human research subject.~~

~~(2) A licensee shall calibrate the instrumentation required in subsection (1) of this section in accordance with nationally-recognized standards or the manufacturer's instructions.~~

~~(3) A licensee shall maintain a record of instrument calibrations, required by this section, for three (3) years. The records shall include the model and serial number of the instrument, the date of the calibration, the results of the calibration, and the name of the individual who performed the calibration.~~

Section 21. Calibration of Survey Instruments. (1) A licensee shall calibrate the survey instruments used to show compliance with this administrative regulation and 902 KAR 100:019 before first use, annually, and following a repair that affects the calibration. A licensee shall:

- (a) Calibrate all scales with readings up to ten (10) mSv (1,000 mrem) per hour with a radiation source;
- (b) Calibrate two (2) separated readings on each scale or decade that will be used to show compliance; and
- (c) Conspicuously note on the instrument the apparent dose rate from a dedicated check source as determined at the time of calibration, and the date of calibration.

(2) A licensee shall not use survey instruments if the difference between the indicated exposure rate and the calculated exposure rate is more than twenty (20) percent.

(3) A licensee shall maintain a record of each radiation survey instrument calibrations for three (3) years. The record shall include the model and serial number of the instrument, the date of the calibration, the results of the calibration, and the name of the individual who performed the calibration.

Section 22. Determination of Dosages of Unsealed Radioactive Material for Medical Use. (1) A licensee shall determine and record the activity of each dosage before medical use.

(2) For a unit dosage, this determination shall be made by:

- (a) Direct measurement of radioactivity; or
- (b) A decay correction, based on the activity or activity concentration determined by:

1. A manufacturer or preparer licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements; or

2. A cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state license for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA.

(3) For other than unit dosages, this determination shall be made by:

- (a) Direct measurement of radioactivity;
- (b) Combination of measurement of radioactivity and mathematical calculations; or
- (c) Combination of volumetric measurements and mathematical calculations, based on the measurement made by a manufacturer or preparer licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements.

(4) Unless otherwise directed by the authorized user, a licensee shall not use a dosage if the dosage does not fall within the prescribed dosage range or if the dosage differs from the prescribed dosage by more than twenty (20) percent.

(5) A licensee shall retain a record of the dosage determination, required by this section, for three (3) years. The record shall contain:

- (a) The radiopharmaceutical;
- (b) The patient's or human research subject's name, or identification number if one (1) has been assigned;
- (c) The prescribed dosage, the determined dosage, or a notation that the total activity is less than 1.11 MBq (30 µCi);
- (d) The date and time of the dosage determination; and
- (e) The name of the individual who determined the dosage.

Section 23. Authorization for Calibration, Transmission, and Reference Sources. Any person authorized by Section 2 of this administrative regulation for medical use of radioactive material may receive, possess, and use any of the following radioactive material for check, calibration, transmission, and reference use. (1) Sealed sources, not exceeding 1.11 GBq (30 mCi) each, manufactured and distributed by a person licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements.

(2) Sealed sources, not exceeding 1.11 GBq (30 mCi) each, redistributed by a licensee authorized to redistribute the sealed

sources manufactured and distributed by a person licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements, providing the redistributed sealed sources are in the original packaging and shielding and are accompanied by the manufacturer's approved instructions.

(3) Any radioactive material with a half-life not longer than 120 days in individual amounts not to exceed 0.56 GBq (15 mCi).

(4) Any radioactive material with a half-life longer than 120 days in individual amounts not to exceed the smaller of 7.4 MBq (200 µCi) or 1000 times the quantities in 902 KAR 100:030.

(5) Technetium-99m in amounts as needed.

Section 24. Requirements for Possession of Sealed Sources and Brachytherapy Sources. (1) A licensee in possession of any sealed source or brachytherapy source shall follow the radiation safety and handling instructions supplied by the manufacturer.

(2) A licensee in possession of a sealed source shall:

(a) Test the source for leakage before its first use unless the licensee has a certificate from the supplier indicating that the source was tested within six (6) months before transfer to the licensee; and

(b) Test the source for leakage at intervals not to exceed six (6) months or at other intervals approved by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state in the Sealed Source and Device Registry.

(3) To satisfy the leak test requirements of this section, the licensee shall measure the sample so that the leak test can detect the presence of 185 Bq (0.005 µCi) of radioactive material in the sample.

(4) A licensee shall retain leak test records in accordance with subsection (8)(a) of this section.

(5) If the leak test reveals the presence of 185 Bq (0.005 µCi) or more of removable contamination, the licensee shall:

(a) Immediately withdraw the sealed source from use and store, dispose, or cause it to be repaired in accordance with the requirements in 902 KAR 100:019, 100:021, 100:040, and 100:058; and

(b) File a report within five (5) days of the leak test in accordance with 902 KAR 100:072, Section 18.

(6) A licensee need not perform a leak test on the following sources:

- (a) Sources containing only radioactive material with a half-life of less than thirty (30) days;
- (b) Sources containing only radioactive material as a gas;
- (c) Sources containing 3.7 MBq (100 µCi) or less of beta or gamma-emitting material or 0.37 MBq (10 µCi) or less of alpha-emitting material;
- (d) Seeds of iridium-192 encased in nylon ribbon; and
- (e) Sources stored and not being used. However, the licensee shall test each source for leakage before any use or transfer unless it has been leak tested within six (6) months before the date of use or transfer.

(7) A licensee in possession of sealed sources or brachytherapy sources, except for gamma stereotactic radiosurgery sources, shall conduct a semiannual physical inventory of all these sources in its possession. The licensee shall retain each inventory record in accordance with subsection (8)(b) of this section.

(8) A licensee shall keep records of leaks tests and inventory of sealed sources and brachytherapy sources as follows:

(a) A licensee shall retain records of leak tests for three (3) years. The records shall include the model number and serial number, if one (1) has been assigned, of each source tested; the identity of each source by radionuclide and its estimated activity; the results of the test; the date of the test; and the name of the individual who performed the test.

(b) A licensee shall retain records of the semiannual physical inventory of sealed sources and brachytherapy sources for three (3) years. The inventory records shall contain the model number of each source, and serial number if one (1) has been assigned, the identity of each source by radionuclide and its nominal activity, the location of each source, and the name of the individual who

performed the inventory.

Section 25. Labeling of Vials and Syringes. Each syringe and vial that contains unsealed radioactive material shall be labeled to identify the radioactive drug. Each syringe shield and vial shield shall also be labeled unless the label on the syringe or vial is visible when shielded.

Section 26. Surveys of Ambient Radiation Exposure Rate. (1) In addition to the surveys required by 902 KAR 100:019, a licensee shall survey with a radiation detection survey instrument at the end of each day of use. A licensee shall survey all areas where unsealed radioactive material requiring a written directive was prepared for use or administered.

(2) A licensee shall not be required to perform the surveys required by subsection (1) of this section in an area where patients or human research subjects are confined when they cannot be released under Section 27 of this administrative regulation.

(3) A licensee shall retain a record of each survey for three (3) years. The record shall include the date of the survey, the results of the survey, the instrument used to conduct the survey, and the name of the individual who performed the survey.

Section 27. Release of Individuals Containing Unsealed Radioactive Material or Implants Containing Radioactive Material.

(1) A licensee may authorize the release from its control of any individual who has been administered unsealed radioactive material or implants containing radioactive material if the total effective dose equivalent to any other individual from exposure to the released individual is not likely to exceed five (5) mSv (five-tenths (0.5) rem). NUREG-1556, Vol. 9, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Medical Licenses," describes methods for calculating doses to other individuals and contains tables of activities not likely to cause doses exceeding five (5) mSv (0.5 rem).

(2) A licensee shall provide the released individual, or the individual's parent or guardian, with instructions, including written instructions, on actions recommended to maintain doses to other individuals as low as is reasonably achievable if the total effective dose equivalent to any other individual is likely to exceed one (1) mSv (one-tenth (0.1) rem). If the total effective dose equivalent to a nursing infant or child could exceed one (1) mSv (one-tenth (0.1) rem) assuming there were no interruption of breast-feeding, the instructions shall also include:

(a) Guidance on the interruption or discontinuation of breast-feeding; and

(b) Information on the potential consequences, if any, of failure to follow the guidance.

(3) A licensee shall retain a record of the basis for authorizing the release of an individual in accordance with this section, if the total effective dose equivalent is calculated by:

(a) Using the retained activity rather than the activity administered;

(b) Using an occupancy factor less than 0.25 at one (1) meter;

(c) Using the biological or effective half-life; or

(d) Considering the shielding by tissue.

(4) A licensee shall retain a record that the instructions, required by this section, were provided to a breast-feeding female if the radiation dose to the infant or child from continued breast-feeding could result in a total effective dose equivalent exceeding five (5) mSv (five-tenths (0.5) rem).

(5) The records required by subsections (3), and (4) of this section shall be retained for three (3) years after the date of release of the individual.

(6) A report shall be filed in accordance with Section 15 of this chapter and submitted to the cabinet if a dose greater than 50 mSv (5 rem) is received by an individual from a patient released under this section.

Section 28. Provision of Mobile Medical Service. (1) A licensee providing mobile medical service shall:

(a) Obtain a letter signed by the management of each client for which services are rendered that permits the use of byproduct

material at the client's address and clearly delineates the authority and responsibility of the licensee and the client;

(b) Check instruments used to measure the activity of unsealed radioactive material for proper function before medical use at each client's address or on each day of use, whichever is more frequent. At a minimum, the check for proper function required by this paragraph shall include a constancy check;

(c) Check survey instruments for proper operation with a dedicated check source before use at each client's address; and

(d) Before leaving a client's address, survey all areas of use to ensure compliance with the requirements in 902 KAR 100:019.

(2) A mobile medical service shall not have radioactive material delivered from the manufacturer or the distributor to the client unless the client has a license allowing possession of the byproduct material. Radioactive material delivered to the client shall be received and handled in conformance with the client's license.

(3) A licensee providing mobile medical services shall retain the letter required in subsection (1)(a) and the record of each survey required in subsection (1)(d) of this section respectively:

(a) A licensee shall retain a copy of each letter required in subsection (1)(a) that permits the use of radioactive material at a client's address. Each letter shall clearly delineate the authority and responsibility of the licensee and the client and shall be retained for three (3) years after the last provision of service.

(b) A licensee shall retain the record of each survey required by subsection (1)(d) for three (3) years. The record shall include the date of the survey, the results of the survey, the instrument used to make the survey, and the name of the individual who performed the survey.

(4) The cabinet shall license mobile medicine services in accordance with this administrative regulation and applicable requirements of 902 KAR 100:012, 100:015, 100:019, 100:021, 100:040, 100:050, 100:060, 100:070, and 100:165.

Section 29. Decay in storage. (1) A licensee may hold radioactive material with a physical half-life of less than 120 days for decay in storage before disposal without regard to its radioactivity if the licensee:

(a) Holds radioactive material for decay a minimum of ten (10) half-lives;

(b) Monitors radioactive material at the surface before disposal and determines that its radioactivity cannot be distinguished from the background radiation level with an appropriate radiation detection survey meter set on its most sensitive scale and with no interposed shielding; and

(c) Removes or obliterates all radiation labels, except for radiation labels on materials that are within containers and that will be managed as biomedical waste after they have been released from the licensee.

(2) A licensee shall retain a record of each disposal for three (3) years. The record shall include the:

(a) Date of the disposal;

(b) Date on which the radioactive material was placed in storage;

(c) Radionuclides disposed;

(d) Model and serial number of the survey instrument used;

(e) Background dose rate;

(f) Radiation dose rate measured at the surface of each waste container; and

(g) Name of the individual who performed the disposal.

Section 30. Use of Unsealed Radioactive Material for Uptake, Dilution, and Excretion Studies for Which a Written Directive is Not Required. Except for quantities that require a written directive under Section 13(2), of this administrative regulation a licensee may use any unsealed radioactive material prepared for medical use for uptake, dilution, or excretion studies that is:

(1) Obtained from a manufacturer or preparer licensed under 902 KAR 100:040 and 902 KAR 100:058 of this chapter, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements;

(2) Prepared by:

- (a) An authorized nuclear pharmacist;
- (b) A physician who is an authorized user and who meets the requirements specified in Section 69 or 70 and Section 69(3)(a)2-g of this administrative regulation; or
- (c) An individual under the supervision of either as specified in Section 12 of this administrative regulation; or
- (3) Obtained from and prepared by a licensee of the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA; or
- (4) Prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.

Section 31. Use of Unsealed Radioactive Material for Imaging and Localization Studies for Which a Written Directive is Not Required. Except for quantities that require a written directive under Section 13(2) of this administrative regulation a licensee may use any unsealed radioactive material prepared for medical use for imaging and localization studies that is:

- (1) Obtained from a manufacturer or preparer licensed under 902 KAR 100:040 or 100:058 of this chapter, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements;
- (2) Prepared by:
 - (a) An authorized nuclear pharmacist;
 - (b) A physician who is an authorized user and who meets the requirements specified in Sections 69 or 70 and Section 69(3)(a)2-g of this administrative regulation; or
 - (c) An individual under the supervision, as specified in Section 12 of this administrative regulation;
 - (3) Obtained from and prepared by a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA; or
 - (4) Prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.

Section 32. Permissible Radionuclide Contaminant Concentration. (1) A licensee shall not administer to humans a radiopharmaceutical containing more than:

- (a) 0.15 kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m (0.15 microcurie of molybdenum-99 per millicurie of technetium-99m); or
- (b) 0.02 kilobecquerel of strontium-82 per megabecquerel of rubidium-82 chloride injection (0.02 microcurie of strontium-82 per millicurie of rubidium-82 chloride); or
- (c) 0.02 kilobecquerel of strontium-85 per megabecquerel of rubidium-82 chloride injection (0.2 microcurie of strontium-85 per millicurie of rubidium-82 chloride);
- (2) A licensee preparing radiopharmaceuticals from radionuclide generators shall measure the concentration of radionuclide contaminant of the first eluate after receipt of a generator to demonstrate compliance with limits specified in subsection (1) of this section.
- (3) A licensee required to measure radionuclide contaminant concentration, in this section, shall retain a record of each measurement for three (3) years;
 - (a) The record shall include, for each elution or extraction tested, the:
 - 1. Measured activity of the radiopharmaceutical expressed in millicuries;
 - 2. Measured activity of contaminant expressed in microcuries;
 - 3. Ratio of the measurements in subsection (1)(a), (b), and (c) of this section expressed as microcuries of contaminant per millicurie of radiopharmaceutical;
 - 4. Date of the test; and
 - 5. Initials of the individual who performed the test.
 - (b) A licensee shall report immediately to the cabinet each

occurrence of contaminant concentration exceeding the limits specified in this section.

Section 33. Use of Unsealed Radioactive Material for Which a Written Directive is Required. A licensee may use any unsealed radioactive material prepared for medical use and for which a written directive is required that is:

- (1) Obtained from a manufacturer or preparer licensed under 902 KAR 100:040 or 902 KAR 100:058 of this chapter, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements;
- (2) Prepared by an authorized nuclear pharmacist; a physician who is an authorized user and who meets the requirements specified in Section 69 or 70 of this administrative regulation, or an individual under the supervision, as specified in Section 12 of this administrative regulation;
- (3) Obtained from and prepared by a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state licensee for use in research in accordance with an Investigational New Drug (IND) protocol accepted by FDA; or
- (4) Prepared by the licensee for use in research in accordance with an Investigational New Drug (IND) protocol accepted by FDA.

Section 34. Safety Instruction. (1) In addition to 902 KAR 100:165, a licensee shall provide radiation safety instruction, initially and at least annually, to personnel caring for the patient or the human research subjects receiving radiopharmaceutical therapy and hospitalized for compliance with Section 27 of this administrative regulation. To satisfy this requirement, the instruction shall describe the licensee's procedures for:

- (a) Patient or human research subject control;
- (b) Visitor control:
 - 1. Routine visitation to hospitalized individuals in accordance with 902 KAR 100:019, Section 10(1)(a) of this chapter; and
 - 2. Visitation authorized in accordance with 902 KAR 100:019, Section 10(6) of this chapter;
- (c) Contamination control;
- (d) Waste control; and
- (e) Notification of the radiation safety officer, or his or her designee, and the authorized user if the patient or the human research subject has a medical emergency or dies.
- (2) A licensee shall retain a record of individuals receiving safety instructions for three (3) years. The record shall include a list of the topics covered, the date of the instruction, the name of the attendee(s), and the name(s) of the individual(s) who provided the instruction.

Section 35. Safety Precautions. (1) For each patient or human research subject who cannot be released under Section 27 of this administrative regulation a licensee shall:

- (a) Quarter the patient or the human research subject either in:
 - 1. A private room with a private sanitary facility; or
 - 2. A room, with a private sanitary facility, with another individual who also has received therapy with unsealed radioactive material and who also cannot be released under Section 27 of this administrative regulation;
- (b) Visibly post the patient's or the human research subject's room with a "Radioactive Materials" sign;
- (c) Note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or the human research subject's room; and
- (d) Either monitor material and items removed from the patient's or the human research subject's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle the material and items as radioactive waste.
- (2) A licensee shall notify the radiation safety officer, or his or her designee, and the authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

Section 36. Suppliers for Sealed Sources or Devices for

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Medical Use. For medical use, a licensee shall only use:

- (1) Sealed sources or devices manufactured, labeled, packaged, and distributed in accordance with a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state;
- (2) Sealed sources or devices noncommercially transferred from a 902 KAR 100:072 license, U.S. Nuclear Regulatory Commission, or equivalent State Medical License; or
- (3) Teletherapy sources manufactured and distributed in accordance with a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state.

Section 37. Use of Sources for Manual Brachytherapy. A licensee shall use only brachytherapy sources for therapeutic medical uses:

- (1) As approved in the Sealed Source and Device Registry; or
- (2) In research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA if the requirements of Section 36(1) of this administrative regulation are met.

Section 38. Surveys After Source Implant and Removal. (1) Immediately after implanting sources in a patient or a human research subject, the licensee shall make a survey to locate and account for all sources that have not been implanted.

(2) Immediately after removing the last temporary implant source from a patient or a human research subject, the licensee shall make a survey of the patient or the human research subject with a radiation detection survey instrument to confirm that all sources have been removed.

(3) A licensee shall retain a record of the surveys required by subsections (1) and (2) of this section for three (3) years. Each record shall include the date and results of the survey, the survey instrument used, and the name of the individual who made the survey.

Section 39. Brachytherapy Sources Accountability. (1) A licensee shall maintain accountability at all times for all brachytherapy sources in storage or use.

(2) As soon as possible after removing sources from a patient or a human research subject, a licensee shall return brachytherapy sources to a secure storage area.

(3) A licensee shall maintain a record of the brachytherapy source accountability for three (3) years for:

(a) Temporary implants, the record shall include:

1. The number and activity of sources removed from storage, the time and date they were removed from storage, the name of the individual who removed them from storage, and the location of use; and

2. The number and activity of sources returned to storage, the time and date they were returned to storage, and the name of the individual who returned them to storage.

(b) Permanent implants, the record shall include:

1. The number and activity of sources removed from storage, the date they were removed from storage, and the name of the individual who removed them from storage;

2. The number and activity of sources not implanted, the date they were returned to storage, and the name of the individual who returned them to storage; and

3. The number and activity of sources permanently implanted in the patient or human research subject.

Section 40. Safety Instruction. In addition to the requirements of 902 KAR 100:165 of this chapter, (1) The licensee shall provide radiation safety instruction, initially and at least annually, to personnel caring for patients or human research subjects who are receiving brachytherapy and cannot be released under Section 27 of this administrative regulation. To satisfy this requirement, the instruction shall be commensurate with the duties of the personnel and shall include the:

- (a) Size and appearance of the brachytherapy sources;
- (b) Safe handling and shielding instructions;
- (c) Patient or human research subject control;

(d) Visitor control, including both:

1. Routine visitation of hospitalized individuals in accordance with 902 KAR 100:019, Section 10(1)(a) of this chapter; and

2. Visitation authorized in accordance with 902 KAR 100:019, Section 10(6) of this chapter; and

(e) Notification of the radiation safety officer, or his or her designee, and an authorized user if the patient or the human research subject has a medical emergency or dies.

(2) A licensee shall retain a record of individuals receiving instruction for three (3) years. The record shall include a list of the topics covered, the date of the instruction, the name of the attendee, and the name of the individual who provided the instruction.

Section 41. Safety Precautions. (1) For each patient or human research subject who is receiving brachytherapy and cannot be released under Section 27 of this administrative regulation a licensee shall:

(a) Not quarter the patient or the human research subject in the same room as an individual who is not receiving brachytherapy;

(b) Visibly post the patient's or human research subject's room with a "Radioactive Materials" sign; and

(c) Note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room.

(2) A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source:

(a) Dislodged from the patient; and

(b) Lodged within the patient following removal of the source applicators.

(3) A licensee shall notify the radiation safety officer, or his or her designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

Section 42. Calibration Measurements of Brachytherapy Sources. (1) Before the first medical use of a brachytherapy source on or after October 24, 2005, a licensee shall have:

(a) Determined the source output or activity using a dosimetry system that meets the requirements of Section 51(1) of this administrative regulation;

(b) Determined source positioning accuracy within applicators; and

(c) Used published protocols currently accepted by nationally recognized bodies to meet the requirements of subsection (1)(a) and (b) of this section.

(2) A licensee may use measurements provided by the source manufacturer or by a calibration laboratory accredited by the American Association of Physicists in Medicine that are made in accordance with subsection (1) of this section.

(3) A licensee shall mathematically correct the outputs or activities determined in subsection (1) of this section for physical decay at intervals consistent with one (1) percent physical decay.

(4) A licensee shall retain a record of each calibration of brachytherapy sources required by this section for three (3) years after the last use of the source. The record shall include:

(a) The date of the calibration;

(b) The manufacturer's name, model number, and serial number for the source and the instruments used to calibrate the source;

(c) The source output or activity;

(d) The source positioning accuracy within the applicators; and

(e) The name of the individual, source manufacturer, or the calibration laboratory that performed the calibration.

Section 43. Decay of strontium-90 sources for ophthalmic treatments. (1) Only an authorized medical physicist shall calculate the activity of each strontium-90 source that is used to determine the treatment times for ophthalmic treatments. The decay shall be based on the activity determined under Section 42 of this administrative regulation.

(2) A licensee shall retain a record of the activity of each

strontium-90 source for the life of the source. The record shall include:

- (a) The date and initial activity of the source as determined under Section 42 of this administrative regulation; and
- (b) For each decay calculation, the date and the source activity as determined under subsection (1) of this section.

Section 44. Therapy-related computer systems. The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally-recognized bodies. At a minimum, the acceptance testing shall include, as applicable, verification of:

- (1) The source-specific input parameters required by the dose calculation algorithm;
- (2) The accuracy of dose, dwell time, and treatment time calculations at representative points;
- (3) The accuracy of isodose plots and graphic displays; and
- (4) The accuracy of the software used to determine sealed source positions from radiographic images.

Section 45. Use of Sealed Sources for Diagnosis. A licensee shall use only sealed sources for diagnostic medical uses as approved in the Sealed Source and Device Registry.

Section 46. Use of a Sealed Source in a Remote Afterloader Unit, Teletherapy Unit, or Gamma Stereotactic Radiosurgery Unit. A licensee shall use sealed sources in photon-emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units for therapeutic medical uses:

- (1) As approved in the Sealed Source and Device Registry; or
- (2) In research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA provided the requirements of Section 36(1) of this administrative regulation are met.

Section 47. Surveys of Patients and Human Research Subjects Treated with a Remote Afterloader Unit. (1) Before releasing a patient or a human research subject from licensee control, a licensee shall survey the patient or the human research subject and the remote afterloader unit with a portable radiation detection survey instrument to confirm that the source has been removed from the patient or human research subject and returned to the safe shielded position.

(2) A licensee shall retain a record of the surveys for three (3) years. Each record shall include the date and results of the survey, the survey instrument used, and the name of the individual who made the survey.

Section 48. Installation, Maintenance, Adjustment, and Repair. (1) Only a person specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state shall install, maintain, adjust, or repair a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit that involves work on the source shielding, the source driving unit, or other electronic or mechanical component that could expose the source, reduce the shielding around the source, or compromise the radiation safety of the unit or the source.

(2) Except for low dose-rate remote afterloader units, only a person specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state shall install, replace, relocate, or remove a sealed source or source contained in other remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units.

(3) For a low dose-rate remote afterloader unit, only a person specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state or an authorized medical physicist shall install, replace, relocate, or remove a sealed source contained in the unit.

(4) A licensee shall retain a record of the installation, maintenance, adjustment, and repair of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units for three (3) years. For each installation, maintenance, adjustment and repair, the record shall include the date, description of the service,

and name of the individual who performed the work.

Section 49. Safety Procedures and Instructions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units. (1) A licensee shall:

- (a) Secure the unit, the console, the console keys, and the treatment room when not in use or unattended;
- (b) Permit only individuals approved by the authorized user, radiation safety officer, or authorized medical physicist to be present in the treatment room during treatment with the source;
- (c) Prevent dual operation of more than one (1) radiation producing device in a treatment room if applicable; and
- (d) Develop, implement, and maintain written procedures for responding to an abnormal situation if the operator is unable to place the source in the shielded position, or remove the patient or human research subject from the radiation field with controls from outside the treatment room. These procedures shall include:

1. Instructions for responding to equipment failures and the names of the individuals responsible for implementing corrective actions;

2. The process for restricting access to and posting of the treatment area to minimize the risk of inadvertent exposure; and

3. The names and telephone numbers of the authorized users, the authorized medical physicist, and the radiation safety officer to be contacted if the unit or console operates abnormally.

(2) A copy of the procedures required by subsection (1)(d) of this section shall be physically located at the unit console.

(3) A licensee shall post instructions at the unit console to inform the operator of:

(a) The location of the procedures required by subsection (1)(d) of this section; and

(b) The names and telephone numbers of the authorized users, the authorized medical physicist, and the radiation safety officer to be contacted if the unit or console operates abnormally.

(4) A licensee shall provide instruction, initially and at least annually, to all individuals who operate the unit, as appropriate to the individual's assigned duties, in:

(a) The procedures identified in paragraph (1)(d) of this section; and

(b) The operating procedures for the unit.

(5) A licensee shall ensure that operators, authorized medical physicists, and authorized users participate in drills of the emergency procedures, initially and at least annually.

(6) A licensee shall retain a record of individuals receiving instructions for three (3) years. The record shall include a list of the topics covered, the date of the instruction, the name of the attendee, and the name of the individual who provided the instruction.

(7) A licensee shall retain a copy of the procedures until the licensee no longer possesses the remote afterloader, teletherapy unit, or gamma stereotactic radiosurgery unit.

Section 50. Safety Precautions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units. (1) A licensee shall control access to the treatment room by a door at each entrance.

(2) A licensee shall equip each entrance to the treatment room with an electrical interlock system that shall:

(a) Prevent the operator from initiating the treatment cycle unless each treatment room entrance door is closed;

(b) Cause the source to be shielded when an entrance door is opened; and

(c) Prevent the source from being exposed following an interlock interruption until all treatment room entrance doors are closed and the source on-off control is reset at the console.

(3) A licensee shall require any individual entering the treatment room to assure, through the use of appropriate radiation monitors, that radiation levels have returned to ambient levels.

(a) Each radiation monitor shall be equipped with a backup power supply separate from the power supply to the unit. This backup power supply may be a battery system.

(b) If the radiation monitor is inoperable, the licensee shall require any individual entering the treatment room to use a survey

instrument or audible alarm personal dosimeter to monitor for any malfunction of the source exposure mechanism that may result in an exposed or partially exposed source. The instrument or dosimeter shall be checked with a dedicated check source for proper operation at the beginning of each day of use. The licensee shall keep a record as established in this section.

(c) A licensee shall promptly repair or replace the radiation monitor if it is inoperable.

(4) Except for low-dose remote afterloader units, a licensee shall construct or equip each treatment room with viewing and intercom systems to permit continuous observation of the patient or the human research subject from the treatment console during irradiation.

(5) For licensed activities in which a source is placed within the patient's or human research subject's body, a licensee shall only conduct treatments that allow for expeditious removal of a decoupled or jammed source.

(6) In addition to the requirements specified in subsections (1) through (5) of this section, a licensee shall:

(a) For medium dose-rate and pulsed dose-rate remote afterloader units, require:

1. An authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit to be physically present during the initiation of all patient treatments involving the unit; and

2. An authorized medical physicist and either an authorized user or an individual, under the supervision of an authorized user, who has been trained to remove the source applicator if there is an emergency involving the unit, to be immediately available during continuation of all patient treatments involving the unit.

(b) For high dose-rate remote afterloader units, require:

1. An authorized user and an authorized medical physicist to be physically present during the initiation of all patient treatments involving the unit; and

2. An authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit, to be physically present during continuation of all patient treatments involving the unit.

(c) For gamma stereotactic radiosurgery units, require an authorized user and an authorized medical physicist to be physically present throughout all patient treatments involving the unit.

(d) Notify the radiation safety officer, or his or her designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

(7) A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source:

(a) Remaining in the unshielded position; or

(b) Lodged within the patient following completion of the treatment.

Section 51. Dosimetry Equipment. (1) Except for low dose-rate remote afterloader sources in which the source output or activity is determined by the manufacturer, a licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one (1) of the following two (2) conditions shall be met:

(a) The system shall have been calibrated using a system or source traceable to the National Institute of Science and Technology (NIST) and published protocols accepted by nationally recognized bodies or by a calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration shall have been performed within the previous two (2) years and after any servicing that may have affected system calibration; or

(b) The system shall have been calibrated within the previous four (4) years. Eighteen (18) to thirty (30) months after that calibration, the system shall have been intercompared with another dosimetry system that was calibrated within the past twenty-four (24) months by NIST or by a calibration laboratory accredited by the AAPM. The results of the intercomparison shall indicate that

the calibration factor of the licensee's system had not changed by more than two (2) percent. The licensee shall not use the intercomparison result to change the calibration factor. If intercomparing dosimetry systems to be used for calibrating sealed sources for therapeutic units, the licensee shall use a comparable unit with beam attenuators or collimators, as applicable, and sources of the same radionuclide as the source used at the licensee's facility.

(2) The licensee shall have a dosimetry system available for use for spot-check output measurements, if applicable. To satisfy this requirement, the system may be compared with a system that has been calibrated in accordance with subsection (1) of this section. This comparison shall have been performed within the previous year and after each servicing that may have affected system calibration. The spot-check system may be the same system used to meet the requirement in subsection (1) of this section.

(3) The licensee shall retain a record of each calibration, intercomparison, and comparison in accordance with this section for the duration of the license. For each calibration, intercomparison, or comparison, the record shall include:

(a) The date;

(b) The manufacturer's name, model numbers and serial numbers of the instruments that were calibrated, intercompared, or compared as required by subsections (1) and (2) of this section;

(c) The correction factor that was determined from the calibration or comparison or the apparent correction factor that was determined from an intercomparison; and

(d) The names of the individuals who performed the calibration, intercomparison, or comparison.

Section 52. Full Calibration Measurements on Teletherapy Units. (1) A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit:

(a) Before the first medical use of the unit;

(b) Before medical use under the following conditions:

1. If spot-check measurements indicate that the output differs by more than five (5) percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

2. Following replacement of the source or following reinstallation of the teletherapy unit in a new location; or

3. Following any repair of the teletherapy unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and

(c) At intervals not exceeding one (1) year.

(2) To satisfy the requirement of subsection (1) of this section, full calibration measurements shall include determination of:

(a) The output within \pm three (3) percent for the range of field sizes and for the distance or range of distances used for medical use;

(b) The coincidence of the radiation field and the field indicated by the light beam localizing device;

(c) The uniformity of the radiation field and its dependence on the orientation of the useful beam;

(d) Timer accuracy and linearity over the range of use;

(e) On-off error; and

(f) The accuracy of all distance measuring and localization devices in medical use.

(3) A licensee shall use the dosimetry system described in Section 51(1) of this administrative regulation to measure the output for one (1) set of exposure conditions. The remaining radiation measurements required in subsection (2)(a) of this section may be made using a dosimetry system that indicates relative dose rates.

(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally recognized bodies.

(5) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section for physical decay for intervals not exceeding one (1) month for cobalt-60, six (6) months for cesium-137, or at intervals consistent with one (1) percent decay for all other nuclides.

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(6) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (5) of this section shall be performed by the authorized medical physicist.

(7) A licensee shall retain a record of each calibration for three (3) years. The record shall include:

- (a) The date of the calibration;
- (b) The manufacturer's name, model number, and serial number of the teletherapy, remote afterloader, and gamma stereotactic radiosurgery unit, the source, and the instruments used to calibrate the unit;
- (c) The results and an assessment of the full calibrations;
- (d) The results of the autoradiograph required for low dose-rate remote afterloader units; and
- (e) The signature of the authorized medical physicist who performed the full calibration.

Section 53. Full calibration measurements on remote afterloader units. (1) A licensee authorized to use a remote afterloader unit for medical use shall perform full calibration measurements on each unit:

- (a) Before the first medical use of the unit;
 - (b) Before medical use under the following conditions:
 - 1. Following replacement of the source or following reinstallation of the unit in a new location outside the facility; and
 - 2. Following any repair of the unit that includes removal of the source or major repair of the components associated with the source exposure assembly;
 - (c) At intervals not exceeding one (1) quarter for high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader units with sources whose half-life exceeds seventy-five (75) days; and
 - (d) At intervals not exceeding one (1) year for low dose-rate remote afterloader units.
- (2) To satisfy the requirement of subsection (1) of this section, full calibration measurements shall include, as applicable, determination of:
- (a) The output within \pm five (5) percent;
 - (b) Source positioning accuracy to within \pm one (1) millimeter;
 - (c) Source retraction with backup battery upon power failure;
 - (d) Length of the source transfer tubes;
 - (e) Timer accuracy and linearity over the typical range of use;
 - (f) Length of the applicators; and
 - (g) Function of the source transfer tubes, applicators, and transfer tube-applicator interfaces.

(3) A licensee shall use the dosimetry system described in Section 51(1) of this administrative regulation to measure the output.

(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally recognized bodies.

(5) In addition to the requirements for full calibrations for low dose-rate remote afterloader units in subsection (2) of this section, a licensee shall perform an autoradiograph of the source to verify inventory and source arrangement at intervals not exceeding one (1) quarter.

(6) For low dose-rate remote afterloader units, a licensee may use measurements provided by the source manufacturer that are made in accordance with subsections (1) through (5) of this section.

(7) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section for physical decay at intervals consistent with one (1) percent physical decay.

(8) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (7) of this section shall be performed by the authorized medical physicist.

(9) A licensee shall retain a record of each calibration for three (3) years. The record shall include:

- (a) The date of the calibration;
- (b) The manufacturer's name, model number, and serial number of the teletherapy, remote afterloader, and gamma stereotactic radiosurgery unit, the source, and the instruments

used to calibrate the unit;

- (c) The results and an assessment of the full calibrations;
- (d) The results of the autoradiograph required for low dose-rate remote afterloader units; and
- (e) The signature of the authorized medical physicist who performed the full calibration.

Section 54. Full calibration measurements on gamma stereotactic radiosurgery units (1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform full calibration measurements on each unit:

- (a) Before the first medical use of the unit;
 - (b) Before medical use under the following conditions:
 - 1. Whenever spot-check measurements indicate that the output differs by more than five (5) percent from the output obtained at the last full calibration corrected.
 - 2. Following replacement of the sources or following reinstallation of the gamma mathematically for radioactive decay, stereotactic radiosurgery unit in a new location, and
 - 3. Following any repair of the gamma stereotactic radiosurgery unit that includes removal of the sources or major repair of the components associated with the source assembly; and
 - (c) At intervals not exceeding one (1) year, with the exception that relative helmet factors need only be determined before the first medical use of a helmet and following any damage to a helmet.
- (2) To satisfy the requirement of subsection (1) of this section, full calibration measurements shall include determination of:
- (a) The output within \pm three (3) percent;
 - (b) Relative helmet factors;
 - (c) Isocenter coincidence;
 - (d) Timer accuracy and linearity over the range of use;
 - (e) On-off error;
 - (f) Trunnion centricity;
 - (g) Treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;
 - (h) Helmet microswitches;
 - (i) Emergency timing circuits; and
 - (j) Stereotactic frames and localizing devices (trunnions).

(3) A licensee shall use the dosimetry system described in Section 51(1) of this administrative regulation to measure the output for one (1) set of exposure conditions. The remaining radiation measurements required in subsection (2)(a) of this section may be made using a dosimetry system that indicates relative dose rates.

(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally recognized bodies.

(5) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section at intervals not exceeding one (1) month for cobalt-60 and at intervals consistent with one (1) percent physical decay for all other radionuclides.

(6) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (5) of this section shall be performed by the authorized medical physicist.

(7) A licensee shall retain a record of each calibration for three (3) years. The record shall include:

- (a) The date of the calibration;
- (b) The manufacturer's name, model number, and serial number of the teletherapy, remote afterloader, and gamma stereotactic radiosurgery unit, the source, and the instruments used to calibrate the unit;
- (c) The results and an assessment of the full calibrations;
- (d) The results of the autoradiograph required for low dose-rate remote afterloader units; and
- (e) The signature of the authorized medical physicist who performed the full calibration.

Section 55. Periodic Spot-checks for Teletherapy Units. (1) A licensee authorized to use teletherapy units for medical use shall perform output spot-checks on each teletherapy unit once in each calendar month that shall include determination of:

- (a) Timer accuracy, and timer linearity over the range of use;

- (b) On-off error;
 - (c) The coincidence of the radiation field and the field indicated by the light beam localizing device;
 - (d) The accuracy of all distance measuring and localization devices used for medical use;
 - (e) The output for one (1) typical set of operating conditions measured with the dosimetry system described in Section 54(2) of this administrative regulation; and
 - (f) The difference between the measurement made in subsection (1)(e) of this section and the anticipated output, expressed as a percentage of the anticipated output (i.e., the value obtained at last full calibration corrected mathematically for physical decay).
- (2) A licensee shall perform measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual shall not be required to actually perform the spot-check measurements.
- (3) A licensee shall have the authorized medical physicist review the results of each spot-check within fifteen (15) days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.
- (4) A licensee authorized to use a teletherapy unit for medical use shall perform safety spot-checks of each teletherapy facility once in each calendar month and after each source installation to assure proper operation of:
- (a) Electrical interlocks at each teletherapy room entrance;
 - (b) Electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation (restriction of source housing angulation or elevation, carriage or stand travel and operation of the beam on-off mechanism);
 - (c) Source exposure indicator lights on the teletherapy unit, on the control console, and in the facility;
 - (d) Viewing and intercom systems;
 - (e) Treatment room doors from inside and outside the treatment room; and
 - (f) Electrically assisted treatment room doors with the teletherapy unit electrical power turned off.
- (5) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.
- (6) A licensee shall retain a record of each spot-check for teletherapy units for three (3) years. The record shall include:
- (a) The date of the spot-check;
 - (b) The manufacturer's name, model number, and serial number of the teletherapy unit, source and instrument used to measure the output of the teletherapy unit;
 - (c) An assessment of timer linearity and constancy;
 - (d) The calculated on-off error;
 - (e) A determination of the coincidence of the radiation field and the field indicated by the light beam localizing device;
 - (f) The determined accuracy of each distance measuring and localization device;
 - (g) The difference between the anticipated output and the measured output;
 - (h) Notations indicating the operability of each entrance door electrical interlock, each electrical or mechanical stop, each source exposure indicator light, and the viewing and intercom system and doors; and
 - (i) The name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.

(7) A licensee shall retain a copy of the procedures required by subsection (2) of this section until the licensee no longer possesses the teletherapy unit.

Section 56. Periodic Spot-checks for Remote Afterloader Units.

(1) A licensee authorized to use a remote afterloader unit for medical use shall perform spot-checks of each remote afterloader facility and on each unit:

- (a) Before the first use of a high dose-rate, medium dose-rate,

or pulsed dose-rate remote afterloader unit on a given day;

(b) Before each patient treatment with a low dose-rate remote afterloader unit; and

(c) After each source installation.

(2) A licensee shall perform the measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual shall not be required to actually perform the spot-check measurements.

(3) A licensee shall have the authorized medical physicist review the results of each spot-check within fifteen (15) days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(4) To satisfy the requirements of subsection (1) of this section, spot-checks shall, at a minimum, assure proper operation of:

- (a) Electrical interlocks at each remote afterloader unit room entrance;
- (b) Source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;
- (c) Viewing and intercom systems in each high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader facility;
- (d) Emergency response equipment;
- (e) Radiation monitors used to indicate the source position;
- (f) Timer accuracy;
- (g) Clock (date and time) in the unit's computer; and
- (h) Decayed source activity in the unit's computer.

(5) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(6) A licensee shall retain a record of each spot-check for remote afterloader units for three (3) years. The record shall include, as applicable:

- (a) The date of the spot-check;
- (b) The manufacturer's name, model number, and serial number for the remote afterloader unit and source;
- (c) An assessment of timer accuracy;
- (d) Notations indicating the operability of each entrance door electrical interlock, radiation monitors, source exposure indicator lights, viewing and intercom systems, and clock and decayed source activity in the unit's computer; and
- (e) The name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.

(7) A licensee shall retain a copy of the procedures required by subsection (2) of this section until the licensee no longer possesses the remote afterloader unit.

Section 57. Periodic Spot-checks for Gamma Stereotactic Radiosurgery Units. (1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform spot-checks of each gamma stereotactic radiosurgery facility and on each unit:

- (a) Monthly;
- (b) Before the first use of the unit on a given day; and
- (c) After each source installation.

(2) A licensee shall:

(a) Perform the measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual shall not be required to actually perform the spot-check measurements.

(b) Have the authorized medical physicist review the results of each spot-check within fifteen (15) days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(3) To satisfy the requirements of subsection (1)(a) of this section, spot-checks shall, at a minimum:

- (a) Assure proper operation of:
 1. Treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;
 2. Helmet microswitches;

3. Emergency timing circuits; and
4. Stereotactic frames and localizing devices (trunnions).

(b) Determine:

1. The output for one (1) typical set of operating conditions measured with the dosimetry system described in Section 54(2) of this administrative regulation;

2. The difference between the measurement made in subsection (3)(b)1. of this section and the anticipated output, expressed as a percentage of the anticipated output (the value obtained at last full calibration corrected mathematically for physical decay);

3. Source output against computer calculation;
4. Timer accuracy and linearity over the range of use;
5. On-off error; and
6. Trunnion centricity.

(4) To satisfy the requirements of subsection (1)(b) and (c) of this section, spot-checks shall assure proper operation of:

- (a) Electrical interlocks at each gamma stereotactic radiosurgery room entrance;
- (b) Source exposure indicator lights on the gamma stereotactic radiosurgery unit, on the control console, and in the facility;
- (c) Viewing and intercom systems;
- (d) Timer termination;
- (e) Radiation monitors used to indicate room exposures; and
- (f) Emergency off buttons.

(5) A licensee shall arrange for the repair of any system identified in subsection (3) of this section that is not operating properly as soon as possible.

(6) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(7) A licensee shall retain a record of each spot-check for gamma stereotactic radiosurgery units required by this section for three (3) years. The record shall include:

- (a) The date of the spot-check;
 - (b) The manufacturer's name, model number, and serial number for the gamma stereotactic radiosurgery unit and the instrument used to measure the output of the unit;
 - (c) An assessment of timer linearity and accuracy;
 - (d) The calculated on-off error;
 - (e) A determination of trunnion centricity;
 - (f) The difference between the anticipated output and the measured output;
 - (g) An assessment of source output against computer calculations;
 - (h) Notations indicating the operability of radiation monitors, helmet microswitches, emergency timing circuits, emergency off buttons, electrical interlocks, source exposure indicator lights, viewing and intercom systems, timer termination, treatment table retraction mechanism, and stereotactic frames and localizing devices (trunnions); and
 - (i) The name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.
- (8) A licensee shall retain a copy of the procedures required by subsection (2) of this section until the licensee no longer possesses the gamma stereotactic radiosurgery unit.

Section 58. Additional Technical Requirements for Mobile Remote Afterloader Units. (1) A licensee providing mobile remote afterloader service shall:

- (a) Check survey instruments before medical use at each address of use or on each day of use, whichever is more frequent; and
- (b) Account for all sources before departure from a client's address of use.

(2) In addition to the periodic spot-checks required by Section 56 of this administrative regulation a licensee authorized to use mobile afterloaders for medical use shall perform checks on each remote afterloader unit before use at each address of use. At a minimum, checks shall be made to verify the operation of:

- (a) Electrical interlocks on treatment area access points;
- (b) Source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;
- (c) Viewing and intercom systems;
- (d) Applicators, source transfer tubes, and transfer tube applicator interfaces;
- (e) Radiation monitors used to indicate room exposures;
- (f) Source positioning (accuracy); and
- (g) Radiation monitors used to indicate whether the source has returned to a safe shielded position.

(3) In addition to the requirements for checks in subsection (2) of this section, a licensee shall ensure overall proper operation of the remote afterloader unit by conducting a simulated cycle of treatment before use at each address of use.

(4) If the results of the checks required in subsection (2) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(5) A licensee shall retain a record of each check for mobile remote afterloader units for three (3) years. The record shall include:

- (a) The date of the check;
- (b) The manufacturer's name, model number, and serial number of the remote afterloader unit;
- (c) Notations accounting for all sources before the licensee departs from a facility;
- (d) Notations indicating the operability of each entrance door electrical interlock, radiation monitors, source exposure indicator lights, viewing and intercom system, applicators, source transfer tubes, and transfer tube applicator interfaces, and source positioning accuracy; and
- (e) The signature of the individual who performed the check.

Section 59. Radiation Surveys. (1) In addition to the survey requirement in 902 KAR 100.019, Section 12, a person licensed under this administrative regulation shall conduct surveys to ensure that the maximum radiation levels and average radiation levels from the surface of the main source safe with the source in the shielded position do not exceed the levels stated in the Sealed Source and Device Registry.

(2) The licensee shall conduct the survey required by subsection (1) of this section at installation of a new source and following repairs to the source shielding, the source driving unit, or other electronic or mechanical component that could expose the source, reduce the shielding around the source, or compromise the radiation safety of the unit or the source.

(3) A licensee shall maintain a record of radiation surveys of treatment units for the duration of use of the unit. The record shall include:

- (a) The date of the measurements;
- (b) The manufacturer's name, model number and serial number of the treatment unit, source, and instrument used to measure radiation levels;
- (c) Each dose rate measured around the source while the unit is in the off position and the average of all measurements; and
- (d) The signature of the individual who performed the test.

Section 60. Five (5) Year Inspection for Teletherapy and Gamma Stereotactic Radiosurgery Units. (1) A licensee shall have each teletherapy unit and gamma stereotactic radiosurgery unit fully inspected and serviced during source replacement or at intervals not to exceed five (5) years, whichever comes first, to assure proper functioning of the source exposure mechanism.

(2) This inspection and servicing may only be performed by persons specifically licensed to do so by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state.

(3) A licensee shall maintain a record of the five (5) year inspections for teletherapy and gamma stereotactic radiosurgery units for the duration of use of the unit. The record shall contain:

- (a) The inspector's radioactive materials license number;
- (b) The date of inspection;
- (c) The manufacturer's name and model number and serial

number of both the treatment unit and source;

(d) A list of components inspected and serviced, and the type of service; and

(e) The signature of the inspector.

Section 61. ~~Therapy-related Computer Systems.~~ The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing shall include, as applicable, verification of:

(1) The source-specific input parameters required by the dose calculation algorithm;

(2) The accuracy of dose, dwell time, and treatment time calculations at representative points;

(3) The accuracy of isodose plots and graphic displays;

(4) The accuracy of the software used to determine sealed source positions from radiographic images; and

(5) The accuracy of electronic transfer of the treatment delivery parameters to the treatment delivery unit from the treatment planning system.

Section 62. ~~Other Medical Uses of Radioactive Material or Radiation from Radioactive Material.~~ A licensee may use radioactive material or a radiation source approved for medical use which is not specifically addressed in Sections 30, 31, 33, 37, 45, and 46 of this administrative regulation if:

(1) The applicant or licensee has submitted the information required by Section 4(2) through (4) of this administrative regulation; and

(2) The applicant or licensee has received written approval from the cabinet in a license or license amendment and uses the material in accordance with the administrative regulations and specific conditions the cabinet considers necessary for the medical use of the material.

Section 63. ~~Recentness of Training.~~ The training and experience specified in Sections 64 through 77 of this administrative regulation shall have been obtained within the seven (7) years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

Section 64. ~~Training for Radiation Safety Officer.~~ Except as provided in Section 67 of this administrative regulation, the licensee shall require an individual fulfilling the responsibilities of the radiation safety officer as provided in 902 KAR 100:072, Section 10 to be an individual who:

(1)(a) Is certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in subsections (2) and (3) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

1.a. Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of twenty (20) college credits in physical science;

b. Have five (5) or more years of professional experience in health physics (graduate training may be substituted for no more than two (2) years of the required experience) including at least three (3) years in applied health physics; and

c. Pass an examination administered by diplomats of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurements of radioactivity, radiation biology, and radiation dosimetry; or

2.a. Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

b. Have two (2) years of full-time practical training, two (2) years of supervised experience, or two (2) years of a combination of full-time practical training and supervised experience in medical physics;

(i) Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state; or

(ii) In clinical nuclear medicine facilities providing diagnostic or therapeutic services under the direction of physicians who meet the requirements for authorized users in 902 KAR 100:072, Sections 67, 69, or 70 of this administrative regulation; and

c. Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety;

(b) Has completed a structured educational program consisting of both:

1. 200 hours of classroom and laboratory training in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Radiation biology; and

e. Radiation dosimetry; and

2. One (1) year of full-time radiation safety experience under the supervision of the individual identified as the radiation safety officer on a cabinet, U.S. Nuclear Regulatory Commission, or agreement state license or permit issued by a Commission master material licensee that authorizes similar type of use of radioactive material involving the following:

a. Shipping, receiving, and performing related radiation surveys;

b. Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure radionuclides;

c. Securing and controlling radioactive material;

d. Using administrative controls to avoid mistakes in the administration of radioactive material;

e. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;

f. Using emergency procedures to control radioactive material; and

g. Disposing of radioactive material; or

(c)1. Is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state pursuant to 902 KAR 100:072, Section 65(1), and has experience in radiation safety for similar types of use of radioactive material for which the licensee is seeking the approval of the individual as radiation safety officer, and who meets the requirements in subsections (2) and (3) of this section; or

2. Is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the licensee's license and has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual has radiation safety officer responsibilities;

(2) Has obtained written attestation, signed by a preceptor radiation safety officer, that the individual has satisfactorily completed the requirements of this section, and has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee; and

(3) Has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by a radiation safety officer, authorized medical physicist, authorized nuclear pharmacist, or authorized user, as appropriate, who is authorized for the type of use for which the licensee is seeking approval.

Section 65. ~~Training for an Authorized Medical Physicist.~~ Except as provided in Section 67 of this administrative regulation the licensee shall require the authorized medical physicist to be an individual who:

(1)(a) Is certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear

Regulatory Commission, or an agreement state and who meets the requirements in paragraph (b)2. of this subsection and subsection (2) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

1. Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

2. Have two (2) years of full-time practical training, two (2) years of supervised experience, or two (2) years of a combination of full-time practical training and supervised experience in medical physics:

a. Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state; or

b. In clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to one (1) million electron volts) and brachytherapy services under the direction of physicians who meet the requirements in Section 67, 74, or 77 of this administrative regulation; and

3. Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

(b) Holds a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and has completed one (1) year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type of use for which the individual is seeking authorization. This training and work experience shall be conducted in clinical radiation facilities that provides high-energy, external beam therapy (photons and electrons with energies greater than or equal to one (1) million electron volts) and brachytherapy services and shall include:

1. Performing sealed source leak test and inventories;

2. Performing decay corrections;

3. Performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

4. Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(2) Has obtained written attestation that the individual has satisfactorily completed the requirements of this section, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation shall be signed by a preceptor authorized medical physicist who meets the requirements in Sections 65 or 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

(3) Has training for the type of use for which authorization is sought that includes hands-on device operation, safety operations, clinical use, and the operation of a treatment planning system. This training requirement shall be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type of use for which the individual is seeking authorization.

Section 66. Training for an Authorized Nuclear Pharmacist. Except as provided in Section 67 of this administrative regulation the licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

(1) Is certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in subsection (2)(b) of this section. To have its certification process recognized, a specialty board shall require all

candidates for certification to:

(a) Have graduated from a pharmacy program accredited by the American Council on Pharmaceutical Education (ACPE) or have passed the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination;

(b) Hold a current, active license to practice pharmacy;

(c) Provide evidence of having acquired at least 4,000 hours of training and experience in nuclear pharmacy practice. Academic training may be substituted for no more than 2,000 hours of the required training and experience; and

(d) Pass an examination in nuclear pharmacy administered by diplomats of the specialty board, that assesses knowledge and competency in procurement, compounding, quality assurance, dispensing, distribution, health and safety, radiation safety, provision of information and consultation, monitoring patient outcomes, research and development; or

(2)(a) Has completed 700 hours in a structured educational program consisting of both:

1. 200 hours of classroom and laboratory training in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Chemistry of radioactive material for medical use; and

e. Radiation biology; and

2. Supervised practical experience in a nuclear pharmacy involving:

a. Shipping, receiving, and performing related radiation surveys;

b. Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

c. Calculating, assaying, and safely preparing dosages for patients or human research subjects;

d. Using administrative controls to avoid medical events in the administration of radioactive material; and

e. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures; and

(b) Has obtained written attestation, signed by a preceptor authorized nuclear pharmacist, that the individual has satisfactorily completed the requirements in subsections (1)(a), (1)(b) and (1)(c) or (2)(a) of this section and has achieved a level of competency sufficient to function independently as an authorized nuclear pharmacist.

Section 67. Training for Experienced Radiation Safety Officer, Teletherapy or Medical Physicist, Authorized Medical Physicist, Authorized User, Nuclear Pharmacist and Authorized Nuclear Pharmacist. (1)(a) An individual identified as a radiation safety officer, a teletherapy or medical physicist, or a nuclear pharmacist on a cabinet, U.S. Nuclear Regulatory Commission, or agreement state license or a permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state broad scope licensee or master material license permit or by a master material license permittee of broad scope before October 24, 2005 shall not be required to comply with the training requirements of Section 64, 65, or 66, of this administrative regulation respectively:

(b) An individual identified as a radiation safety officer, an authorized medical physicist, or an authorized nuclear pharmacist on a cabinet, U.S. Nuclear Regulatory Commission, or agreement state license or a permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state broad scope licensee or master material license permit or master material license permittee of broad scope between October 24, 2002 and April 29, 2005 is not required to comply with the training requirements of Section 64, 65, or 66 of this administration regulation respectively.

(2)(a) Physicians, dentists, or podiatrists identified as authorized users for the medical use of radioactive material on a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state, a permit issued by a

Commission master material licensee, a permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state broad scope licensee, or a permit issued by a Commission master material license broad scope permittee before October 24, 2002 who perform only those medical uses for which they were authorized on that date shall not be required to comply with the training requirements of 902 KAR 100.072, Sections 68 through 77.

(b) Physicians, dentists, or podiatrists identified as authorized users for the medical use of radioactive material on a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state, a permit issued by a Commission master material licensee, a permit issued by the cabinet, U.S. Nuclear Regulatory Commission or an agreement state broad scope licensee or a permit issued by a Commission master material license broad scope permittee who performs only those medical uses for which they were authorized between October 24, 2002 and April 29, 2005 shall not be required to comply with the training requirements of Sections 68 through 77 of this administrative regulation.

Section 68. Training for Uptake, Dilution, and Excretion Studies. Except as provided in Section 67 of this administrative regulation the licensee shall require an authorized user of unsealed radioactive material for the uses authorized pursuant to Section 30 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission or an agreement state and who meets the requirements in subsection (3)(b) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Complete sixty (60) hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies as described in subsection (3)(a)1 through 3(a)2 of this section; and

(b) Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control;

(2) Is an authorized user under Section 69 or 70 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements; or

(3)(a) Has completed sixty (60) hours of training and experience, including a minimum of eight (8) hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience shall include:

1. Classroom and laboratory training, in the following areas;
 - a. Radiation physics and instrumentation;
 - b. Radiation protection;
 - c. Mathematics pertaining to the use and measurement of radioactivity;
 - d. Chemistry of radioactive material for medical use; and
 - e. Radiation biology; and
2. Work experience, under the supervision of an authorized user who meets the requirements in Section 67, 68, 69, or 70, of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, involving:
 - a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
 - b. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
 - c. Calculating, measuring, and safely preparing patient or human research subject dosages;
 - d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
 - e. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and
 - f. Administering dosages of radioactive drugs to patients or human research subjects; and

(b) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in Section 67, 68, 69, or 70 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) or (3)(a) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized pursuant to Section 30 of this administrative regulation.

Section 69. Training for Imaging and Localization Studies. Except as provided in Section 67 of this administrative regulation the licensee shall require an authorized user of unsealed radioactive material for the uses authorized pursuant to Section 31 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in subsection (3)(b) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Complete 700 hours of training and experience in basis radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for imaging and localization studies that includes the topics listed in subsection (3)(a)1 through (3)(a)2 of this section; and

(b) Pass an examination, administered by diplomats of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control;

(2) Is an authorized user pursuant to Section 70 of this administrative regulation and meets the requirements in subsection (3)(a)2.g of this section, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements; or

(3)(a) Has completed 700 hours of training and experience, including a minimum of eighty (80) hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience shall include, at a minimum:

1. Classroom and laboratory training in the following areas:
 - a. Radiation physics and instrumentation;
 - b. Radiation protection;
 - c. Mathematics pertaining to the use and measurement of radioactivity;
 - d. Chemistry of radioactive material for medical use; and
 - e. Radiation biology; and
 2. Work experience, under the supervision of an authorized user, who meets the requirements in Section 67, 69 or 70 and Section 69(3)(a)2.g of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, involving:
 - a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
 - b. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
 - c. Calculating, measuring, and safely preparing patient or human research subject dosages;
 - d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
 - e. Using procedures to safely contain spilled radioactive material and using proper decontamination procedures;
 - f. Administering dosages of radioactive drugs to patients or human research subjects; and
 - g. Eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and
- (b) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in Sections 67, 69, or 70 and Section 69(3)(a)2.g of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, that the individual has satisfactorily completed

the requirements in subsection (1)(a) or (3)(a) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized pursuant to Sections 30 and 31 of this administrative regulation.

Section 70. Training for Use of Unsealed Radioactive Material for Which a Written Directive Is Required. Except as provided in Section 67 of this administrative regulation the licensee shall require an authorized user of unsealed radioactive material for the uses authorized pursuant to Section 33 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission or an agreement state, and who meets the requirements in subsection (2)(a)2.f and (b) of this section. To be recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty. These residency training programs shall include 700 hours of training and experience as described in subsection (2)(a)1 through 2.e of this section. Eligible training programs shall be approved by:

1. Residency Review Committee of the Accreditation Council for Graduate Medical Education;
2. Royal College of Physicians and Surgeons of Canada; or
3. Committee on Post-Graduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by the diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed radioactive material for which a written directive is required; or

(2)(a) Has completed 700 hours of training and experience, including a minimum of 200 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience shall include:

1. Classroom and laboratory training in the following areas:
 - a. Radiation physics and instrumentation;
 - b. Radiation protection;
 - c. Mathematics pertaining to the use and measurement of radioactivity;
 - d. Chemistry of radioactive material for medical use; and
 - e. Radiation biology; and
2. Work experience, under the supervision of an authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements. A supervising authorized user, who meets the requirements in this subsection, shall have experience in administering dosages in the same dosage category or categories (clause f. of this subparagraph) of this administrative regulation as the individual requesting authorized user status. The work experience shall involve:

- a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- b. Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;
- c. Calculating, measuring, and safely preparing patient or human research subject dosages;
- d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
- e. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;
- f. Administering dosages of radioactive drugs to patients or human research subjects involving a minimum of three (3) cases in each of the following categories for which the individual is requesting authorized user status:

(i) Oral administration of less than or equal to 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131, for which a

written directive is required;

(ii) Oral administration of greater than 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131;

(iii) Parenteral administration of any beta emitter or a photon-emitting radionuclide with a photon energy less than 150 keV, for which a written directive is required; or

(iv) Parenteral administration of any other radionuclide, for which a written directive is required; and

(b) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (1)(a) and (2)(a)2.f or (2)(a) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized pursuant to Section 33 of this administrative regulation. The written attestation shall be signed by a preceptor authorized user who meets the requirements of this section, and section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements. The preceptor authorized user, who meets the requirements in subsection (2) of this section, shall have experience in administering dosages in the same dosage category or categories (Section 70(2)(a)2.f) of this administrative regulation as the individual requesting authorized user status.

Section 71. Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 Gigabecquerels (33 millicuries). Except as provided in Section 67 of this administrative regulation, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 Gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3)(a) and (b) of this section and whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in subsection (3)(c) of this section;

(2) Is an authorized user pursuant to Section 70 of this administrative regulation for uses listed in Section 70(2)(a)2.f.(i) or (ii), or Section 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements; or

(3)(a) Has successfully completed eighty (80) hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training shall include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity;
4. Chemistry of radioactive material for medical use; and
5. Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in Section 67, 70, 71, or 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements. A supervising authorized user who meets the requirements in Section 70 (2)(a) of this administrative regulation shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(i) or (ii) of this administrative regulation. The work experience shall involve:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
2. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation for survey meters;
3. Calculating, measuring, and safely preparing patient or human research subject dosages;
4. Using administrative controls to prevent a medical event involving the use of radioactive material;
5. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and
6. Administering dosages to patients or human research

subjects, that includes at least three (3) cases involving the oral administration of less than or equal to 1.2 Gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (3)(a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized pursuant to Section 33 of this administrative regulation. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Section 67, 70, 71, or 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements. A preceptor authorized user, who meets the requirement in Section 70(2) of this administrative regulation shall also have experience in administering dosages as specified in Section 70(2)(a)2.f.(i) or (ii) of this administrative regulation.

Section 72. Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries). Except as provided in Section 67 of this administrative regulation the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3)(a) and (b) of this section, and whose certification has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in subsection of (3)(c) of this section; or

(2) Is an authorized user pursuant to Section 70 of this administrative regulation for uses listed in Section 70(2)(a)2.f.(iii) of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements; or

(3)(a) Has successfully completed eighty (80) hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training shall include:

1. Radiation physics and instrumentation;
2. Radiation protection; and
3. Mathematics pertaining to the use and measurement of radioactivity;
4. Chemistry of radioactive material for medical use; and
5. Radiation biology;

(b) Has work experience, under the supervision of an authorized user who meets the requirements in Section 67, 70, or 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements. A supervising authorized user, who meets the requirements in Section 70(2) of this administrative regulation, shall also have experience in administering dosages as specified in Section 70(2)(a)2.f.(ii) of this administrative regulation. The work experience shall involve:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
2. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation for survey meters;
3. Calculating, measuring, and safely preparing patient or human research subject dosages;
4. Using administrative controls to prevent a medical event involving the use of radioactive material;
5. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and
6. Administering dosages to patients or human research subjects, that includes at least three (3) cases involving the oral administration of greater than 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (3)(a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized pursuant to Section 33 of this

administrative regulation. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Section 67, 70 or 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements. A preceptor authorized user, who meets the requirements in Section 70(2) of this administrative regulation, shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(ii).

Section 73. Training for the Parenteral Administration of Unsealed Radioactive Material Requiring a Written Directive. Except as provided in Section 67 of this administrative regulation, the licensee shall require an authorized user for the parenteral administration requiring a written directive, to be a physician who:

(1) Is an authorized user pursuant to Section 70 for uses listed in Section 70(2)(a)2.f.(iii) or Section 70(2)(a)2.f.(iv) of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements; or

(2)(a)1. Is an authorized user pursuant to Sections 74 or 77 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state and who meets the requirements in paragraph (b) of this subsection; or

2. Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state pursuant to Sections 74 or 77 of this administrative regulation; and who meets the requirements in paragraph (b) of this subsection; and

(b)1. Has successfully completed eighty (80) hours of classroom and laboratory training, applicable to parenteral administrations, for which a written directive is required, of a beta emitter or a photon-emitting radionuclide with a photon energy less than 150 keV, or parenteral administration of other radionuclides for which a written directive is required. The training shall include:

- a. Radiation physics and instrumentation;
- b. Radiation protection;
- c. Mathematics pertaining to the use and measurement of radioactivity;
- d. Chemistry of radioactive material for medical use; and
- e. Radiation biology;

2. Has work experience, under the supervision of an authorized user who meets the requirements in Sections 67, 70, or 73 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, in the parenteral administration, for which a written directive is required, of a beta emitter, or a photon-emitting radionuclide with a photon energy less than 150 keV, or parenteral administration of other radionuclides for which a written directive is required. A supervising authorized user who meets the requirements in Section 70 of this administrative regulation shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(iii) or (iv) of this administrative regulation or both. The work experience shall involve:

- a. Ordering, receiving, and unpacking radioactive materials safely, and performing the related radiation surveys;
- b. Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;
- c. Calculating, measuring, and safely preparing patient or human research subjects dosages;
- d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
- e. Using procedures to contain spilled radioactive material safely, and using proper decontamination procedures; and
- f. Administering dosages to patients or human research subjects, that include at least three (3) cases involving the parenteral administration, for which a written directive is required, of a beta emitter, or photon-emitting radionuclide with a photon energy less than 150 keV, or a minimum of three (3) cases involving the parenteral administration of other radionuclides, for which a written directive is required, or both; and

3. Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraph (a)1. or 2. of this subsection, and has achieved a level of competency

sufficient to function independently as an authorized user for the parenteral administration of unsealed radioactive material requiring a written directive. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Sections 67, 70, or 73 of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements. A preceptor authorized user, who meets the requirements in Section 70 of this administrative regulation, shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(iii) or (iv) of this administrative regulation or both.

~~Section 74. Training for Use of Manual Brachytherapy Sources. Except as provided in Section 67 of this administrative regulation, the licensee shall require an authorized user of a manual brachytherapy source for the uses authorized pursuant to Section 37 of this administrative regulation to be a physician who:~~

~~(1) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in (2)(c) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:~~

~~(a) Successfully complete a minimum of three (3) years of residency training in a radiation oncology program approved by the:~~

- ~~1. Residency Review Committee of the Accreditation Council for Graduate Medical Education; or~~
- ~~2. Royal College of Physicians and Surgeons of Canada; or~~
- ~~3. Committee on Post-Graduate Training of the American Osteopathic Association; and~~

~~(b) Pass an examination, administered by diplomats of the specialty board, that tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or~~

~~(2)(a) Has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources that includes:~~

~~1. 200 hours of classroom and laboratory training in the following areas:~~

- ~~a. Radiation physics and instrumentation;~~
- ~~b. Radiation protection;~~
- ~~c. Mathematics pertaining to the use and measurement of radioactivity; and~~
- ~~d. Radiation biology; and~~

~~2. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements at a medical institution, involving:~~

- ~~a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;~~
- ~~b. Checking survey meters for proper operation;~~
- ~~c. Preparing, implanting, and removing brachytherapy sources;~~
- ~~d. Maintaining running inventories of material on hand;~~
- ~~e. Using administrative controls to prevent a medical event involving the use of radioactive material;~~
- ~~f. Using emergency procedures to control radioactive material; and~~

~~(b) Has completed three (3) years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subsection (2)(a)2. of this section; and~~

~~(c) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S.~~

~~Nuclear Regulatory Commission or agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) or (2)(a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized pursuant to Section 37 of this administrative regulation.~~

~~Section 75. Training for Ophthalmic Use of Strontium-90. Except as provided in Section 67 of this administrative regulation the licensee shall require the authorized user of strontium-90 for ophthalmic radiotherapy to be a physician who:~~

~~(1) Is an authorized user pursuant to Section 74 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements; or~~

~~(2)(a) Has completed twenty-four (24) hours of classroom and laboratory training applicable to the medical use of strontium-90 for ophthalmic radiotherapy. The training shall include:~~

- ~~1. Radiation physics and instrumentation;~~
- ~~2. Radiation protection;~~
- ~~3. Mathematics pertaining to the use and measurement of radioactivity; and~~
- ~~4. Radiation biology; and~~

~~(b) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution, clinic, or private practice that includes the use of strontium-90 for the ophthalmic treatment of five (5) individuals. This supervised clinical training shall involve:~~

- ~~1. Examination of each individual to be treated;~~
- ~~2. Calculation of the dose to be administered;~~
- ~~3. Administration of the dose; and~~
- ~~4. Follow up and review of each individual's case history; and~~

~~(c) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in Sections 67, 74, or 75 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (2) of this section and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.~~

~~Section 76. Training for use of sealed sources for diagnosis. Except as provided in Section 67 of this administrative regulation, the licensee shall require the authorized user of a diagnostic sealed source for use in a device authorized pursuant to Section 45 of this administrative regulation to be a physician, dentist, or podiatrist who:~~

~~(1)(a) Is certified by a specialty board whose certification process includes all of the requirements in paragraph (b) of this subsection and subsection (2) of this section and whose certification has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state; or~~

~~(b) Has completed eight (8) hours of classroom and laboratory training in basic radionuclide handling techniques specifically applicable to the use of the device. The training shall include:~~

- ~~1. Radiation physics and instrumentation;~~
- ~~2. Radiation protection;~~
- ~~3. Mathematics pertaining to the use and measurement of radioactivity; and~~
- ~~4. Radiation biology; and~~

~~(2) Has completed training in the use of the device for the uses requested.~~

~~Section 77. Training for Use of Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units. Except as provided in Section 67 of this administrative regulation, the licensee shall require an authorized user of a sealed source for a use authorized pursuant to Section 46 of this administrative regulation to be a physician who:~~

~~(1) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in (2)(c) and (3) of this section. To have its~~

certification recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a minimum of three (3) years of residency training in a radiation therapy program approved by the:

1. Residency Review Committee of the Accreditation Council for Graduate Medical Education;
2. Royal College of Physicians and Surgeons of Canada; or
3. Committee on Post-Graduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, remote afterloaders and external beam therapy; or

(2)(a) Has completed a structured educational program in basic radionuclide techniques applicable to the use of a sealed source in a therapeutic medical unit that includes:

1. 200 hours of classroom and laboratory training in the following areas:

- a. Radiation physics and instrumentation;
- b. Radiation protection;
- c. Mathematics pertaining to the use and measurement of radioactivity; and
- d. Radiation biology; and

2. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements at a medical institution, involving:

- a. Reviewing full calibration measurements and periodic spot-checks;
- b. Preparing treatment plans and calculating treatment doses and times;
- c. Using administrative controls to prevent a medical event involving the use of radioactive material;
- d. Implementing emergency procedures to be followed in the event of the abnormal operation of the medical unit or console;
- e. Checking and using survey meters; and
- f. Selecting the proper dose and how it is to be administered; and

(b) Has completed three (3) years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subsection (2)(a)2 of this section; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (1)(a) or (2)(a) and (b), and (3) of this section, and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation shall be signed by a preceptor authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

(3) Has received training in device operation, safety procedures, and clinical use for the type of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type of use for which the individual is seeking authorization.

Section 78. Alternative Training. During a two (2) year period

after the effective date of October 24, 2005, alternative training and experience requirements shall be available. Licensees shall have the option of complying with either the training requirements of Section 78 of this administrative regulation or the new requirements in Sections 65 through 77 of this administrative regulation. After October 24, 2007, licensee shall not have the option of using Section 78 of this administrative regulation. Except as provided in Section 67 of this administrative regulation, the licensee shall require for:

(1) A radiation safety officer, an individual fulfilling the responsibilities of the radiation safety officer as provided in Section 10 of this administrative regulation to be an individual who:

(a) Is certified by the:

1. American Board of Health Physics in Comprehensive Health Physics;
2. American Board of Radiology;
3. American Board of Nuclear Medicine;
4. American Board of Science in Nuclear Medicine;
5. Board of Pharmaceutical Specialties in Nuclear Pharmacy;
6. American Board of Medical Physics in radiation oncology physics;

7. Royal College of Physicians and Surgeons of Canada in nuclear medicine;

8. American Osteopathic Board of Radiology; or
9. American Osteopathic Board of Nuclear Medicine;

(b) Has had classroom and laboratory training and experience as follows:

1. 200 hours of classroom and laboratory training that includes:
 - a. Radiation physics and instrumentation;
 - b. Radiation protection;
 - c. Mathematics pertaining to the use and measurement of radioactivity;
 - d. Radiation biology; and
 - e. Radiopharmaceutical chemistry; and
2. One (1) year of full time experience as a radiation safety technologist at a medical institution under the supervision of the individual identified as the radiation safety officer on a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state license that authorizes the medical use of radioactive material; or

(c) Is an authorized user identified on the licensee's license.

(2) Authorized user of a radiopharmaceutical for uptake, dilution, and excretion in Section 30(1) of this administrative regulation to be a physician who:

(a) Is certified in:

1. Nuclear medicine by the American Board of Nuclear Medicine;
2. Diagnostic radiology by the American Board of Radiology;
3. Diagnostic radiology or radiology by the American Osteopathic Board of Radiology;
4. Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or
5. American Osteopathic Board of Nuclear Medicine in nuclear medicine;

(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, and supervised clinical experience as follows:

1. Forty (40) hours of classroom and laboratory training that includes:
 - a. Radiation physics and instrumentation;
 - b. Radiation protection;
 - c. Mathematics pertaining to the use and measurement of radioactivity;
 - d. Radiation biology; and
 - e. Radiopharmaceutical chemistry; and
2. Twenty (20) hours of supervised clinical experience under the supervision of an authorized user and that includes:
 - a. Examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;
 - b. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;
 - c. Administering dosages to patients or human research

subjects and using syringe radiation shields;

d. Collaborating with the authorized user in the interpretation of radioisotope test results; and

e. Patient or human research subject follow-up; or

(c) Has successfully completed a six (6) month training program in nuclear medicine as part of a training program that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in paragraph (b) of this section.

(3) Authorized user for imaging and localization studies using a radiopharmaceutical, generator, or reagent kit in Section 31(1) of this administrative regulation to be a physician who:

(a) Is certified in:

1. Nuclear medicine by the American Board of Nuclear Medicine;

2. Diagnostic radiology by the American Board of Radiology;

3. Diagnostic radiology or radiology by the American Osteopathic Board of Radiology;

4. Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

5. American Osteopathic Board of Nuclear Medicine in nuclear medicine;

(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, supervised work experience, and supervised clinical experience as follows:

(c) 1. 200 hours of classroom and laboratory training that includes:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Radiopharmaceutical chemistry; and

e. Radiation biology;

2. 500 hours of supervised work experience under the supervision of an authorized user that includes:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

b. Calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;

c. Calculating and safely preparing patient or human research subject dosages;

d. Using administrative controls to prevent the medical event of radioactive material;

e. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

f. Eluting technetium-99m from generator systems, measuring and testing the eluate for molybdenum-99 and alumina contamination, and processing the eluate with reagent kits to prepare technetium-99m labeled radiopharmaceuticals; and

3. 500 hours of supervised clinical experience under the supervision of an authorized user that includes:

a. Examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

b. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

c. Administering dosages to patients or human research subjects and using syringe radiation shields;

d. Collaborating with the authorized user in the interpretation of radioisotope test results; and

e. Patient or human research subject follow-up; or

(c) Has successfully completed a six (6) month training program in nuclear medicine that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in paragraph (b) of this section.

(4) The authorized user of radiopharmaceuticals for therapeutic use in Section 33 of this administrative regulation to be a physician who:

(a) Is certified by:

1. The American Board of Nuclear Medicine;

2. The American Board of Radiology in radiology, therapeutic radiology, or radiation oncology;

3. The Royal College of Physicians and Surgeons of Canada in nuclear medicine; or

4. The American Osteopathic Board of Radiology after 1984; or

(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of therapeutic radiopharmaceuticals, and supervised clinical experience as follows:

1. Eighty (80) hours of classroom and laboratory training that includes:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity; and

d. Radiation biology; and

2. Supervised clinical experience under the supervision of an authorized user at a medical institution that includes:

a. Use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in ten (10) individuals; and

b. Use of iodine-131 for treatment of thyroid carcinoma in three (3) individuals.

(5) The authorized user of only iodine-131 for the treatment of hyperthyroidism to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating hyperthyroidism, and supervised clinical experience as follows:

(a) Eighty (80) hours of classroom and laboratory training that includes:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity; and

4. Radiation biology; and

(b) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for diagnosis of thyroid function, and the treatment of hyperthyroidism in ten (10) individuals.

(6) The authorized user of only iodine-131 for the treatment of thyroid carcinoma to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating thyroid carcinoma, and supervised clinical experience as follows:

(a) Eighty (80) hours of classroom and laboratory training that includes:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity; and

4. Radiation biology; and

(b) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for the treatment of thyroid carcinoma in three (3) individuals.

(7) The authorized user of a brachytherapy source in Section 36 of this administrative regulation for therapy to be a physician who:

(a) Is certified in:

1. Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

2. Radiation oncology by the American Osteopathic Board of Radiology;

3. Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

4. Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(b) Is in the active practice of therapeutic radiology, has had classroom and laboratory training in radioisotope handling techniques applicable to the therapeutic use of brachytherapy sources, supervised work experience, and supervised clinical

experience as follows:

1. 200 hours of classroom and laboratory training that includes:
 - a. Radiation physics and instrumentation;
 - b. Radiation protection;
 - c. Mathematics pertaining to the use and measurement of radioactivity; and
 - d. Radiation biology;
2. 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:
 - a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
 - b. Checking survey meters for proper operation;
 - c. Preparing, implanting, and removing sealed sources;
 - d. Maintaining running inventories of material on hand;
 - e. Using administrative controls to prevent a medical event involving radioactive material; and
 - f. Using emergency procedures to control radioactive material; and
3. Three (3) years of supervised clinical experience that includes one (1) year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and an additional two (2) years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:
 - a. Examining individuals and reviewing their case histories to determine their suitability for brachytherapy treatment, and any limitations or contraindications;
 - b. Selecting the proper brachytherapy sources and dose and method of administration;
 - c. Calculating the dose; and
 - d. Post-administration follow-up and review of case histories in collaboration with the authorized user.
- (8) The authorized user of only strontium-90 for ophthalmic radiotherapy to be a physician who is in the active practice of therapeutic radiology or ophthalmology, and has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of strontium-90 for ophthalmic radiotherapy, and a period of supervised clinical training in ophthalmic radiotherapy as follows:
 - (a) Twenty-four (24) hours of classroom and laboratory training that includes:
 1. Radiation physics and instrumentation;
 2. Radiation protection;
 3. Mathematics pertaining to the use and measurement of radioactivity; and
 4. Radiation biology; and
 - (b) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution that includes the use of strontium-90 for the ophthalmic treatment of five (5) individuals that includes:
 1. Examination of each individual to be treated;
 2. Calculation of the dose to be administered;
 3. Administration of the dose; and
 4. Follow-up and review of each individual's case history.
- (9) The authorized user of a sealed source for diagnosis in a device listed in Section 45 of this administrative regulation to be a physician, dentist, or podiatrist who:
 - (a) Is certified in:
 1. Radiology, diagnostic radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;
 2. Nuclear medicine by the American Board of Nuclear Medicine;
 3. Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or
 4. Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or
 - (b) Has had eight (8) hours of classroom and laboratory training in basic radioisotope handling techniques specifically applicable to the use of the device that includes:

1. Radiation physics, mathematics pertaining to the use and measurement of radioactivity, and instrumentation;
 2. Radiation biology;
 3. Radiation protection; and
 4. Training in the use of the device for the uses requested.
- (10) The authorized user of a sealed source for therapeutic medical devices listed in Section 46 of this administrative regulation to be a physician who:
- (a) Is certified in:
 1. Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;
 2. Radiation oncology by the American Osteopathic Board of Radiology;
 3. Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology";
 4. Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or
 - (b) Is in the active practice of therapeutic radiology, and has had classroom and laboratory training in basic radioisotope techniques applicable to the use of a sealed source in a therapeutic medical device, supervised work experience, and supervised clinical experience as follows:
 1. 200 hours of classroom and laboratory training that includes:
 - a. Radiation physics and instrumentation;
 - b. Radiation protection;
 - c. Mathematics pertaining to the use and measurement of radioactivity; and
 - d. Radiation biology;
 2. 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:
 - a. Review of the full calibration measurements and periodic spot-checks;
 - b. Preparing treatment plans and calculating treatment times;
 - c. Using administrative controls to prevent medical events;
 - d. Implementing emergency procedures to be followed in the event of the abnormal operation of the medical device or console; and
 - e. Checking and using survey meters; and
 3. Three (3) years of supervised clinical experience that includes one (1) year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two (2) years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:
 - a. Examining individuals and reviewing their case histories to determine their suitability for teletherapy, remote afterloader, or gamma stereotactic radiosurgery treatment, and any limitations or contraindications;
 - b. Selecting the proper dose and how it is to be administered;
 - c. Calculating the doses and collaborating with the authorized user in the review of patients' or human research subjects' progress and consideration of the need to modify originally prescribed doses as warranted by patients' or human research subjects' reaction to radiation; and
 - d. Postadministration follow up and review of case histories.
- (11) The authorized medical physicist shall be an individual who:
- (a) Is certified by the American Board of Radiology in:
 1. Therapeutic radiological physics;
 2. Roentgen ray and gamma ray physics;
 3. X-ray and radium physics; or
 4. Radiological physics; or
 - (b) Is certified by the American Board of Medical Physics in radiation oncology physics; or
 - (c) Holds a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and has completed one (1) year of full time training in therapeutic radiological physics and an additional year of full time work experience under the supervision of a medical physicist at a medical institution that includes the

tasks listed in Sections 24, 52, 53, 54, 55, 56, 57 and 58 of this administrative regulation as applicable.

(12) The authorized nuclear pharmacist to be a pharmacist who:

(a) Has current board certification as a nuclear pharmacist by the Board of Pharmaceutical Specialties; or

(b)1. Has completed 700 hours in a structured educational program consisting of both:

a. Didactic training in the following areas:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity;

(iv) Chemistry of radioactive material for medical use; and

(v) Radiation biology; and

b. Supervised experience in a nuclear pharmacy involving the following:

(i) Shipping, receiving, and performing related radiation surveys;

(ii) Using and performing checks for proper operation of dose calibrators, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

(iii) Calculating, assaying, and safely preparing dosages for patients or human research subjects;

(iv) Using administrative controls to avoid mistakes in the administration of radioactive material;

(v) Using procedures to prevent or minimize contamination and using proper decontamination procedures; and

2. Has obtained written certification, signed by a preceptor authorized nuclear pharmacist, that the above training has been satisfactorily completed and that the individual has achieved a level of competency sufficient to independently operate a nuclear pharmacy.

(13) An authorized experienced nuclear pharmacist must be a pharmacist who has completed a structured educational program as specified in subsection (12)(b)(1) of this section before December 2, 1994, and who is working in a nuclear pharmacy would qualify as an experienced nuclear pharmacist. An experienced nuclear pharmacist shall not be required to comply with the requirements for a preceptor statement (subsection (12)(b)(2) of this section) and recency of training (Section 63 of this administrative regulation) to qualify as an authorized nuclear pharmacist.

Section 79. Food and Drug Administration (FDA), Other Federal and State Requirements. Nothing in this administrative regulation relieves the licensee from complying with applicable FDA, other federal and state requirements governing radioactive drugs or devices.]

JEFFREY D. HOWARD, JR., M.D., Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at noon

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, 502) 564-3970, julied.brooks@ky.gov, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and provisions for the medical use of byproduct materials, for issuance of licenses authorizing the medical use of byproduct material and for specific licensees to possess, use and transfer radioactive materials for medical use.

(b) The necessity of this administrative regulation: This administrative regulation outlines the specific qualifications and trainings necessary for the use of byproduct materials for medical purposes. Proper licensing and training helps to ensure the safe

administration of radioactive materials during medical treatment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.844(1) requires the cabinet to promulgate regulations for the registration and licensing of the possession or use of any source of ionizing or electronic product radiation; as well as the specification of the form of applications for registration and licenses, and the qualifications therefor; and to protect the public from unnecessary radiation exposure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that all individuals using byproduct materials for medical purposes are properly trained and licensed to do so.

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

(a) How the amendment will change this existing administrative regulation: All individuals using radioactive materials for medical purposes must be in full compatibility with the Nuclear Regulatory Commission (NRC) regulations for the medical use of byproduct material. This administrative regulation is being further amended in response to comments received in order to ensure full compatibility with NRC regulations.

(b) The necessity of the amendment to this administrative regulation: This amended after comment administrative regulation establishes compatibility with the federal regulation, except where exclusions are allowed. The necessity for additional compatibility language was realized during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment helps to ensure all professionals engaged in the practice of nuclear medicine are properly trained and licensed to the national standard. This in turn protects those receiving radioactive materials as part of medical therapy.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures all entities licensed for the use of radioactive materials in the healing arts are engaged in the safe usage of radioactive materials in their practice consistent with state and federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 205 specific licensees of the cabinet and all future applicants for specific license authorizing the medical use of byproduct material.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Individuals engaged in the practice of nuclear medicine are required to be in full compliance with NRC regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There is no anticipated additional cost for regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By adopting 10 C.F.R. Part 35, the state will eliminate any unnecessary training or licensing requirement for regulated entities.

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

(a) Initially: There is no anticipated additional cost to the program to implement this regulation.

(b) On a continuing basis: The program is already operating. There is no cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment does not affect funding.

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

change to the regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? No, tiering is not applied. Regulated entities practicing nuclear medicine are all required to meet the national standards for the discipline.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Radiation Health Branch in the Department for Public Health will be impacted by this administrative regulation as it contains reference to the federal regulation. There are no new requirements.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 211.844(1) requires the Cabinet to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. 10 C.F.R. Part 35, contains these federal requirements that Kentucky must be compatible with.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation does not add costs to the agency.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not add costs to the agency.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954 as amended, the Energy Policy Act of 2005 and 10 C.F.R. Part 35.

2. State compliance standards. This regulation adopts the federal standards for the issuance of license for the medical use of byproduct material.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires state regulations to be compatible with the equivalent federal regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no different, stricter, or additional responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health Division of Public Health Protection and Safety (Amended After Comments)

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

RELATES TO: KRS 211.180(1), 211.842-211.852, 211.990(4), 10 C.F.R. Part 34, 42 U.S.C. 2011[-71, 21 C.F.R. 1020.40]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.844(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes radiation safety requirements for industrial radiographic operations and shall apply to licensees[or—registrants] who use sources of radiation for industrial radiography.

Section 1. Definitions. (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1). (3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement state[Specific License and Registration Requirements for Industrial Radiography. (1) An Application for Radioactive Material License, incorporated by reference in 902 KAR 100:040, for a specific license or registration for the use of sources of radiation in industrial radiography shall be approved if the applicant meets the following requirements:

(a) Except as provided in subsection (3)(k) of this section, the applicant shall satisfy the general requirements specified in 902 KAR 100:040, Section 4, or 100:110 and 100:145, and any specific requirements contained in this administrative regulation.

(b) The applicant shall submit an adequate program for training a radiographer and a radiographers' assistant that meets the requirements of Section 14 of this administrative regulation.

1. An applicant shall not describe the initial training and examination program for a radiographer in the subjects outlined in Section 14 of this administrative regulation.

2. From June 30, 2000, to June 30, 2002, an applicant shall affirm that an individual acting as an industrial radiographer shall be certified in radiation safety by a certifying entity as described in 10 C.F.R. Part 34, Appendix A, before commencing duty as a radiographer. This affirmation shall substitute for a description of the initial training and examination program for a radiographer in the subjects outlined in Section 14 of this administrative regulation.

(c) The applicant shall submit procedures for verifying and documenting the certification status of a radiographer and for ensuring that the certification of an individual acting as a radiographer remains valid.

(d) The applicant shall submit written operating and emergency procedures as described in Section 15 of this administrative regulation.

(e) The applicant shall submit a description of a program for inspections of the job performance of a radiographer and a radiographers' assistant at intervals not to exceed six (6) months as described in Section 14 of this administrative regulation.

(f) The applicant shall submit a description of the applicant's overall organization structure as it applies to the radiation safety responsibilities in industrial radiography, including specified delegation of authority and responsibility.

(g) The applicant shall identify and list the qualifications of the individual designated as the radiation safety officer (RSO) and of the potential designees responsible for ensuring that the licensee's radiation safety program is implemented in accordance with the procedures that have been submitted to the cabinet and have received approval pursuant to Sections 13 and 15 of this administrative regulation.

(h) If an applicant intends to perform leak testing of sealed sources or exposure devices containing depleted uranium (DU) shielding, the applicant shall describe the procedures for performing and the qualifications of the person authorized to do the leak testing.

(i) If the applicant intends to analyze the applicant's own wipe samples, the application shall include a description of the procedures to be followed, which shall include:

1. Instruments to be used;
2. Methods of performing the analysis; and
3. Pertinent experience of the person analyzing the wipe samples.

(j) If the applicant intends to perform an "in-house" calibration of a survey instrument, the applicant shall describe the method to be used and the relevant experience of the person performing the calibration. A calibration shall be performed according to the procedures and at the intervals prescribed in Section 5 of this administrative regulation.

(k) The applicant shall identify and describe the location of each field station and permanent radiographic installation.

(l) The applicant shall identify the location where records required by this and other administrative regulations in 902 KAR Chapter 100 shall be maintained.

(2) A licensee shall maintain a copy of its license, documents incorporated by reference, and amendments to these items until superseded by new documents approved by the cabinet or until the cabinet terminates the license].

Section 2. Applicability. This administrative regulation shall apply to a licensee. The licensee shall comply with 10 C.F.R. Part 34 except as established in subsections (1) through (4) of this section. (1) The licensee shall not be subject to the following:

- (a) 10 C.F.R. 34.5;
- (b) 10 C.F.R. 34.8;
- (c) 10 C.F.R. 34.11;
- (d) 10 C.F.R. 34.121; or
- (e) 10 C.F.R. 34.123.

(2) Each application for a specific license shall be filed pursuant to 902 KAR 100:040.

(3) Reference to the "Commission", ~~or~~ "NRC", or an agreement state shall be deemed to be a reference to the "Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch", the NRC, or an agreement state.

(4) Notifications required by 10 C.F.R. 34.101 shall be directed to the manager, Radiation Health Branch, at:

- (a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;
- (b) (502) 546-1492: Facsimile;
- (c) (502) 564-3700: Telephone, Monday through Friday from 8 a.m. to 4:30 p.m.; or
- (d) (800) 255-2587: Telephone, for hours except those established in paragraph (c) of this subsection.

(Performance Provisions for Radiography Equipment. Equipment used in industrial radiographic operations shall meet the following criteria:

(1)(a) Except as provided in subsection (3)(k) of this section, a radiographic exposure device, source assembly, or sealed source and associated equipment shall meet the provisions specified in American National Standard Institute (ANSI) N432-1980, Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography; and

(b) Engineering analysis shall be submitted by an applicant or licensee to demonstrate the applicability of previously performed testing on similar individual radiography equipment components. If upon review, the cabinet determines that the engineering analysis demonstrates that actual testing of the component is not

necessary, the engineering analysis shall be an acceptable alternative.

(2)(a) A radiographic exposure device shall have attached to it by the user, a durable, legible, clearly visible label bearing the:

1. Chemical symbol and mass number of the radionuclide in the device;
2. Activity and date on which this activity was last measured;
3. Model or product code and serial number of the sealed source;
4. Manufacturer of the sealed source; and
5. Name, address, and telephone number of the licensee or registrant.

(b) A radiographic exposure device intended for use as a Type B transport container shall meet the applicable provisions of 10 C.F.R. 71.

(c) Modification of an exposure device, source changer, source assembly, or associated equipment shall be prohibited, unless the design of a replacement component, including source holder, source assembly, control, or guide tube, shall not compromise the design safety features of the system.

(3) In addition to the provisions specified in subsections (1) and (2) of this section, the following provisions shall apply to a radiographic exposure device, source assembly, and associated equipment that allow the source to be moved out of the device for radiographic operation or to a source changer:

(a) The coupling between the source assembly and the control cable shall be designed in a manner so that the source assembly cannot:

1. Become disconnected if cranked outside the guide tube; and
2. Be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.

(b) The device shall automatically secure the source assembly if it is cranked back into the fully shielded position within the device. The securing system shall be released only by a deliberate operation on the exposure device.

(c) Each outlet fitting, lock box, and drive cable fitting on a radiographic exposure device shall be equipped with a safety plug or cover, which shall be installed during storage and transportation to protect the source assembly from water, mud, sand, or other foreign matter.

(d) A sealed source or source assembly shall have attached to it or engraved on it, a durable, legible, visible label with the words: "DANGER-RADIOACTIVE." The label shall not interfere with the safe operation of the exposure device or associated equipment.

(e) The guide tube shall have passed:

1. A crushing test that closely approximates the crushing forces likely to be encountered during use; and
2. A kinking resistance test that closely approximates the kinking forces likely to be encountered during use.

(f) Guide tubes shall be used if moving the source out of the device.

(g) An exposure head or similar device designed to prevent the source assembly from passing out the end of the guide tube shall be attached to the outermost end of the guide tube during a radiographic operation.

(h) The guide tube exposure head connection shall withstand the tensile test for control units specified in ANSI N432-1980.

(i) A source changer shall provide a system for assuring that the source cannot be accidentally withdrawn from the changer if connecting or disconnecting the drive cable to or from a source assembly.

(j) A radiographic exposure device and associated equipment in use after January 10, 1996, shall comply with the provisions of this section.

(k) Equipment used in industrial radiography operations need not comply with paragraph 8.9.2(c) of the Endurance Test in American National Standards Institute N432-1980, if the prototype equipment has been tested using a torque value representative of the torque that an individual using the radiographic equipment can realistically exert on the lever or crankshaft of the drive mechanism.

Section 3. Limits on External Levels of Radiation for

~~Radiographic Exposure Devices and Storage Containers. The maximum exposure rate limits for storage containers and source changers shall be:~~

- ~~(1) 200 millirems (2 millisieverts) per hour at any exterior surface; and~~
- ~~(2) Ten (10) millirems (0.1 millisieverts) per hour at one (1) meter from any exterior surface, with the sealed source in the shielded position.~~

~~Section 4. Locking of Radiographic Exposure Devices, Storage Containers, and Source Containers. (1) A radiographic exposure device shall have a lock or outer locked container designed to prevent unauthorized or accidental production of radiation or removal or exposure of a sealed source from its shielded position.~~

~~(a) An exposure device or its container shall be kept locked, and if a keyed lock, with the key removed at all times except:~~

~~1. If under the direct surveillance of a radiographer or radiographer's assistant; or~~

~~2. As authorized by Section 19 of this administrative regulation.~~

~~(b) During radiographic operation the sealed source assembly shall be secured in the shielded position each time the source is returned to that position.~~

~~(c) A sealed source storage container and source changer shall be:~~

~~1. Provided with a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position; and~~

~~2. Kept locked, and if a keyed lock, with the key removed at all times if containing sealed sources, except if under the direct surveillance of a radiographer or radiographer's assistant.~~

~~(2) The control panel of a radiation machine shall be:~~

~~(a) Equipped with a lock that prevents the unauthorized use of an x-ray system or the accidental production of radiation; and~~

~~(b) Kept locked and the key removed at all times, except if under the direct visual surveillance of a radiographer or radiographer's assistant.~~

~~Section 5. Radiation Survey Instruments. (1) A licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments at a location where a source of radiation is present in order to perform radiation surveys as required by this administrative regulation and 902 KAR 100:019, Section 12(1).~~

~~(2) A radiation survey instrument shall be calibrated:~~

~~(a) At intervals not to exceed six (6) months;~~

~~(b) After an instrument servicing, except for battery changes;~~

~~(c) 1. At two (2) points located approximately one-third (1/3) and two-thirds (2/3) of full-scale for linear scale instruments;~~

~~2. Midrange of each decade, and at two (2) points of at least one (1) decade for logarithmic scale instruments;~~

~~3. At three (3) points between two (2) and 1,000 millirems (90.02 and ten (10) millisieverts) per hour for digital instruments; and~~

~~(d) So that an accuracy within plus or minus twenty (20) percent of the calibration source can be demonstrated at the points checked.~~

~~(3) A record of each calibration shall be maintained for three (3) years after the calibration date for inspection by the cabinet.~~

~~(4) Instrumentation required by this section shall have a range so that two (2) millirems (0.02 millisieverts) per hour through one (1) rem (0.01 sievert) per hour may be measured.~~

~~Section 6. Leak Testing and Replacement of Sealed Sources.~~

~~(1) The replacement of a sealed source fastened to or contained in a radiographic exposure device, and leak testing, repairing, opening, or modification of a sealed source shall be performed by a person specifically authorized by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state.~~

~~(2) A sealed source shall be tested for leakage:~~

~~(a) At intervals not to exceed six (6) months;~~

~~(b) Using a method approved by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state; and~~

~~(c) 1. By taking a wipe sample from the nearest accessible point to the sealed source where contamination might accumulate.~~

~~2. The wipe sample shall be analyzed for radioactive contamination.~~

~~3. The analysis shall be capable of detecting the presence of 0.005 microcuries (185 Bq) of radioactive material on the test sample; and~~

~~4. The analysis shall be performed by a person specifically authorized by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state to perform the analysis.~~

~~(3) A sealed source shall not be used by the licensee until tested for leakage, except if:~~

~~(a) The source is accompanied by a certificate from the transferor showing it to have been leak-tested within six (6) months preceding the transfer; or~~

~~(b) The source has been in storage and not in use for six (6) months or less.~~

~~(4)(a) A test conducted in accordance with subsections (1) and (2) of this section that reveals the presence of 0.005 microcuries (185 Bq) or more of removable radioactive material shall be considered evidence that the sealed source is leaking.~~

~~(b) The licensee shall immediately withdraw the equipment involved from use and shall have it decontaminated and repaired or disposed of in accordance with 902 KAR 100:021.~~

~~(c) The licensee shall file a report with the Manager, Radiation Health Branch, Department of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, within five (5) days of a test with results that exceed the threshold in this subsection.~~

~~(d) The report shall describe the equipment involved, the test results, and the corrective action taken.~~

~~(5) An exposure device using depleted uranium (DU) shielding and an "S" tube configuration shall be tested for DU contamination at intervals not to exceed twelve (12) months.~~

~~(a) The analysis shall be:~~

~~1. Capable of detecting the presence of 0.005 microcuries (185 Bq) of radioactive material on the test sample; and~~

~~2. Performed by a person specifically authorized by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state to perform the analysis.~~

~~(b) If testing reveals the presence of 0.005 microcuries (185 Bq) or more of removable DU contamination, the exposure device shall be removed from use until an evaluation of the wear on the S-tube has been made.~~

~~(c) If the evaluation reveals that the S-tube is worn through, the device shall not be used again.~~

~~(d) A DU shielded device shall:~~

~~1. Not require testing for DU contamination while in storage and not in use; and~~

~~2. Require testing before use or transfer if the interval of storage exceeded twelve (12) months.~~

~~(6)(a) A licensee shall maintain records of leak test results for each sealed source or device containing DU.~~

~~(b) The results shall be stated in units of microcuries (becquerels).~~

~~(c) The licensee shall retain a record for three (3) years after it is made or until the source in storage is removed.~~

~~Section 7. Quarterly Inventory. (1) A licensee or registrant shall conduct a quarterly physical inventory to account for each source of radiation and each device containing depleted uranium received or possessed in accordance with the license.~~

~~(2) Records of the inventories shall be maintained for three (3) years from the date of the inventory for inspection by the cabinet. The records of inventories shall include:~~

~~(a) Radionuclide;~~

~~(b) Number of curies (becquerels) or mass (for DU) in a device;~~

~~(c) Location of sealed sources and devices;~~

~~(d) Date of the inventory;~~

~~(e) Name of the individual making the inventory; and~~

~~(f) Manufacturer, model number, and serial number of each sealed source or device, as appropriate.~~

~~Section 8. Utilization Logs. A licensee or registrant shall maintain utilization logs, which shall be kept available for inspection by the cabinet for three (3) years from the date of the~~

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recorded event, at the address specified in the license or on the registration, showing for a source of radiation the following information:

- (1) A description including make, model, and serial number of the exposure device, radiation machine, or transport or storage container in which a sealed source is located;
- (2) Identity and signature of the radiographer to whom assigned;
- (3) Site or plant where used and dates of use;
- (4) Date a source of radiation is removed from storage and returned to storage; and
- (5) For permanent radiographic installations, the dates a radiation machine is energized.

Section 9. Inspection and Maintenance of Radiographic Exposure Devices, Radiation Machines, Transport and Storage Containers, Associated Equipment, Source Changers, and Survey Instruments. (1) A licensee or registrant shall perform:

(a) Visual and operability checks on survey meters, radiographic exposure devices, radiation machines, transport and storage containers, associated equipment, and source changers before use on a day the equipment is to be used to ensure that the:

1. Equipment is in good working condition;
2. Source is adequately shielded; and
3. Required labeling is present; and

(b) An operability check of survey instruments using check sources or other appropriate means.

(2) If an equipment problem is found, the equipment shall be removed from service until repaired.

(3) A licensee or registrant shall have written procedures for:

(a) Inspection and routine maintenance of radiographic exposure devices, radiation machines, source changers, associated equipment, transport and storage containers, and survey instruments at intervals not to exceed three (3) months, or before the first use in order to ensure the proper functioning of components important to safety;

(b) Inspection and maintenance necessary to maintain the Type B packaging used to transport radioactive materials; and

(c) Inspection and maintenance program to assure that a Type B package is shipped and maintained in accordance with the certificate of compliance, or other approval.

(4) A replacement component shall meet design specifications.

(5) If an equipment problem is found, the equipment shall be removed from service until repaired.

(6)(a) A record of equipment problems found in daily checks and quarterly inspections of radiographic exposure devices, transport and storage containers, associated equipment, source changers, and survey instruments and of any maintenance performed in accordance with subsections (1) through (3) of this section shall be kept for three (3) years for inspection by the cabinet.

(b) The record shall include:

1. The date of check or inspection;
2. Name of the inspector;
3. Equipment involved;
4. Problems found; and
5. What repair and maintenance was done.

Section 10. Permanent Radiographic Installations. (1) Permanent radiographic installations with an entrance used for personnel access to a high radiation area shall have:

(a) Entrance controls of the type described in 902 KAR 100.019, Section 14(1)(b) and (c) and Section 14(2) that reduce the radiation level upon entry into the area; or:

(b) Both visible and audible warning signals to warn of the presence of radiation.

1. The visible signal shall be activated by radiation if the source is exposed or the machine is energized.

2. The audible signal shall be activated if an attempt is made to enter the installation while the source is exposed or the machine is energized.

(2)(a) The alarm system shall be tested for proper operation with a radiation source at the beginning of each day

before the installation is used for radiographic operations.

(b) The test shall include a check of the visible and audible signals.

(c) Each entrance control device that reduces the radiation level upon entry, as designated in subsection (1) of this section, shall be tested monthly.

(3)(a) If an entrance device or alarm system is operating improperly, it shall be immediately labeled as defective and repaired within seven (7) calendar days.

(b) The facility may continue to be used during the seven (7) day repair period if the licensee:

1. Implements the continuous surveillance requirements of Section 19 of this administrative regulation; and

2. Uses an alarming ratemeter.

(4) Records of tests for entrance control and audible and visual alarms shall be maintained for inspection by the cabinet for three (3) years from the date of the test.

Section 11. Labeling, Storage, and Transportation. (1) A licensee shall not use a source changer or a container to store radioactive material unless the source changer or the storage container has securely attached to it a durable, legible, and clearly visible label bearing the standard trefoil radiation caution symbol conventional colors (magenta, purple or black on a yellow background, having a minimum diameter of twenty-five (25) millimeters), and the following words:

(a) 1. CAUTION*; or

2. DANGER;

(b) RADIOACTIVE MATERIAL; and

(c) NOTIFY:

1. CIVIL AUTHORITIES; or

2. NAME OF COMPANY.

(2) The licensee shall not transport radioactive material unless the material is packaged, and the package is labeled, marked, and accompanied with appropriate shipping papers in accordance with 10 C.F.R. Part 71.

(3) A locked radiographic exposure device, radiation machine, or storage container shall be physically secured to prevent tampering or removal by unauthorized personnel. The licensee shall store radioactive material in a manner that minimizes danger from explosion or fire.

(4) The licensee shall lock and physically secure the transport package containing radioactive material in the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal of the radioactive material from the vehicle.

Section 12. Conducting Industrial Radiographic Operations.

(1)(a) If radiography is performed at a location other than a permanent radiographic installation, the radiographer shall be accompanied by at least one (1) other qualified radiographer or an individual who has met the requirements of Section 14 of this administrative regulation. The additional qualified individual shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry.

(b) Radiography shall not be performed unless more than one (1) qualified individual is present.

(2) A radiographic operation conducted at a location of use authorized on the license shall be conducted in a permanent radiographic installation, unless specifically authorized by the cabinet.

(3) A licensee shall have one (1) year from the effective date of June 27, 1998 to meet the requirement for having two (2) qualified individuals present at a location other than a permanent radiographic installation, as specified in subsection (1) of this section.

Section 13. Radiation Safety Officer for Industrial Radiography. The radiation safety officer (RSO) shall ensure that radiation safety is being performed in the daily operation of the licensee's program in accordance with approved procedures and regulatory requirements. (1) The minimum qualifications, training, and experience for RSOs for industrial radiography is as follows:

(a) Completion of the training and testing requirements of

Section 14 of this administrative regulation;

(b) 2,000 hours of hands-on experience as a qualified radiographer in industrial radiographic operations; and

(c) Formal training in the establishment and maintenance of a radiation protection program.

(2) The cabinet shall consider alternatives if the RSO has:

(a) Appropriate training or experience in the field of ionizing radiation; and

(b) Adequate formal training in establishing and maintaining a radiation safety protection program.

(3) The specific duties and authorities of the RSO shall include:

(a) Establishing and overseeing operating, emergency and ALARA procedures as required by 902 KAR 100:019, and reviewing them regularly to ensure that the procedures in use conform to current 902 KAR 100:019 procedures, and conform to other requirements in 902 KAR Chapter 100 and to the license conditions.

(b) Overseeing and approving all phases of the training program for radiographic personnel, ensuring that appropriate and effective radiation protection is taught;

(c) Ensuring that:

1. Required radiation surveys and leak tests are performed and documented in accordance with 902 KAR Chapter 100, including corrective measures if levels of radiation exceed established limits;

2. Personnel monitoring devices are calibrated and used properly by occupationally-exposed personnel;

3. Records are kept of the monitoring results;

4. Timely notifications are made as required by 902 KAR 100:019, Section 40; and

5. Operations are conducted safely; and

(d) Assuming control for instituting corrective actions including stopping of operations, if necessary.

(4) A licensee or registrant shall have two (2) years from the effective date of June 27, 1999 to meet the requirements of subsections (1) and (2) of this section.

Section 14. Training. (1) A licensee or registrant:

(a) Shall not permit an individual to act as a radiographer as defined in 902 KAR 100:010 until the individual has received:

1. Formal training in the subjects identified in subsection (4) of this section;

2. At least two (2) months of on-the-job training; and

3. Is certified through a radiographer certification program in accordance with the criteria specified in Section 1 of this administrative regulation; or

(b) May, until two (2) years from the effective date of June 27, 1999, allow an individual who has not met the requirements of this section, to act as a radiographer if the individual has:

1. Received training in the subjects identified in subsection (4) of this section; and

2. Demonstrated an understanding of the subjects by successful completion of a written examination previously submitted to and approved by the cabinet;

(c) Shall not permit an individual to act as a radiographer until the individual has:

1. Received copies of and instructions in the following:

a. Provisions contained in this administrative regulation;

b. Provisions of 902 KAR 100:019, 100:040, 100:070, and 100:165;

c. Conditions of the license or registration certificate issued by the cabinet; and

d. The licensee's or registrant's approved operating and emergency procedures;

2. Demonstrated understanding of the licensee's license and operating and emergency procedures by successful completion of a written or oral examination covering this material;

3. Received training in the:

a. Use of the licensee's sources of radiation, the registrant's radiation machine, and other radiation exposure devices;

b. Daily inspection of devices and associated equipment; and

c. Use of radiation survey instruments; and

4. Demonstrated an understanding of the use of radiographic exposure devices, sources, survey instruments, and associated equipment described in paragraphs (a) and (c) of this subsection,

by successful completion of a practical examination covering the material;

(d) Shall not permit an individual to act as a radiographer's assistant as defined in 902 KAR 100:010 until the individual has:

1. Received copies of and instructions in the following:

a. Provisions contained in this administrative regulation;

b. Requirements of 902 KAR 100:019, 100:040, 100:070, and 100:165;

c. Conditions of the license or registration certificate issued by the cabinet; and

d. The licensee's or registrant's operating and emergency procedures;

2. Demonstrated competence to use, under the personal supervision of the radiographer, the sources of radiation, radiographic exposure devices, radiation machines, associated equipment, and radiation survey instruments that the assistant uses; and

3. Demonstrated:

a. Understanding of the instructions provided in paragraph (a) of this subsection by successfully completing a written test on the subjects covered; and

b. Competence in the use of hardware described in paragraph (b) of this subsection by successfully completing a practical examination on the use of the hardware; and

(e) Shall provide annual refresher safety training for a radiographer and radiographer's assistant at intervals not to exceed twelve (12) months.

(2)(a) Except in those operations in which a single individual shall serve as both radiographer and RSO and shall perform all radiography operations, the RSO or designee shall conduct an inspection program of the job performance of a radiographer and radiographer's assistant to ensure that 902 KAR Chapter 100, license requirements, and the applicant's operating and emergency procedures are followed.

(b) The inspection program shall include observation of the performance of the radiographer and radiographer's assistant during an actual industrial radiographic operation, at intervals not to exceed six (6) months;

(c) If a radiographer or a radiographer's assistant has not participated in an industrial radiographic operation for more than six (6) months since the last inspection, the radiographer shall demonstrate knowledge of the training requirements of subsection (3) of this section and the radiographer's assistant shall demonstrate knowledge of the training requirements of subsection (1)(d)2 of this section by a practical examination before either person may next participate in a radiographic operation; and

(d) The cabinet shall consider alternatives in those situations in which the individual serves as both radiographer and RSO.

(3) Records of training specified in subsection (1)(c) of this section shall be maintained by a licensee or registrant for inspection by the cabinet for three (3) years after the record is made.

(a) Records shall include:

1. Radiographer certification documents;

2. Verification of certification status;

3. Copies of written tests;

4. Dates of oral tests and practical examinations;

5. Names of individuals conducting and receiving the oral and practical examinations; and

6. Documentation of annual refresher safety training and semi-annual inspections of job performance for a radiographer and a radiographer's assistant, which shall include:

a. Topics discussed during the refresher safety training;

b. Dates the annual refresher safety training was conducted; and

c. Names of the instructors and attendees.

(b) For inspections of job performance, the records shall also include a list showing the items checked and all noncompliances observed by the RSO.

(4) The licensee or registrant shall include the following subjects required in subsection (1)(b) of this section:

(a) Fundamentals of radiation safety including:

1. Characteristics of gamma radiation;

2. Units of radiation dose and quantity of radioactivity;

3. Hazards of exposure to radiation;
4. Levels of radiation from radioactive material; and
5. Methods of controlling radiation dose by time, distance, and shielding;

(b) Radiation detection instruments including:

1. Use, operation, calibration, and limitations of radiation survey instruments;

2. Survey techniques; and

3. Use of personnel monitoring equipment;

(c) Equipment to be used including:

1. Operation and control of radiographic exposure equipment, remote handling equipment, and storage containers, including pictures or models of source assemblies (pigtailed);

2. Storage, control, and disposal of radioactive material;

3. Inspection and maintenance of equipment; and

4. Operation and control of radiation machines;

(d) The requirements of 902 KAR Chapter 100, as applicable; and

(e) Case histories of accidents in radiography.

(5) A licensee or registrant shall have one (1) year from June 27, 1998 to comply with the additional training requirements specified in subsections (1)(c) and (d) of this section.

(6) Licensees and registrants shall have one (1) year from June 27, 1999, to comply with the certification requirements specified in subsection (1) of this section. Records of radiographer certification maintained in accordance with subsection (3) of this section shall provide appropriate affirmation of certification requirements specified in subsection (1) of this section.

Section 15. Operating and Emergency Procedures. (1) A licensee's or registrant's operating and emergency procedures shall include instructions in at least the following:

(a) The handling and use of sources of radiation to be employed so an individual is not likely to be exposed to radiation doses in excess of the limits established in 902 KAR 100.019, Section 3;

(b) Methods and occasions for conducting radiation surveys;

(c) Methods for controlling access to radiographic areas;

(d) Methods and occasions for locking and securing a source of radiation, radiographic exposure device, or transport and storage container;

(e) Personnel monitoring and the use of personnel monitoring equipment, including steps that shall be taken immediately by radiography personnel if a pocket dosimeter is found to be off-scale or an alarm ratemeter alarms unexpectedly;

(f) Transportation of sources of radiation to field locations, including:

1. Packing of a radiographic exposure device and storage container in a vehicle;

2. Placarding of a vehicle if needed; and

3. Control of sources of radiation during transportation;

(g) Minimizing exposure of individuals if an accident occurs;

(h) The procedure for notifying proper personnel if an accident occurs;

(i) Maintenance of records; and

(j) The inspection, maintenance, and operability checks of radiographic exposure devices, radiation machines, storage containers, survey instruments, and transport containers.

(2) The licensee or registrant shall maintain copies of current operating and emergency procedures until the cabinet terminates the license.

(3) Superseded material shall be retained for three (3) years after the change is made.

Section 16. Personnel Monitoring. (1) A licensee or registrant shall not permit an individual to act as a radiographer or radiographer's assistant unless, at all times during radiographic operations, the individual wears on the trunk of the body a direct reading pocket dosimeter, an operating alarm ratemeter, and a personal dosimeter that is processed and evaluated by an accredited National Voluntary Laboratory Accreditation Program (NVLAP) processor.

(2) The wearing of an alarm ratemeter shall not be required for

permanent radiography facilities in which another alarming or warning device is in routine use or during radiographic operations using radiation machines.

(3) Pocket dosimeters shall have a range from zero to at least 200 milliroentgens (two (2) millisieverts) and shall be recharged daily or at the start of a shift. Electronic personal dosimeters may be used in place of ion-chamber pocket dosimeters only.

(4) A personal dosimeter shall be assigned to, and worn by, only one (1) individual.

(5) A film badge shall be replaced each month, and other personal dosimeters processed and evaluated by an accredited NVLAP processor shall be replaced at intervals not to exceed three (3) months.

(6) After replacement, each personal dosimeter shall be processed as soon as possible.

(7) Direct reading dosimeters, such as pocket dosimeters or electronic personal dosimeters, shall be read and exposures recorded at the beginning and end of a shift.

(a) If an individual's pocket dosimeter is found to be off-scale, or if the electronic personal dosimeter reads greater than 200 millirems (two (2) millisieverts), and the possibility of radiation exposure cannot be ruled out as the cause:

1. The individual's personal dosimeter shall be sent for processing within twenty-four (24) hours;

2. Radiographic operations by the individual shall cease; and

3. The individual shall not return to work with sources of radiation until a determination of the radiation exposure has been made by the RSO or the RSO's designee. The results shall be included in the records maintained in accordance with paragraph (b) of this subsection and subsection (10)(b) of this section.

(b) A licensee or registrant shall maintain the following exposure records:

1. Direct reading dosimeter readings and yearly operability checks for three (3) years after the record is made;

2. Reports received from the NVLAP processor of personal dosimeter results until the cabinet terminates the license; and

3. Records of estimates of exposures as a result of off-scale personal direct reading dosimeters, or lost or damaged personal dosimeters, until the cabinet terminates the license.

(8) If a personal dosimeter is lost or damaged, the worker shall cease work immediately until:

(a) A replacement personal dosimeter meeting the requirements of subsection (1) of this section is provided; and

(b) The exposure is calculated for the time period from issuance to loss or damage of the personal dosimeter. The results of the calculated exposure and the time period for which the personal dosimeter was lost or damaged shall be included in the records maintained in accordance with subsection (7) of this section.

(9)(a) Pocket dosimeters, or electronic personal dosimeters, shall be checked for correct response to radiation at periods not to exceed twelve (12) months.

(b) Acceptable dosimeters shall read within plus or minus twenty (20) percent of the true radiation exposure.

(10)(a) An alarm ratemeter shall:

1. Be checked to ensure that the audible alarm functions properly prior to use at the start of a shift;

2. Be set to give an alarm signal at a preset dose rate of 500 mR/hr (5mSv/hr);

3. Require special means to change the preset alarm functions;

4. Be calibrated at periods not to exceed twelve (12) months for correct response to radiation; and

5. Alarm within plus or minus twenty (20) percent of the true radiation dose rate.

(b) Records of alarm ratemeter calibrations shall be maintained for three (3) years after the record is made.

Section 17. Documents Required at Field Stations and Temporary Job Sites. A licensee or registrant shall have the following records available for inspection by the cabinet at each field station, if applicable, and at each job site:

(1) A copy of the operating and emergency procedures;

- (2) A current copy of the radioactive material license or registration certificate;
- (3) A copy of 902 KAR 100:019, 100:100, and 100:165;
- (4) Latest survey records required by Section 22 of this administrative regulation;
- (5) Records of direct reading dosimeters, such as pocket dosimeters or electronic personal dosimeters readings, as required by Section 16 of this administrative regulation;
- (6) Evidence of the latest instrument calibration of the radiation survey instrumentation in use at the site, as required by Section 5 of this administrative regulation;
- (7) Utilization records for each radiographic exposure device dispatched from that location, as required by Section 8 of this administrative regulation;
- (8) Records of equipment problems identified in daily checks of equipment required by Section 9 of this administrative regulation;
- (9) Records of alarm system and entrance control checks required by Section 10 of this administrative regulation, if applicable;
- (10) Evidence of the latest calibrations of alarm ratemeters and operability checks of pocket dosimeters and electronic personal dosimeters, as required by Section 16 of this administrative regulation;
- (11) The shipping papers for the transportation of radioactive materials required by 902 KAR 100:070; and
- (12) If operating in accordance with reciprocity pursuant to 902 KAR 100:065, a copy of the agreement state or U.S. Nuclear Regulatory Commission license authorizing the use of radioactive materials.

Section 18. Specific Provisions for Radiographic Personnel Performing Industrial Radiography. (1) At a job site, the following shall be supplied by a licensee or registrant:

- (a) At least one (1) operable, calibrated survey instrument for every exposure device or radiation machine in use;
- (b) A current whole body personnel monitor (TLD or film badge) for an individual performing radiographic operations;
- (c) An operable, calibrated pocket dosimeter with a range of zero to 200 milliroentgens for a worker performing radiographic operations;
- (d) Appropriate barrier ropes and signs; and
- (e) An operable, calibrated, alarming ratemeter for every person performing radiographic operations using a radiographic exposure device.

(2) A radiographer at a job site shall have on the radiographer's person a valid certificate ID card issued by a certifying entity.

(3) An industrial radiographic operation shall not be performed if the items in subsections (1) and (2) of this section are not available at the job site or they are inoperable.

(4) During an inspection by the cabinet, the cabinet shall terminate an operation if items in subsections (1) and (2) of this section are not available or not operable, or if the required number of radiographic personnel are not present. Operations shall not be resumed until required conditions are met.

Section 19. Surveillance. During a radiographic operation, a radiographer or the other individual present, as required by Section 12 of this administrative regulation, shall maintain direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area, except at a permanent radiographic installation where:

- (1) Entryways are locked; and
- (2) The requirements of Section 10 of this administrative regulation are met.

Section 20. Posting. (1) An area in which radiography is being performed shall be conspicuously posted, as required in 902 KAR 100:019, Section 24(1) and (2).

(2) Exceptions listed in 902 KAR 100:019 do not apply to an industrial radiographic operation.

Section 21. Special Provisions and Exemptions for Cabinet X-

ray Systems. (1) The use of a certified or certifiable cabinet x-ray system shall be exempt from the requirements of this administrative regulation, except for the following:

(a) For certified and certifiable cabinet x-ray systems, including those designed to allow admittance of individuals:

1. A registrant shall not permit an individual to operate a cabinet x-ray system until the individual has received a copy of and instruction in the operating procedures for the unit.

2. A test for proper operation of interlocks shall be conducted and recorded at intervals not to exceed six (6) months.

3. A registrant shall perform an evaluation of the radiation dose limits to determine compliance with 902 KAR 100:019, Section 10, and 21 C.F.R. 1020.40, Cabinet X-ray Systems, at intervals not to exceed one (1) year.

4. Records shall be maintained demonstrating compliance with subsections (1)(a)1 and 2 of this section until disposal is authorized by the cabinet.

5. Records of the evaluation required by subparagraph 3 of this paragraph shall be maintained for two (2) years after the evaluation is performed.

(b)1. Certified cabinet x-ray systems shall be maintained in compliance with 21 C.F.R. 1020.40, Cabinet X-ray Systems.

2. A modification shall not be made to the system unless prior cabinet approval has been granted.

(2) An industrial use of a hand-held light intensified imaging device shall be exempt from the requirements of this administrative regulation if the dose rate eighteen (18) inches from the source of radiation to any individual does not exceed two (2) millirem per hour. A device exceeding this limit shall meet the applicable requirements of this administrative regulation and the licensing or registration requirements of 902 KAR 100:040 and 100:110, as applicable.

Section 22. Radiation Surveys and Survey Records. (1) A radiographic operation shall not be conducted unless calibrated and operable radiation survey instrumentation, as described in Section 5 of this administrative regulation, is available and used at a location of radiographic operations.

(2) A survey with a radiation survey instrument shall be made after a radiographic exposure of the radiographic exposure device and the guide tube if approaching the device or guide tube to determine that the sealed source has been returned to its shielded position before exchanging films, repositioning the exposure head, or dismantling equipment.

(3) A survey shall be conducted of the radiographic exposure device with a calibrated radiation survey instrument if the source is exchanged and if a radiographic exposure device is placed in a storage area, to ensure that the source is in its shielded position.

(4) A physical radiation survey shall be made after a radiographic exposure using radiographic machines to determine that the machine is "off."

(5) Records shall be kept of the exposure device survey conducted before the device is placed in storage as specified in subsection (3) of this section if that survey is the last one performed in the workday. The records shall be maintained for inspection by the cabinet for three (3) years after it is made.

Section 23. Supervision of Radiographer's Assistant. (1) If a radiographer's assistant uses radiographic exposure devices, associated equipment, sealed sources, or conducts radiation surveys required by Section 22 of this administrative regulation to determine that the sealed source has returned to the shielded position after an exposure or the radiation machine is off, the radiographer's assistant shall be under the personal supervision of a radiographer.

(2) The radiographer shall:

(a) Be physically present at the site where a source of radiation and associated equipment is being used;

(b) Watch, by direct visual observation, the performance of the operations performed by the radiographer's assistant referred to in this section; and

(c) Be in close proximity so that immediate assistance shall be given if required.

Section 24. Reporting Requirements. (1) In addition to the

reporting requirements specified in 902 KAR 100:040, Section 15, and in accordance with other sections of this administrative regulation, a licensee or registrant shall provide a written report to the

Cabinet for Health and Family Services, Radiation Health Branch within thirty (30) days of the occurrence of the following incidents involving radiographic equipment:

- (a) Unintentional disconnection of the source assembly from the control cable;
 - (b) Inability to retract the source assembly to its fully shielded position and secure it in this position;
 - (c) Failure of a component, critical to safe operation of the device, to properly perform its intended function;
 - (d) Failure of an indicator on a radiation machine to show that radiation is being produced;
 - (e) Failure of an exposure switch to terminate production of radiation if turned to the off position; or
 - (f) Failure of a safety interlock to terminate x-ray production.
- (2) The licensee or registrant shall include the following information in a report submitted in accordance with subsection (1) of this section:
- (a) A description of the equipment problem;
 - (b) Cause of an incident, if known;
 - (c) Manufacturer and model number of equipment involved in the incident;
 - (d) Place, time, and date of the incident;
 - (e) Actions taken to establish normal operations;
 - (f) Corrective actions taken or planned to prevent recurrence;
- and

- (g) Qualifications of personnel involved in the incident.

(3) A report of an overexposure submitted under 902 KAR 100:019, Section 40, involving failure of a safety component of radiography equipment shall include the information specified in subsection (2) of this section.

(4) A licensee shall notify the cabinet if conducting radiographic operations or storing radioactive material at a location not listed on the license for a period in excess of 180 days in a calendar year.

~~Section 25. Incorporation by Reference. (1) The American National Standard Institute (ANSI) N432-1980, "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography", published in NBS Handbook 136, issued January 1981, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Office of the Commissioner, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. until 4:30 p.m.]~~

JEFFREY D. HOWARD, JR., M.D., Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at noon

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, 502) 564-3970, julie.brooks@ky.gov, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the technical requirements and basis for issuing licenses to perform radiography using byproduct material.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to control hazards to health and the environment from ionizing radiation associated with the use of byproduct material in industrial radiography.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to

operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.844(1) requires the cabinet to provide by administrative regulation for the licensing of the possession and use of byproduct material and shall include specification of the form of application for licenses and the qualifications therefore.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will make the cabinet's administrative regulation identical to the federal regulation that regulates the same activities. This provides for consistent regulatory framework for all entities affected.

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

(a) How the amendment will change this existing administrative regulation: This amendment adopts by reference the applicable Nuclear Regulatory Commission (NRC) regulations for licenses for industrial radiography and radiation safety requirements for industrial radiographic operations which eliminates any discrepancies between state and federal licensing and safety requirements. This administrative regulation is being further amended in response to comments received in order to ensure full compatibility with NRC regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment after comment administrative regulation establishes compatibility with the federal regulation, except where exclusions are allowed. The necessity for additional compatibility language was realized during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the authorizing statutes, which require the secretary to adopt regulations for the registration and licensing of the possession of any source of ionizing or electronic product radiation necessary to protect the public from unnecessary radiation exposure.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures all entities licensed or registered for industrial radiographic operations are in full compliance with state and national regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are approximately eighteen (18) licensees of the cabinet; all future applicants for licenses authorizing the use of byproduct material for industrial radiography and any licensee that performs industrial radiography in the Commonwealth under the reciprocal recognition of licenses pursuant to 902 KAR 100:065.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Affected entities are required to be in compliance with NRC regulations so there will be no new actions required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There is no cost for compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will be in full compliance with NRC regulations.

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

(a) Initially: This program is already operating. There is no cost to implement this amendment.

(b) On a continuing basis: This program is already operating. There is no cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment does not affect funding.

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

amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this regulation.

(9) TIERING: Is tiering applied? No. This administrative regulation is applicable to all affected entities in a like manner. All regulated entities must be in compliance with NRC regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Radiation Health Branch in the Department for Public Health administers this program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 10 C.F.R. Part 34, KRS 194A.050(1), 211.090(3), 211.844(1).

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954, as amended, the Energy Policy Act of 2005 and 10 C.F.R. Part 34.

2. State compliance standards. This regulation adopts the federal technical requirements and basis for issuing licenses to perform radiography using byproduct material in industrial radiography.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires state regulations to be compatible with the equivalent federal regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no different, stricter, or additional responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety

(Amended After Comments)

902 KAR 100:142. Licenses and radiation safety requirements for well logging[Wire line service operations].

RELATES TO: KRS 194A.005(1), 211.180(1), 211.842-211.852, 211.990(4), 10 C.F.R. Part 39, 42 U.S.C. 2021

STATUTORY AUTHORITY: KRS 194.050(1), 211.090(3), 211.844(1)[, 10 C.F.R. 39]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the Cabinet for Health and Family Services to promulgate administrative regulations for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides the requirements for the issuance of a license authorizing the use of licensed materials including sealed sources, radioactive tracers, radioactive markers, and uranium sinker bars in well logging in a single well.[radiation safety requirements for persons using sources of radiation for wire line service operations including radioactive markers, mineral exploration, and subsurface tracer studies].

Section 1. Definitions. (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state[Agreement with Well Owner or Operator. (1)

A licensee shall not perform a wire line service operation with a sealed source in a well or well-bore unless, prior to commencement of the operation, the licensee has a written agreement with the well operator or well or land owner that:

(a) If a sealed source is lodged downhole, a reasonable effort at recovery shall be made;

(b) If a decision is made to abandon the sealed source downhole, the requirements of this administrative regulation shall be met;

(c) A person shall not attempt to recover a sealed source in a manner, which, in the licensee's opinion, may result in its rupture;

(d) The radiation monitoring required in Section 24 of this administrative regulation shall be performed;

(e) If the environment, equipment, or personnel are contaminated with radioactive material, decontamination shall be performed prior to release from the site or for unrestricted use; and

(f) If the sealed source is classified as not retrievable after reasonable efforts at recovery have been expended, the requirements of Section 27 of this administrative regulation shall be met.

(2) The licensee shall retain a copy of the written agreement with the well operator or well or land owner for three (3) years after completion of the well logging operations].

Section 2. Applicability. This administrative regulation shall apply to a licensee. The licensee shall comply with 10 C.F.R. Part 39 except as established in subsections (1) through (3) of this section.

(1) The licensee shall not be subject to the following:

(a) 10 C.F.R. 39.5;

(b) 10 C.F.R. 39.8;

(c) 10 C.F.R. 39.11;

(d) 10 C.F.R. 39.101; or

(e) 10 C.F.R. 39.103.

(2) Each application for a specific license shall be filed pursuant to 902 KAR 100:040.

(3) Reference to the "Commission,"[or] "NRC", or an agreement state shall be deemed to be a reference to the "Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch", the NRC, or an agreement state.

(4) Notifications required by 10 C.F.R. 39.77 shall be directed

to the manager, Radiation Health Branch, at:

(a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(b) (502)564-1492: Facsimile;

(c) (502)564-3700: Telephone, Monday through Friday from 8 a.m. to 4:30 p.m.; or

(d) (800)255-2587: Telephone, for hours outside of those in paragraph (c). Limits on Levels of Radiation. Radioactive materials shall be used, stored, and transported in a manner that the requirements of 902 KAR 100:019 and 100:070 shall be met.

Section 3. Storage Precautions. (1) Sources of radiation, except accelerators, shall be provided with a lockable storage or transport container.

(2) The container shall be provided with a lock (or tamper seal for calibration sources) to prevent unauthorized removal of, or exposure to, the source of radiation.

(3) Sources of radiation shall be stored in a manner that shall minimize the danger from explosion or fire.

Section 4. Transport Precautions. Transport containers shall be physically secured to the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal.

Section 5. Radiation Survey Instruments. (1) The licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments, capable of detecting beta and gamma radiation, at each field station and temporary jobsite to make physical radiation surveys as required by this administrative regulation and by 902 KAR 100:019.

(2)(a) Instrumentation required by this section shall be capable of measuring one-tenth (0.1) millirem (.001 mSv) per hour through at least fifty (50) millirem (0.5 mSv) per hour.

(b) The licensee shall have available additional calibrated and operable radiation detection instruments sensitive enough to detect the low radiation and contamination levels that could be encountered if a sealed source ruptured. The licensee shall own the instruments or have a procedure to obtain them as soon as possible from a second party.

(3) The licensee shall have each radiation survey instrument required by subsection (1) and (2) of this section calibrated:

(a) At intervals not to exceed six (6) months and after each instrument servicing;

(b) At energies and exposure levels appropriate for use; and

(c) So that accuracy within plus or minus twenty (20) percent of the true radiation level shall be demonstrated on each scale.

(4) Records of calibration shall be maintained for a period of at least three (3) years after the date of calibration for inspection by the cabinet.

Section 6. Leak Testing of Sealed Sources. (1) A licensee who uses a sealed source of radioactive material shall have the source tested for leakage as specified in this section. The licensee shall keep a record of leak test results in units of microcuries and retain the record for inspection by the cabinet.

(2) Method of Testing.

(a) The wipe of a sealed source shall be performed using a leak test kit or method approved by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state;

(b) The wipe sample shall be taken from the nearest accessible point to the sealed source where contamination might accumulate;

(c) The wipe sample shall be analyzed for radioactive contamination; and

(d) The analysis shall be capable of detecting the presence of 0.005 microcuries (185 Bq) of radioactive material on the test sample and shall be performed by a person approved by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state, as established in 10 C.F.R. Part 39.35.

(3) Test Frequency.

(a) Each sealed source, except an Energy Compensation Source (ECS), shall be tested at intervals not to exceed six (6) months;

(b) In the absence of a certificate from a transferor that a test has been made within the six (6) months before the transfer, the sealed source shall not be used until tested.

(4)(a) Each ECS, not exempted by subsection (7) of this section, shall be tested at intervals not to exceed three (3) years. In the absence of a certificate from a transferor that a test has been made with the three (3) years before the transfer, the ECS shall not be used until tested.

(5) Removal from service:

(a) If the test conducted under subsections (1) and (2) of this section reveals the presence of 0.005 microcuries (185 Bq) or more of removable radioactive material, the licensee shall remove the sealed source from service immediately and have it decontaminated, repaired, or disposed by a cabinet, U.S. Nuclear Regulatory Commission, or agreement state licensee authorized to perform these functions;

(b) The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of by a cabinet, U.S. Nuclear Regulatory Commission, or agreement state licensee that is authorized to perform these functions.

(6) The licensee shall submit a report to the cabinet within five (5) days of receiving the test results, and the report shall describe the equipment involved in the leak, the test results, contamination that resulted from the leaking source, and the corrective actions taken up to the time that report is made.

(7) The following sealed sources shall be exempt from the periodic leak test requirements in subsections (1) through (5) of this section:

(a) Hydrogen-3 (tritium) sources;

(b) Sources containing radioactive material with a half-life of thirty (30) days or less;

(c) Sealed sources containing radioactive material in gaseous form;

(d) Sources of beta or gamma-emitting radioactive material with an activity of ten (10) microcuries (0.37 Bq) or less; and

(e) Sources of alpha or neutron-emitting radioactive material with an activity of ten (10) microcuries (0.37 Bq) or less.

Section 7. Quarterly Inventory. (1) A licensee or registrant shall conduct a quarterly physical inventory to account for sources of radiation received or possessed by the licensee or registrant.

(2) Records of inventories shall be maintained for at least two (2) years from the date of the inventory for inspection by the cabinet and shall include:

(a) The quantities and kinds of sources of radiation;

(b) The location where sources of radiation are assigned;

(c) The date of the inventory; and

(d) The name of the individual conducting the inventory.

Section 8. Utilization Records. A licensee or registrant shall maintain current records, which shall be kept available for inspection by the cabinet for at least two (2) years from the date of the recorded event showing the following information for each source of radiation:

(1) A description (or make and model number or serial number) of each source of radiation used;

(2) The identity of the logging supervisor responsible for the radioactive material and identity of logging assistant present;

(3) Locations where used and dates of use; and

(4) In the case of tracer materials and radioactive markers, the utilization record shall also indicate the radionuclide and activity used at a particular well site.

Section 9. Design and Performance Criteria for Sealed Sources used in Downhole Operations. (1) A sealed source, except those containing radioactive material in gaseous form, used in downhole operations shall, as a minimum, meet the following criteria:

(a) Be of double encapsulated construction;

(b) Contain radioactive material whose chemical and physical form shall be as insoluble and nondispersible as practicable; and

(c) Meets the requirements of paragraphs (2), (3), and (4) of

this section.

(2) For a sealed source manufactured on or before July 14, 1989, a licensee may use the sealed source in well logging applications if it meets the requirements of USASI N5.10-1968, Classification of Sealed Radioactive Sources, or the requirements in subsections (3) or (4) of this section.

(3) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source for use in well logging applications if it meets the oil well logging requirements of ANSI/HPS N43.6-1997, Sealed Radioactive Sources – Classification.

(4) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source for use in well logging applications if the sealed source's prototype has been tested and found to maintain its integrity after each of the following tests:

(a) Temperature. The test source shall be held at minus forty (40) degrees Centigrade for twenty (20) minutes, 600 degrees Centigrade for one (1) hour, and then be subject to a thermal shock test with a temperature drop from 600 degrees Centigrade to twenty (20) degrees Centigrade within fifteen (15) seconds;

(b) Impact test. A five (5) kilogram steel hammer, two and five-tenths (2.5) centimeters in diameter, shall be dropped from a height of one (1) meter onto the test source;

(c) Vibration test. The test source shall be subject to a vibration from twenty-five (25) Hz to 500 Hz at five (5) g amplitude for thirty (30) minutes;

(d) Puncture test. A one (1) gram hammer and pin, three-tenths (0.3) centimeter in diameter, shall be dropped from a height of one (1) meter onto the test source.

(e) Pressure Test. The test source shall be subject to an external pressure of 1.695×10^7 pascals (24,600 pounds per square inch absolute).

(5) The requirements in subsections (1) through (4) of this section shall not apply to sealed sources that contain radioactive material in gaseous form.

(6) The requirements in subsections (1) through (4) of this section shall not apply to ECS sources, which shall be registered with the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state.

(7) Certification documents shall be maintained for inspection by the cabinet for a period of at least two (2) years after source disposal.

(8) For sources abandoned downhole, certification documents shall be maintained until their disposal is authorized by the cabinet.

Section 10. Labeling. (1) A source, source holder, or logging tool containing radioactive material shall bear a durable, legible, and clearly visible marking or label that has, as a minimum, the standard radiation symbol without color requirement and the following wording: DANGER (or CAUTION) RADIOACTIVE.

(2) This labeling shall be on the smallest component, for example, source, source holder, or logging tool, that is transported as a separate piece of equipment.

(3) A transport container shall have permanently attached to it a durable legible and clearly visible label that has, at a minimum, the standard radiation symbol and the following wording: DANGER (or CAUTION) RADIOACTIVE. Notify civil authorities (or name of company) if found.

Section 11. Inspection and Maintenance. (1) A licensee or registrant shall conduct, at intervals not to exceed six (6) months, a program of inspection of sealed sources and inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, uranium sinker bars, and injection tools to assure proper labeling, operation, and physical condition.

(2) Records of inspection and maintenance shall be maintained for a period of at least two (2) years for inspection by the cabinet.

(3) If an inspection conducted pursuant to this section reveals damage to labeling or components critical to radiation safety, the device shall be removed from service until repairs have been made.

(4) The repair, opening, or other modification of a sealed

source shall be performed only by persons specifically authorized to do so by the cabinet, the U. S. Nuclear Regulatory Commission, or an Agreement State.

(5) If a sealed source is stuck in the source holder, the licensee shall not perform any operation, for example drilling, cutting, or chiseling on the source holder unless the licensee is specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state to perform the operation.

Section 12. Training Requirements. (1) A licensee or registrant shall not permit an individual to act as a logging supervisor until the individual has:

(a) Completed a course recognized by the cabinet, an Agreement State, or the U. S. Nuclear Regulatory Commission covering the subjects outlined in Section 28 of this administrative regulation and shall have demonstrated an understanding of the subjects;

(b) Received copies of and demonstrated an understanding of the following:

1. The requirements contained in this administrative regulation;

2. Provisions of 902 KAR Chapter 100;

3. The conditions of the license or registration certificate issued by the cabinet; and

4. The licensee's or registrant's approved operating and emergency procedures;

(c) Completed on-the-job training and demonstrated competence in the use of sources of radiation, related handling tools, and radiation survey instruments that shall be employed in his assignment; and

(d) Demonstrated an understanding of the requirements in paragraphs (a) and (b) of this subsection by successfully completing a written test.

(2) A licensee or registrant shall not permit an individual to act as a logging assistant until the individual has:

(a) Read and received instruction in the licensee's or registrant's operating and emergency procedures, the requirements contained in this administrative regulation and other applicable provisions of 902 KAR Chapter 100 and shall have demonstrated understanding of the subjects;

(b) Demonstrated competence to use, under the personal supervision of the logging supervisor, the sources of radiation, related handling tools, and radiation survey instruments that will be employed in his assignment; and

(c) Demonstrated understanding of the requirements in paragraphs (a) and (b) of this subsection by successfully completing a written or oral test.

(3) A licensee or registrant shall maintain employee training records for inspection by the cabinet for at least two (2) years following termination of employment.

Section 13. Operating and Emergency Procedures. The licensee's or registrant's operating and emergency procedures shall include instructions in at least the following:

(1) The handling and use of sources of radiation to be employed so that an individual is not likely to be exposed to radiation doses in excess of the limits established in 902 KAR 100:019, Section 3;

(2) The handling and use of radioactive material including the use of sealed sources in wells without surface casing for protecting fresh water aquifers, if appropriate;

(3) The use of remote handling tools for handling sealed source and radioactive tracer material except low-activity calibration sources;

(4) Methods and occasions for conducting radiation surveys, including surveys for detecting contamination;

(5) Methods and occasions for locking and securing sources of radiation;

(6) Personnel monitoring and the use of personnel monitoring equipment;

(7) Transportation to temporary job sites and field stations, including:

(a) Packaging of sources of radiation in the vehicles;

(b) Placarding of vehicles, if needed; and

(c) Physically securing sources of radiation during transportation to prevent accidental loss, tampering, or unauthorized removal;

(8) Minimizing exposures of individuals from inhalation and ingestion of radioactive tracer material;

(9) The procedure for notifying proper personnel if an accident occurs;

(10) Maintenance of records, including records generated by logging personnel at temporary jobsites;

(11) The inspection of sealed sources;

(12) The inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, uranium sinker bars, and injection tools;

(13) The procedures that shall be followed if a sealed source is lodged downhole;

(14) Picking up, receiving, and opening packages containing radioactive material;

(15) Decontamination of the environment, equipment, and personnel if tracers are used; and

(16) Actions to be taken if a sealed source is ruptured or a sealed source is lodged in a well, including steps to:

(a) Prevent the spread of contamination;

(b) Minimize inhalation and ingestion of radioactive material; and

(c) Obtain suitable radiation survey instruments as required by Section 5 of this administrative regulation.

Section 14. Personnel Monitoring. (1) A licensee or registrant shall not permit an individual to act as a logging supervisor or logging assistant unless the individual wears, at all times during well service operations utilizing sources of radiation, a personal dosimeter that is processed and evaluated by an accredited NVLAP processor.

(2) A personal dosimeter shall be assigned to and worn by only one (1) individual.

(3) Film badges shall be replaced monthly and other personal dosimeters replaced at least quarterly.

(4) After replacement, a personal dosimeter shall be promptly processed.

(5) Personnel monitoring records shall be maintained for inspection by the cabinet until it authorizes disposal.

Section 15. Security. During logging or tracer applications, the logging supervisor or other designated employee shall maintain direct surveillance of the operation to protect against unauthorized or unnecessary entry into a restricted area.

Section 16. Handling Tools. The licensee shall provide and require the use of tools that shall assure remote handling of sealed sources other than low activity calibration sources.

Section 17. Tracer Studies. (1) Protective gloves and other protective clothing shall be used by personnel handling radioactive tracer material.

(2) Care shall be taken to avoid ingestion or inhalation of radioactive material.

(3) A licensee shall not permit injection of radioactive material into potable aquifers without prior written authorization from the cabinet.

Section 18. Uranium Sinker Bars. The licensee may use a uranium sinker bar in well logging applications only if it is legibly impressed with the words "CAUTION RADIOACTIVE DEPLETED URANIUM" and "NOTIFY CIVIL AUTHORITIES (or COMPANY NAME) IF FOUND."

Section 19. Energy Compensation Source (ECS). (1) The licensee may use an energy compensation source which is contained within a logging tool, or other tool components, only if the ECS contains quantities of radioactive material not exceeding 100 microcuries (3.7 MBq).

(2) For well logging applications with a surface casing for protecting fresh water aquifers, use of the ECS is only subject to

the requirements of Sections 6, 7, and 8.

(3) For well logging applications without a surface casing for protecting fresh water aquifers, use of the energy compensation source is only subject to the requirements of Sections 1, 6, 7, 8, 20, and 27.

Section 20. Use of a Sealed Source in a Well Without a Surface Casing. A licensee may use a sealed source in a well without a surface casing for protecting fresh water aquifers only if the licensee follows a procedure, approved by the Cabinet, for reducing the probability of the source becoming lodged in the well.

Section 21. Particle Accelerators. A licensee or registrant shall not permit above ground testing of particle accelerators if the testing will result in the production of radiation except in areas or facilities controlled or shielded so that the requirements of 902 KAR 100:019 shall be met.

Section 22. Tritium Neutron Generator Target Source. (1) Use of a tritium neutron generator target source, containing quantities not exceeding thirty (30) curies (1,110 GBq) and in a well with a surface casing to protect fresh water aquifers shall be as established in this administrative regulation, except Sections 1, 9, and 27 of this administrative regulation.

(2) Use of a tritium neutron generator target source, containing quantities exceeding thirty (30) curies (1,110 GBq) or in a well without a surface casing to protect fresh water aquifers shall be as established in this administrative regulation, except Section 9 of this administrative regulation.

Section 23. Radiation Surveys. (1) A radiation survey shall be made and recorded for each area where radioactive materials are stored and used.

(2) A radiation survey shall be made and recorded of the radiation levels in occupied positions and on the exterior of each vehicle used to transport radioactive materials.

(3) Each survey shall include each source of radiation and combination of sources of radiation transported in the vehicle.

(4) After removal of the sealed source from the logging tool and before departing the job site, the logging tool detector shall be energized, or a survey meter used, to assure that the logging tool is free of contamination.

(5) A radiation survey shall be made and recorded at the job site or well head for tracer operations, except for those using hydrogen-3, carbon-14, and sulfur-35.

(6) Each survey shall include radiation levels prior to and after the operation.

(7) Records required pursuant to this section shall include:

(a) The dates;

(b) The identification of the individual making the survey;

(c) Identification of survey instrument used; and

(d) An exact description of the location of the survey.

(8) Each survey record shall be maintained for inspection by the cabinet for at least two (2) years after completion of the survey.

Section 24. Radioactive Contamination Control. (1) If the licensee has reason to believe that, as a result of an operation involving a sealed source, the encapsulation of the sealed source may be damaged by the operation, the licensee shall conduct a radiation survey, including a contamination survey, during and after the operation.

(2) If the licensee detects evidence that a sealed source has ruptured or radioactive materials have caused contamination, the licensee shall initiate immediately the emergency procedures required by Section 13 of this administrative regulation.

(3) If contamination results from the use of radioactive material in well logging, the licensee shall decontaminate work areas, equipment, and unrestricted areas.

(4) During efforts to recover a sealed source lodged in the well, the licensee shall continuously monitor, with a radiation detector capable of detecting the radioactive material, the circulating fluids from the well, if present, to check for contamination resulting from damage to the sealed source.

Section 25. Records Required at Field Stations. A licensee or registrant maintaining field stations from which well service operations are conducted shall have copies of the following records available at each station for inspection by the cabinet:

- (1) Appropriate license or certificate of registration;
- (2) Operating and emergency procedures;
- (3) A copy of 902 KAR 100:019, 100:142, and 100:165;
- (4) Survey records required pursuant to Section 23 of this administrative regulation;
- (5) Quarterly inventories required pursuant to Section 7 of this administrative regulation;
- (6) Utilization records required pursuant to Section 8 of this administrative regulation;
- (7) Records of inspection and maintenance required pursuant to Section 11 of this administrative regulation;
- (8) Records of the latest survey instrument calibration pursuant to Section 5 of this administrative regulation;
- (9) Records of the latest leak test results pursuant to Section 6 of this administrative regulation; and
- (10) Training records required by Section 12 of this administrative regulation.

Section 26. Records Required at Temporary Job Sites. (1) A licensee or registrant conducting a well service operation at a temporary job site shall have the following records available at that site for inspection by the cabinet:

- (a) Operating and emergency procedures;
- (b) Survey records required pursuant to Section 23 of this administrative regulation for the period of operation at the site;
- (c) Evidence of current calibration for the radiation survey instruments in use at the site; and
- (d) The shipping papers for the transportation of radioactive materials.

(2) In addition to the record requirements of this section, at each temporary job site where a well service operation is conducted under cabinet authorization granted pursuant to 902 KAR 100:065, a licensee or registrant shall have the following records available for inspection by the cabinet:

- (a) Current leak test records for the sealed sources in use at the site;
- (b) The appropriate license and certification of registration or equivalent document; and
- (c) Shipping papers for the transport of radioactive material.

Section 27. Notification of Incidents and Lost Sources. (1) If the licensee knows or has reason to believe that a sealed source has been ruptured, the licensee shall:

- (a) Immediately notify by telephone the Cabinet for Health and Family Services, Radiation Health Branch at (502) 564-3700 from 8 a.m.-4:30 p.m. Monday through Friday or at (800) 255-2587 at other hours; and
- (b) Within thirty (30) days, notify by confirmatory letter to the Manager, Radiation Health Branch, 275 East Main Street, Frankfort, Kentucky 40621. The letter shall:
 1. Designate the well or other location;
 2. Describe the magnitude and extent of the escape of radioactive materials;
 3. Assess the consequences of the rupture; and
 4. Explain efforts planned or being taken to mitigate these consequences.

(2) The licensee shall notify the Cabinet for Health and Family Services, Radiation Health Branch of the theft or loss of radioactive materials, radiation overexposures, excessive levels and concentrations of radiation, and certain other accidents as required by 902 KAR 100:019, Sections 38, 39, and 40 and 100:040, Section 15.

(3) If a sealed source or device containing radioactive material is lodged in a well and it becomes apparent that efforts to recover the sealed source will not be successful, the licensee shall:

- (a) Notify the Cabinet for Health and Family Services, Radiation Health Branch, immediately by telephone at (502) 564-3700 from 8 a.m. - 4:30 p.m., Monday through Friday or at (800)

255-2587 at other hours of the circumstances that resulted in the inability to retrieve the source and obtain cabinet approval to implement abandonment procedures; or

(b) That the licensee implemented abandonment before receiving cabinet approval because the licensee believed there was an immediate threat to public health and safety.

(4) If it becomes apparent that efforts to recover the radioactive source shall not be successful, the licensee shall:

(a) Advise the well owner or well operator of the requirements of this administrative regulation regarding abandonment and an appropriate method of abandonment, which shall include:

1. The immobilization and sealing in place of the radioactive source with a cement plug;

2. A means to prevent inadvertent intrusion on the source, unless the source is not accessible to any subsequent drilling operations; and

3. The mounting of a permanent identification plaque, containing information required by this section, at the surface of the well, unless the mounting of the plaque is not practical;

(b) Either ensure that abandonment procedures are implemented within thirty (30) days after the sealed source has been classified as irretrievable or request an extension of time if unable to complete the abandonment procedures; and

(c) File a written report on the abandonment with the Manager, Radiation Health Branch, 275 East Main Street, Frankfort, Kentucky 40621 within thirty (30) days after a sealed source has been classified as irretrievable. The report shall be sent to each appropriate state or federal agency that issued permits or approved of the drilling operation and shall include the following information:

1. Date of occurrence and a brief description of attempts to recover the source;

2. Description of the radioactive source involved, including radionuclide, quantity, and chemical and physical form;

3. Surface location and identification of well;

4. Results of efforts to immobilize and seal the source in place;

5. A brief description of the attempted recovery effort;

6. Depth of the radioactive source;

7. Depth of the top of the cement plug;

8. Depth of the well;

9. The immediate threat to public health and safety justification for implementing abandonment if prior cabinet approval was not obtained in accordance with subsection (6) of this section;

10. Information such as a warning statement, contained on the permanent identification plaque; and

11. State and federal agencies receiving a copy of this report.

(5) If a sealed source containing radioactive material is abandoned downhole, the licensee shall provide a permanent plaque mounted at the surface of the well. This plaque shall:

(a) Be constructed of long-lasting material, such as stainless steel, brass, bronze, or Monel. The size of the plaque shall be at least seven (7) inch, seventeen (17) cm square and one-eighth (1/8) inch (3mm) thick. Letter size of the word "Caution" shall be approximately twice the letter size of the rest of the information, for example, one-half (1/2) inch and one-fourth (1/4) inch letter size, respectively; and

(b) Contain the following engraved information on its face:

1. The word "Caution;"

2. The radiation symbol (color not required);

3. The date of abandonment;

4. The name of the well operator or well owner;

5. The well name and well identification number or other designation;

6. The sealed source by radionuclide and quantity of activity;

7. The source depth and the depth to the top of the plug;

8. An appropriate warning, depending on the specific circumstances of an abandonment, for example, "Do not drill below plug depth;" or "Do not enlarge casing;" and

9. The words "Do not reenter hole before contacting Radiation Health Branch, Kentucky Cabinet for Health and Family Services."

(6) If the licensee knows or has reason to believe that radioactive material has been lost in or to an underground potable water source, the licensee shall:

~~(a) Immediately notify the Cabinet for Health and Family Services, Radiation Health Branch by telephone at (502) 564-3700 from 8 a.m. – 4:30 p.m. Monday through Friday or at (800) 255-2587 at other hours; and~~

~~(b) Confirm by letter, within thirty (30) days, to the Manager, Radiation Health Branch, 275 East Main Street, Frankfort, Kentucky 40621.~~

~~(7) The notice shall designate the well location and shall describe the magnitude and extent of loss of radioactive material, assess the consequences of the loss, and explain efforts planned or being taken to mitigate consequences.~~

~~Section 28. Minimum Training Requirements for Logging Supervisors. Logging supervisors shall receive minimum training in the following areas:~~

~~(1) Fundamentals of radiation safety:~~

~~(a) Characteristics of gamma, neutron, and x-radiation;~~

~~(b) Units of radiation dose (mrem);~~

~~(c) Quantity of radioactivity (curie);~~

~~(d) Significance of radiation dose:~~

~~1. Radiation protection standards; and~~

~~2. Biological effects of radiation dose;~~

~~(e) Levels of radiation from sources of radiation;~~

~~(f) Methods of controlling radiation dose:~~

~~1. Working time;~~

~~2. Working distance; and~~

~~3. Shielding; and~~

~~(g) Radiation safety practices including prevention of contamination and methods of decontamination;~~

~~(2) Radiation detection instrumentation to be used:~~

~~(a) Use of radiation survey instruments:~~

~~1. Operation;~~

~~2. Calibration; and~~

~~3. Limitations;~~

~~(b) Survey techniques; and~~

~~(c) Use of personnel monitoring equipment;~~

~~(3) Equipment to be used:~~

~~(a) Remote handling equipment;~~

~~(b) Sources of radiation;~~

~~(c) Storage and transport containers; and~~

~~(d) Operation and control of equipment;~~

~~(4) The requirements of 10 C.F.R. Part 39 and 902 KAR Chapter 100;~~

~~(5) The licensee's or registrant's written operating and emergency procedures;~~

~~(6) The licensee's or registrant's recordkeeping procedures; and~~

~~(7) Case histories of well logging accidents.~~

~~Section 29. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "USASI N5.10-1968, Classification of Sealed Radioactive Sources", 1968; and~~

~~(b) "ANSI/HPS N43.6-1997, "Sealed Radioactive Sources – Classification", 1997.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Commissioner of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m.].~~

JEFFREY D. HOWARD, JR., M.D., Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at noon

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, 502) 564-3970, julied.brooks@ky.gov, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements for the issuance of a license authorizing the use of radioactive materials, and the radiation safety requirements for those authorized for the use of licensed materials, in well logging in a single well.

(b) The necessity of this administrative regulation: This administrative regulation outlines the requirements for those entities licensed for the practice of well logging. As an Agreement State with the authority to operate its radiation program, the Department for Public Health, Radiation Health Branch, is required to maintain a compatible set of regulations to those of the U.S. Nuclear Regulatory Commission (NRC) which govern the receipt, transfer, possession, use, and distribution of radioactive material in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.844(1) requires the secretary to provide by administrative regulation the registration and licensing of the possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste; and to protect the public from unnecessary radiation exposure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures all those who licensed for the practice of well logging are appropriately licensed and following all safety requirements for using sealed sources, radioactive tracers, radioactive markers and uranium sinker bars.

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

(a) How the amendment will change this existing administrative regulation: This amendment adopts by reference the applicable NRC regulations for licenses and radiation safety requirements for well logging which eliminates any discrepancies between state and federal licensing requirements. This administrative regulation is being further amended in response to comments received in order to ensure full compatibility with NRC regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as the agreement between NRC and the Commonwealth requires the Radiation Health Branch to promulgate regulations that are compatible with NRC regulations. This amended after comment administrative regulation establishes compatibility with the federal regulation, except where exclusions are allowed. The necessity for additional compatibility language was realized during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the authorizing statutes, which require the secretary to adopt regulations for the registration and licensing of the possession of any source of ionizing or electronic product radiation necessary to protect the public from unnecessary radiation exposure.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures all entities licensed for the practice of well logging understand the licensing requirements and are engaged in the safe usage of radioactive materials in their practice consistent with state and federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately five (5) licensees, all future applicants for a specific licensee to possess and use byproduct material for well logging and all licensees of other agreement states or NRC who perform licensed activities within the Commonwealth under reciprocal recognition pursuant to 902 KAR 100:065.

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

(a) List the actions that each of the regulated entities identified

in questions (3) will have to take to comply with this administrative regulation or amendment: Affected entities are required to be in compliance with NRC regulations so there will be no new actions required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There is no cost of compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will be in full compliance with NRC regulations.

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

(a) Initially: There is no cost to implement this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment does not affect funding.

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

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

(9) TIERING: Is tiering applied? No. This administrative regulation affects all radioactive materials licensees subject to 902 KAR Chapter 100 regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Radiation Health Branch in the Department for Public Health will be impacted by this administrative regulation as it contains reference to the federal regulation. There are no new requirements.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 211.844(1) requires the Cabinet to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. 10 C.F.R. Part 34, contains these federal requirements that Kentucky must be consistent with.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation does not add costs to the agency.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not add costs to the agency.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954, as amended, the Energy Policy Act of 2005 and 10 C.F.R. Part 39.

2. State compliance standards. This regulation adopts the federal standards for the issuance of license authorizing the use of licensed materials including sealed sources, radioactive tracers, radioactive markers, and uranium sinker bars in well logging in a single.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires state regulations to be compatible with the equivalent federal regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no different, stricter, or additional responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Protection and Permanency

(Amended After Comments)

922 KAR 1:560. Putative father registry and operating procedures.

RELATES TO: KRS 194A.060, 199.011, 199.480, 199.505, 199.990, 620.020(11), 625.065

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472, 199.503(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.472(1) requires the cabinet to promulgate administrative regulations that establish criteria to be followed for the adoption of children. Ky. Acts ch. 159, Section 28(3), codified as KRS 199.503(3), requires that the cabinet establish a putative father registry and promulgate administrative regulations to administer the registry. This administrative regulation establishes the putative father registry and operating procedures.

Section 1. Definitions.

- (1) "Cabinet" is defined by KRS 199.011(3).
- (2) "Child-placing agency" is defined by KRS 199.011(6).
- (3) "Department" is defined by KRS 199.011(7).
- (4) "Putative father" is defined by KRS 199.503(2).
- (5) "Reasonable efforts" is defined by KRS 620.020(11).

Section 2. Registry Standards.

(1) The cabinet shall establish and maintain a putative father registry in accordance with KRS 199.503, KRS 199.505 and KRS 199.990.

(2) Information received and recorded by the cabinet shall be kept confidential in accordance with KRS 194A.060 and KRS 199.503(11).

Section 3. Submission of Registration.

(1) A putative father shall request registration on the putative father registry by completing the DPP-1304, Putative Father Registration Form.

(2) A putative father shall submit a DPP-1304 to the cabinet by:

(a) Mail to the Department for Community Based Services, attention: Putative Father Registry, 275 East Main Street, mail-stop 3C-E, Frankfort, Kentucky 40621;

(b) Electronic submission through the online registration system located on the department's website once the online

function is available; or

(c) Electronic mail to putativefather@ky.gov.

(3) A putative father shall provide the following information on the DPP-1304 prior to the cabinet accepting and processing a registration request:

- (a) The putative father's full name;
- (b) The putative father's date of birth;
- (c) The putative father's place of birth;
- (d) The putative father's place of residence;
- (e) An address where the putative father may be served with notice of a petition for termination of parental rights or adoption;
- (f) The first and last name of the birth mother;
- (g) The birth mother's date of birth, if known;
- (h) The birth mother's place of birth, if known;
- (i) The birth mother's place of residence, if known;
- (j) The birth mother's mailing address, if known;
- (k) The child's name, if known;
- (l) The child's date of birth, if known; and
- (m) The child's place of birth, if known.

(4)(3) A putative father shall sign the DPP-1304 verifying that the information in his registration is accurate subject to penalty in accordance with KRS 199.990.

(5)(4) A putative father who is registered shall submit an amended DPP-1304 each time information about the father changes in accordance with KRS 199.503(4)(b)2.

(6)(5) The cabinet shall not accept and shall attempt to return a DPP-1304 that:

- (a) Does not contain the information required by subsection (2) of this section; or
- (b) Is not accepted in accordance with subsection (7) of this section.

(7)(6) The cabinet shall:

- (a) Accept a DPP-1304 that contains information required by subsection (2) of this section and is submitted within the timeframe specified in subsection (7) of this section; and
- (b) Provide the putative father with a copy of his registration, including:
 - 1. A registration number; and
 - 2. The date the registration was processed and made effective by the cabinet.

(8)(7) The cabinet shall not accept a registration request that is electronically submitted, electronically mailed, or postmarked more than thirty (30) days after the birth of the child subject to the registration in accordance with KRS 199.480(1)(b)2. and KRS 625.065(1)(b).

Section 4. Search of the Putative Father Registry.

(1) An individual or entity authorized by KRS 199.503(8) or KRS 199.505, to receive a certified copy of a putative father's registration shall:

- (a) Complete the DPP-1305, Putative Father Registry Search Request;
- (b) Include a copy of the birth mother's consent or adoption petition with the **DPP-1305[form]**; and
- (c) Submit the DPP-1305 to the cabinet by means specified in Section 3(2)(a) through (c) of this administration regulation.

(2) Unless the entity requesting a certified copy of a putative father's registration is a court, a DPP-1305 shall include a twenty-five (25) dollar fee in accordance with KRS 199.503(10), paid by:

- (a) Certified or cashier's check or money order made payable to the Kentucky State Treasurer if the DPP-1305 is mailed to the cabinet;
- (b) A prepaid account established with the cabinet; or
- (c) Credit or debit card through the online registration system once the function becomes available.

(3) Upon submission of a completed DPP-1305 in accordance with this section, KRS 199.503 and KRS 199.505, the cabinet shall issue a DPP-1302, Kentucky Putative Father Registry Affidavit of Diligent Search.

(4) The cabinet may request at any time a search of the putative father registry to establish:

- (a) Reasonable efforts in a child protective services case in accordance with 922 KAR 1:330; or

(b) Permanency services in accordance with 922 KAR 1:140.

(5) Pursuant to KRS 199.505, a search of the putative father registry shall not be required for a public agency adoption in accordance with 922 KAR 1:100.

Section 5. Registration Revocation.

(1) A putative father registrant may revoke his registration at any time using the DPP-1304.

(2) The cabinet shall revoke a registration that is found to have been filed with error or false information.

(3) The cabinet shall provide notice of:

- (a) Revocation of a registration; and
- (b) Appeal rights in accordance with 922 KAR 1:320 if the revocation is performed by the cabinet in accordance with subsection (2) of this section.

Section 6. Notice by a Mother.

(1) A mother may notify the cabinet of a potential putative father by completing, at a minimum, Part 1 of the DPP-1303, Birth Mother Notification of Putative Father, and submitting it to the cabinet through means specified in Section 3(2)(a) through (c) of this administrative regulation.

(2) Upon receipt of a completed DPP-1303, the cabinet shall provide the putative father with information regarding the putative father registry by:

- (a) Mail to his mailing address; or
- (b) Delivery to his place of residence.

(3) The cabinet shall take no action on a DPP-1303 that is received after a putative father's ability to register has expired in accordance with Section 3(7) of this administrative regulation.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "DPP-1302, Kentucky Putative Father Registry Affidavit of Diligent Search", **9/18[7/18]**;
- (b) "DPP-1303, Birth Mother Notification of Putative Father", **9/18[7/18]**;
- (c) "DPP-1304, Putative Father Registration Form", **9/18[7/18]**; and
- (d) "DPP-1305, Putative Father Registry Search Request", 7/18;

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

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at noon

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the putative father registry and operating procedures as authorized by 2018 Ky. Acts ch. 159 (House Bill 1 from the 2018 Regular Session).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the putative father registry and operating procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of the putative father registry and operating procedures.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes through its establishment of the putative father registry and operating procedures.

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

(a) How the amendment will change this existing administrative regulation: The amended-after-comments version of the administrative regulation addresses technical corrections resulting from public comment submitted by the Children's Alliance.

(b) The necessity of the amendment to this administrative regulation: The amended-after-comments version of the administrative regulation provides clarification and acknowledgement to users resulting from public comments submitted by the Children's Alliance.

(c) How the amendment conforms to the content of the authorizing statutes: The amended-after-comments version of the administrative regulation addresses technical corrections resulting from public comment submitted by the Children's Alliance.

(d) How the amendment will assist in the effective administration of the statutes: The amended-after-comments version of the administrative regulation provides acknowledgment and addresses technical corrections resulting from public comment submitted by the Children's Alliance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation is anticipated to impact entities specified in KRS 199.503.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Putative fathers will have the ability to register with the cabinet thereby protecting their rights. The registry will aid in the identification of putative fathers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to putative fathers to register. Authorized entities or individuals, other than a court, will be required to pay a twenty-five (25) dollar fee for a search of the registry.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Putative fathers will have another safeguard for their paternal rights to a child. The registry will add an additional means to identify a putative father in private adoption proceedings.

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

(a) Initially: The cabinet projects that staffing and technology costs for the registry will be approximately \$700,000 for the first year.

(b) On a continuing basis: The cabinet projects the staffing and technology costs to maintain the registry will be approximately \$350,000 in subsequent years.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A fee was authorized in KRS 199.503 to offset costs of the registry. State General Fund dollars will support any additional agency costs above and beyond the collection of fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The cabinet anticipates establishing, operating, and maintaining the registry within appropriations.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes a fee for a search of the putative father registry in accordance with KRS 199.503(10).

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.472, 199.503, 199.505

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? KRS 199.503(10) establishes a fee for putative father registry searches; however, the cabinet is unable to project at this time the revenue that may be generated from said fee.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? KRS 199.503(10) establishes a fee for putative father registry searches; however, the cabinet is unable to project at this time the revenue that may be generated from said fee.

(c) How much will it cost to administer this program for the first year? The cabinet projects that staffing and technology costs for the registry will be approximately \$700,000 for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet projects the staffing and technology costs to maintain the registry will be approximately \$350,000 in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 1:040. Waiver of penalties.

RELATES TO: KRS 131.010[(9)], 131.030[(3)], 131.081[(6)], 131.175, 131.180, 131.440(2)[(3)(d)], 133.180, 133.220, 138.885, 139.185, 141.180, [(7), 141.180(8),] 141.340(2), 141.990, 142.357, 143.085.

STATUTORY AUTHORITY: KRS 131.130[(4)], 131.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.175 authorizes the Commissioner of the Department of Revenue to waive the penalty, but not interest, if the failure to pay is due to reasonable cause. KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer Kentucky's tax laws. This administrative regulation establishes the criteria used to determine if the taxpayer has demonstrated reasonable cause to justify the waiver of penalties.

Section 1. Enumeration of Circumstances Constituting Reasonable Cause. The Department of Revenue shall employ the criteria established in this section to determine if the taxpayer has demonstrated reasonable cause to waive penalties.

(1) Erroneous advice by Department of Revenue. The taxpayer may demonstrate good cause for reliance on erroneous written advice from the department in accordance with KRS 131.081(6).

(2) Death or serious illness of taxpayer or immediate family. Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the death or serious illness of the taxpayer or a member of that taxpayer's immediate family. If the taxpayer is not an individual, the death or serious illness shall be that of an individual having sole authority to execute the return or a member of the individual's immediate family. The following factors shall be considered in a determination of the applicability of this subsection:

- (a) Relationship of parties involved;
- (b) Date of death;
- (c) Date and nature of serious illness;
- (d) Length of time from the date of death or serious illness to the date prescribed by law for filing a return, including any extension granted;
- (e) Explanation of how the event prevented compliance; and
- (f) Explanation of other business obligations that were impaired.

(3) Death or serious illness of taxpayer's tax return preparer. Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the death or serious illness of the taxpayer's tax return preparer. The following factors shall be considered in a determination of the applicability of this subsection:

- (a) Name of preparer;
- (b) 1. Date of preparer's death; or
- 2. Date and nature of preparer's serious illness;
- (c) Length of time from the date of death or serious illness of the tax preparer to the date prescribed by law for filing a return, including any extension granted; and
- (d) Explanation of how the death or serious illness prevented compliance.

(4) Unavoidable Absence of Taxpayer. Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the unavoidable absence of the taxpayer. For a corporation, partnership, estate, trust, or similar entity, the absence shall have been of an individual having sole authority to execute the return or report. The following factors shall be considered in a determination of the applicability of this subsection:

- (a) Dates and reasons for the absence; and
 - (b) Explanation as to how the event prevented compliance.
- (5) Destruction or unavailability of taxpayer records by a catastrophic event. Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the destruction or unavailability of the taxpayer's records by a catastrophic event.

The following factors shall be considered in a determination of the applicability of this subsection:

- (a) Date and description of catastrophic event;
- (b) Supporting documentation such as a copy of the police, fire, or insurance report;
- (c) Explanation of how the destruction or unavailability of records prevented compliance; and
- (d) Explanation of all other means explored to secure needed tax information.

(6) Inability to obtain records in custody of third party. Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the inability to obtain taxpayer's records in the custody of a third party. The following factors shall be considered in a determination of the applicability of this subsection:

- (a) The records in the custody of a third party and the third party's identity;
- (b) Explanation of why the records were needed to comply;
- (c) Explanation of why the records were unavailable and what steps were taken to secure the records;
- (d) Explanation of when and how the taxpayer became aware that the necessary records were unavailable;
- (e) Supporting documentation such as copies of letters written and responses received in an effort to get the needed information; and
- (f) Explanation of all means explored to secure the needed tax information.

(7) Employee Theft or Defalcation. Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by employee theft or defalcation. The employee theft or defalcation shall be directly related to the financial records or funds required to file a return or report or pay a tax.

(8) Undue hardship. Penalties may be waived if the enforcement of the penalty or fee would constitute an undue hardship on the taxpayer, and if waiver of the penalty or fee would facilitate collection of the tax liability. A taxpayer shall demonstrate that reasonable care and prudence was exercised in providing for payment of the tax, but the taxpayer was unable to pay the tax.

(a) The following factors shall be considered in determining undue hardship:

- 1. Nature of the tax which the taxpayer has failed to pay;
- 2. Amount and nature of the taxpayer's expenditures in light of the income the taxpayer could, at the time of the expenditures, reasonably have expected to receive prior to the date prescribed by law for the payment of the tax;
- 3. Reasonableness of the taxpayer's efforts to conserve sufficient assets in marketable form to satisfy the tax liability;
- 4. Potential loss due to the sale of property at a sacrificed price. If a market exists, the sale of property at the current market price shall not be considered as resulting in an undue hardship;
- 5. Equity in assets, including repayment ability;
- 6. Family size;
- 7. Necessary living expenses, if a taxpayer is an individual, or necessary business expenses;
- 8. Income from all sources, both taxable and nontaxable, including income of the nonliable spouse to the extent used for the necessary living expenses of a family;
- 9. Stability of income and anticipated increases or decreases;
- 10. Current status of business;
- 11. Possibility of payment through an installment agreement;

and

12. Age and health of the taxpayer.

(b) The following factors shall be considered in determining if waiver of a fee or penalty facilitates collection of the tax liability:

- 1. Dischargeability of tax liability in bankruptcy;
- 2. Collectability of the tax, penalty, and interest directly from the taxpayer, as determined from the taxpayer's financial statements;
- 3. Availability of sources of funds for payment not under the control of the taxpayer; and
- 4. Past and current compliance with Department of Revenue filing and payment requirements.

(9) Human error. Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by human error and the delay or failure is the first occurrence over the last twelve (12) calendar months if the taxpayer is a monthly or quarterly filer, or twenty-four (24) months if the taxpayer is an annual filer, and Department of Revenue records show that the taxpayer took appropriate steps to eliminate the delinquency in a timely manner.

(10) Erroneous advice by tax advisor. Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the receipt of erroneous advice from a tax advisor or other professional on whom a taxpayer had a reasonable right to rely. The taxpayer shall establish the presence of the following three (3) factors for the Department of Revenue to consider the applicability of this subsection:

(a) Unfamiliarity of the taxpayer with the tax laws, and actual reliance by the taxpayer on the advice of the tax advisor;

(b) Supporting documentation of full disclosure by the taxpayer of all relevant facts provided to the tax advisor or other professional retained and advice received, including:

1. A copy of the advice requested;

2. A copy of the advice provided; and

3. A statement from the tax advisor explaining the circumstances; and

(c) Exercise of reasonable care and prudence by the taxpayer in determining whether to secure further advice.

(11) Reliance on substantial legal authority. Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by reliance on substantial legal authority for the particular tax treatment of an item of gross income, deduction, exemption, credit, or basis. The following factors shall be considered in a determination of the applicability of this subsection:

(a) Actual reliance by the taxpayer at the time of failure to file the return or report or to pay the tax; and

(b) Conspicuous, full disclosure by the taxpayer in the return, if a return was filed, of the position that is contrary to the Department of Revenue's position, including all copies of or citation to the Internal Revenue Code, the Kentucky Revised Statutes, final and temporary regulations of the Internal Revenue Service and the Department of Revenue, Revenue Rulings, Revenue Procedures, and Private Letter Rulings of the Internal Revenue Service, case law interpreting the previous items, or any other relevant legal authority which provides that the tax treatment is more likely than not correct.

(12) Ignorance of Reporting Requirements. Ordinary business care and prudence shall require that a taxpayer be aware of tax obligations. Penalties may be waived in isolated cases if a taxpayer is not aware of the reporting requirements. Ignorance of the law may be considered in conjunction with other facts and circumstances including limited education or the lack of previous tax and penalty experience.

~~(13) [Tax modernization. For taxable periods beginning after December 31, 2004 and before January 1, 2006, the penalty for any declaration underpayment, as provided in KRS 131.180 and 141.990(3) shall be waived if the declaration underpayment is directly related to the changes to the tax laws pursuant to 2005 Ky. Acts ch. 168, and the taxpayer made a good faith effort to comply with 2005 Ky. Acts ch. 168.~~

(14) Miscellaneous. If the cause for penalty waiver submitted by the taxpayer does not fall within the other reasonable cause guidelines provided in this section, the Department of Revenue may decide that the written statements submitted by the taxpayer establish a reasonable cause for noncompliance with the applicable tax statute. A cause for noncompliance which appears to a person of ordinary prudence and intelligence as a reasonable cause for delay in filing a return or paying a tax and which clearly negates negligence, willful disregard of administrative regulations, or fraud may be accepted. The facts and circumstances of each case shall be considered.

Section 2. Taxpayer's Support for Reasonable Cause. (1) Responsibility for request. The taxpayer shall:

(a) Request reduction or waiver of any penalty, in writing; and

(b) Provide all supporting documentation necessary to substantiate reasonable cause.

(2) Time of request. A taxpayer shall:

(a) Attach a statement requesting waiver for reasonable cause to a return; or

(b) Request waiver after notice of assessment.

(3) Request by representative of taxpayer. A request from a taxpayer's representative shall be considered a request by the taxpayer if the taxpayer has provided a properly signed power of attorney or the Department of Revenue is satisfied by any other written statement that the representative has been authorized to act for the taxpayer.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 12, 2018

FILED WITH LRC: October 12, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on November 26, 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 November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, 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 regulation provides guidance to taxpayers regarding the factors the Department of Revenue considers when waiving penalties for reasonable cause under the administrative authority granted to the agency by statute.

(b) The necessity of this administrative regulation: The authority to waive penalties could be exercised capriciously, and this regulation sets forth objective factors the department considers when making waiver determinations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.175 grants the department the authority to waive penalties if the "failure to file or pay timely is due to reasonable cause." This regulation sets forth the factors the department will consider to grant penalty relief.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 131.175 is silent with regard to the definition of "reasonable cause" as it relates to penalty waivers, and this regulation provides guidance regarding factors the department considers in granting relief.

(2) If 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 two substantive amendments requested in this administrative regulation are: (1) update statutory section references due to changes that resulted from the passage of HB 487/2018GA, and (2) remove references to penalty relief related to 2004 and 2005 tax modernization. All returns filed for 2004 and 2005 are beyond the statute of limitations, and references to penalty relief for those returns are no longer needed.

(b) The necessity of the amendment to this administrative regulation: References to statutory sections of the Kentucky

Revised Statutes that are no longer valid must be removed to avoid taxpayer confusion. References to penalty relief for periods well outside the statute of limitations are not helpful and do not provide meaningful guidance to taxpayers.

(c) How the amendment conforms to the content of the authorizing statutes: Removing obsolete code section references will bring the regulation into conformity with existing statutes. Failure to remove the erroneous references will cause the regulation to reference non-existent statutes. Penalty relief granted for 2004 and 2005 tax modernization was authorized by statute, but relief is no longer needed due to the expiration of the statute of limitations.

(d) How the amendment will assist in the effective administration of the statutes: Removing inaccurate code section references and obsolete guidance will avoid taxpayer and administrative agency confusion.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All taxpayers in the Commonwealth who fail to file or pay timely will benefit from clear penalty relief guidance. State and local governments that provide similar penalty relief and rely on the department's objective standards will also benefit from clear guidance.

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

(a) List 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 are required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost to any entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Less confusion as a result of clear penalty relief guidance.

(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 requesting a waiver of penalties 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) and 131.175

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

(a) How much 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 corrections to statutory

references listed herein.

(b) How 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? A cost cannot be determined because staff and department resources that have already been budgeted will be used.

(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 1:130. Taxation of federal and certain nonfederal obligations.

RELATES TO: KRS 136.290, 136.300, 136.310, 136.320, 141.019, 141.900[141.010(10)(a), (12)(a)]

STATUTORY AUTHORITY: KRS 131.130[(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.019(1)(a) and 141.900(10)(a)[141.010(10)(a)] and (12)(a) provide[provides] an exclusion from gross income when calculating Kentucky income tax for income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky. KRS 136.290, 136.300, 136.310, and 136.320 impose an ad valorem tax on the total value of the capital of federally or state chartered savings and loan associations, savings banks, and other similar institutions and domestic life insurance companies authorized to transact business in Kentucky, with property and payroll both within and without this state. This administrative regulation establishes the requirements relating to taxation of federal and certain nonfederal obligations in accordance with those statutes.

Section 1. Income Taxation. Interest income from United States government obligations upon which states are prohibited by federal law from imposing a tax shall be excluded from gross income when calculating Kentucky income tax liability. Only the interest income from exempt United States government obligations included in the taxpayer's federal taxable income may be deducted from the taxpayer's gross income for Kentucky income tax purposes.

Section 2. This section contains two (2) lists of certain agencies, authorized corporations, and banks of the United States government from which Kentucky taxpayers may receive interest income. These lists are not all-inclusive, nor are they intended to be conclusive of the taxable or exempt status of a particular obligation issued by or in conjunction with a listed department, agency, instrumentality, or other entity.

(1) The list in this subsection shall serve as examples of departments, agencies, and instrumentalities that issue United States government obligations from which interest income shall be exempt from state taxation.

(a) U.S. Treasury (Bonds);

(b) U.S. Treasury (Series EE and HH Savings Bonds and I Bonds);

(c) U.S. Treasury (Certificates of Indebtedness);

(d) U.S. Treasury (Bills);

(e) U.S. Treasury (Notes);

(f) U.S. Treasury (Note and Bond "Strips");

- (g) Commodity Credit Corporation;
 - (h) Central Banks for Cooperatives and Banks for Cooperatives;
 - (i) Farm Credit Banks;
 - (j) Federal Land Bank Associations;
 - (k) Production Credit Associations;
 - (l) Farm Credit System Financial Assistance Corporation;
 - (m) Federal Deposit Insurance Corporation;
 - (n) Federal Financing Bank;
 - (o) Federal Home Loan Banks;
 - (p) Federal Savings and Loan Insurance Corporation;
 - (q) General Insurance Fund, Department of Housing and Urban Development, Rental Housing Insurance, War Housing Insurance Project, Rental Housing Project, Armed Services Housing, National Defense Housing Insurance, Neighborhood Conservation Housing Insurance;
 - (r) Guam (Bonds);
 - (s) Puerto Rico (Bonds);
 - (t) Virgin Islands (General Obligation Bonds and Public Improvement Bonds);
 - (u) American Samoa (Industrial Development Bonds);
 - (v) Student Loan Marketing Association (SLMA or "Sallie Mae");
 - (w) Tennessee Valley Authority (Bonds); or
 - (x) United States Postal Service.
- (2) The list in this subsection shall serve as examples of organizations which issue obligations from which interest income shall be taxable for Kentucky income tax purposes.
- (a) Bank Certificates of Deposit;
 - (b) Farmers Home Administration;
 - (c) Federal Home Loan Mortgage Corp. (FHLMC or "Freddie Mac");
 - (d) Federal National Mortgage Association (FNMA or "Fannie Mae");
 - (e) Government National Mortgage Association (GNMA or "Ginnie Mae");
 - (f) Inter-American Development Bank;
 - (g) International Bank for Reconstruction and Development (World Bank); or
 - (h) International Monetary Fund.

Section 3. Property Taxation. A claim by a taxpayer that property or capital subject to the ad valorem taxes imposed by KRS 136.290, 136.300, 136.310 or 136.320 is exempt under federal law shall be supported by specific statutory or binding case authority. In the absence of statutory or binding case authority, all intangible property shall be taxable. Securities merely guaranteed by the U.S. government shall be taxable as intangible property.

Section 4. Exempt federal obligations shall be classified as:

- (1) Direct obligations of the United States such as U.S. Treasury bonds, U.S. Treasury notes or U.S. Treasury bills; or
- (2) Direct obligations of U.S. government agencies.

Section 5. (1) The following list is provided as a general reference of obligations exempt from state ad valorem taxation imposed by KRS 136.290, 136.300, 136.310, or 136.320:

- (a) Banks for Cooperatives;
- (b) Central Banks for Cooperatives;
- (c) Commodity Credit Corporation;
- (d) Farmers Home Administration;
- (e) Farmers Home Corporation;
- (f) Federal Credit Union;
- (g) Federal Savings and Loan Associations (Kentucky);
- (h) Federal Deposit Insurance Corporation;
- (i) Federal Farm Credit Corporation;
- (j) Federal Home Loan Bank (Stocks and Bonds);
- (k) Federal Housing Administration;
- (l) Federal Intermediate Credit Banks;
- (m) Federal Land Banks;
- (n) Federal Maritime Board and Maritime Administration;
- (o) Federal Reserve Banks;
- (p) Federal Savings and Loan Insurance Corporation;

- (q) General Insurance Fund;
- (r) Guam Bonds;
- (s) Municipal Obligations (Kentucky);
- (t) National Farm Loan Association;
- (u) Panama Canal Bonds;
- (v) Production (Agricultural) Credit Association or Corporation;
- (w) Puerto Rican Bonds;
- (x) Student Loan Marketing Association;
- (y) Tennessee Valley Authority;
- (z) U.S. Housing Authority;
- (aa) U.S. Postal Service Bonds; or
- (bb) Virgin Island Bonds.

(2) The following list is provided as a general reference of obligations that are taxable entities for state ad valorem taxation imposed by KRS 136.290, 136.300, 136.310, or 136.320:

- (a) Federal Home Loan Bank Deposits;
- (b) Federal Home Loan Mortgage Corporation Bonds;
- (c) Federal National Mortgage Corporation Bonds;
- (d) Government National Mortgage Corporation Bonds; or
- (e) Retail Repurchase Agreements.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: October 12, 2018

FILED WITH LRC: October 12, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation will be held on November 26, 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 November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, 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 statutory references due to the passage of HB 487/GA2018 and provides guidance about the taxation of certain federal and nonfederal obligations under KRS Chapters 136 and 141.

(b) The necessity of this administrative regulation: This regulation is required to provide updated guidance and examples of certain federal and nonfederal obligations that are not taxable in Kentucky to taxpayers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapters 136 and 141 exempt federal and certain nonfederal obligations from income and ad valorem taxes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Clearly defining federal and nonfederal obligations not subject to taxation, as well as providing nonexclusive lists of those obligations, assist taxpayers to comply with the law and assists the department with verifying compliance fairly and objectively.

(2) If 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: Businesses and individuals earning income from certain federal and nonfederal obligations, as well as financial organizations subject to ad valorem tax on those obligations, will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are required due to the changes made herein. These changes only update the statutory citations to conform to HB 487/2018GA.

(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 costs to the entities identified. This amendment only corrects the statutory citations they may reference to find the guidance they need to comply with the provisions of HB 487.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Taxpayers will be able to find the relevant sections of the Kentucky Revised Statutes supporting the regulatory requirements set forth.

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

(a) Initially: Current department funding and staff will be utilized. No new funding will be needed or allocated for implementing 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: The department's currently budgeted funding is used to support implementation and enforcement of this regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No direct or indirect fees are established.

(9) TIERING: Is tiering applied? Tiering was not applied, because all taxpayers are treated equally by the regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Revenue will implement this administrative regulation, but other governmental agencies that benefit from reduced borrowing rates may also benefit from this regulatory guidance.

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), 136.290, 136.300, 136.310, 136.320, 141.019, 141.900

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no revenue generated by corrections to the statutory references made herein.

(b) How 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 direct costs can be determined as current staff and funds budgeted to the department are utilized to administer this amendment.

(d) How much will it cost to administer this program for subsequent years? There will be no costs in subsequent years as once these corrections are made, this regulation should remain in effect until future statutory changes are made.

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 16:060. Income classification; apportionable ~~[business]~~ and nonapportionable~~[nonbusiness]~~.

RELATES TO: KRS 141.010[(3)], 141.120

STATUTORY AUTHORITY: KRS 131.130[(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS 141.120 contains provisions for assigning to Kentucky the apportionable~~[business]~~ income and non-apportionable~~[nonbusiness]~~ income of multistate corporations. Income for purposes of classification as apportionable or non-apportionable includes gains and losses. Apportionable income is apportioned among jurisdictions by use of a formula. Non-apportionable income is specifically assigned or allocated to one (1) or more specific jurisdictions pursuant to express rules. An item of income is classified as apportionable income if it falls within the definition of apportionable income. An item of income is non-apportionable income only if it does not meet the definitional requirements for being classified as apportionable income. This administrative regulation establishes criteria for classification of corporate income into its apportionable~~[business]~~ and non-apportionable~~[nonbusiness]~~ components, allocates expenses for non-apportionable~~[nonbusiness]~~ income, and clarifies that Kentucky follows both the transactional and functional tests. The examples used throughout this administrative regulation are illustrative only and are limited to the facts they contain.

Section 1. Definitions. (1) "Acquisition" means the act of obtaining an interest in property.

(2) "Allocation" means non-apportionable~~[nonbusiness]~~ income specifically assigned or allocated to one (1) or more specific jurisdictions.

(3) Apportionable income is defined in KRS 141.120(1)(a).

(4) "Apportionment" means apportionable~~[business]~~ income divided among jurisdictions by use of the~~three-(3)~~ apportionment factor~~[formula]~~ provided in KRS 141.120[(8)].

(4) "Business income" is defined in KRS 141.120(1)(a).

(5) "Disposition" means the act or the power to relinquish or transfer an interest in or control over property to another, in whole or in part.

(6) Integral part means property that constitutes a part of the composite whole of the trade or business, each part of which gives value to every other part, in a manner which materially contributes to the production of business income.

(7) "Management" means the oversight, direction, or control, directly or by delegation, of the property for the use or benefit of the trade or business.

(7) "Non-apportionable income"~~(8)~~ "Nonbusiness income" is defined in KRS 141.120(1)(d)~~(e)~~.

(8) "Trade or business," as used in the definition of apportionable income and in the application of that definition means the unitary business of the taxpayer, part of which is conducted within Kentucky.

Section 2. Determination of Apportionable[Business] Income. In determining whether income is apportionable[business] income, the Department of Revenue shall apply both the transactional test and the functional test as established in Sections 3 and 4 of this administrative regulation. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, income derived from accounts receivable, operating income, non-operating income, etc., is of no aid in determining whether income is apportionable or nonapportionable income.

Section 3. Transactional Test. Apportionable income includes income arising from transactions and activity in the regular course of the taxpayer's trade or business[Under the transactional test, income shall be considered business income if the income arises from transactions and activities in the regular course of the taxpayer's trade or business] in accordance with this section.

(1) If the transaction or activity is[shall be] in the regular course of the taxpayer's trade or business, part of which trade or business is conducted within Kentucky, the resulting income of the transaction or activity is apportionable[business] income for Kentucky. Income may be apportionable[business] income even though the actual transaction or activity that gives rise to the income does not occur in Kentucky.

(2) For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transaction or activity is[shall] not [be] required to be one that frequently occurs in the trade or business.

(a) Most, but not all, frequently occurring transactions or activities will[shall] be in the regular course of that trade or business and will[shall]; therefore, satisfy the transactional test.

(b) It is[shall be] sufficient to classify a transaction or activity as being in the regular course of a trade or business, if it is reasonable to conclude transactions of that type are:

1. Customary in the kind of trade or business being conducted; or

2. Within the scope of what that kind of trade or business does.

(c) If a taxpayer frequently or customarily engages in investment activities, if those activities are for the taxpayer's [mere]financial betterment rather than[not] for the operations of the trade or business, those activities shall not satisfy the transactional test.

(d) The transactional test includes[shall include], but is not limited to:

1. Income from sales of inventory, property held for sale to customers, and services which are commonly sold by the trade or business; and

2. Income from the sale of property used in the production of apportionable[business] income of a kind that is sold and replaced with some regularity, even if replaced less frequently than once a year.

(3) The corporation shall classify income as apportionable[business] or non-apportionable[nonbusiness] income on a consistent basis. If the corporation is not consistent, it shall disclose in its Kentucky return the nature and extent of the inconsistency.

Section 4. Functional Test. Apportionable[Business] income also includes[shall include] income from tangible and intangible property, including any direct or indirect interest in, control over, or use in the property held directly, beneficially, by contract, or otherwise, that[materially] contributes to the production of apportionable[business] income, if the acquisition, management, employment, development, or[and] disposition of the property is or was related to the operation[constitute integral parts] of the taxpayer's[regular] trade or business[operations].

(1) Under the functional test, apportionable[business] income shall not be required to be derived from transactions or activities

that are in the regular course of the taxpayer's own particular trade or business.

(a) Except as provided in paragraph (b) of this subsection, it shall be sufficient if the property from which the income is derived is, or was a[an integral,] functional,[or] operative component, or related to or used in the taxpayer's trade or business operations, or otherwise materially contributed to the production of apportionable[business] income of the trade or business, part of which trade or business is or was conducted within this state.

(b) Property that has been converted to an investment purpose[nonbusiness use] through the passage of a sufficiently lengthy period of time (generally, five (5) years shall be sufficient) or that has been removed as an operational asset and is instead held by the taxpayer's trade or business exclusively for investment purposes, shall be deemed to have lost its character as a business asset.

(c) Property that was related to a[an integral] part of the trade or business shall not be considered converted to investment purposes merely because it is placed for sale.

Example (i): Taxpayer purchases a chain of 100 retail stores for the purpose of merging those store operations with its existing business. Five (5) of the retail stores are redundant under the taxpayer's business plan and are sold six (6) months after acquisition. Even though the five (5) stores were never integrated into the taxpayer's trade or business, the income is apportionable because the property's acquisition was related to the taxpayer's trade or business.

Example (ii): Taxpayer is in the business of developing adhesives for industrial and construction uses. In the course of its business, it accidentally creates a weak but non-toxic adhesive and patents the formula, awaiting future applications. Another manufacturer uses the formula to create temporary body tattoos. Taxpayer wins a patent infringement suit against the other manufacturer. The entire damages award, including interest and punitive damages, constitutes apportionable income.

Example (iii): Taxpayer is engaged in the oil refining business and maintains a cash reserve for buying and selling oil on the spot market as conditions warrant. The reserve is held in overnight "repurchase agreement" accounts of U.S. treasuries with a local bank. The interest on those amounts is apportionable income because the reserves are necessary for the taxpayer's business operations. Over time, the cash in the reserve account grows to the point that it exceeds any reasonably expected requirement for acquisition of oil or other short-term capital needs and is held pending subsequent business investment opportunities. The interest received on the excess amount is non-apportionable income.

Example (iv): A manufacturer decides to sell one (1) of its redundant factories to a real estate developer and transfers the ownership of the factory to a special purpose subsidiary, SaleCo (Taxpayer) immediately prior to its sale to the real estate developer. The parties elect to treat the sale as a disposition of assets under IRC 338(h)(10), resulting in Taxpayer recognizing a capital gain on the sale. The capital gain is apportionable income. Note: although the gain is apportionable, application of the standard apportionment formula in KRS 141.120 may not fairly reflect the taxpayer's business presence in any state, necessitating a resort to equitable apportionment pursuant to KRS 141.120 (12)(a).

(2)(a) Income that is derived from isolated sales, leases, assignments, licenses, and other infrequently occurring dispositions, transfers, or transactions involving property, including transactions made in the full or partial liquidation or the winding-up of any portion of the trade or business, is apportionable[shall be business] income, if the property is or was related to[used in] the taxpayer's trade or business operations, unless the property has been converted to investment purposes[nonbusiness use].

(b) Income from the licensing of an intangible asset, such as a patent, copyright, trademark, service mark, know-how, trade secrets, or the like, that was developed or acquired for use by the taxpayer in its trade or business[operations], constitutes[shall constitute] apportionable[business] income whether or not the licensing itself constituted the operation of a trade or business, and

whether or not the taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired.

(3) Under the functional test, income from intangible property is apportionable~~[shall be business]~~ income when~~[if]~~ the intangible property serves~~[shall serve]~~ an operational function as opposed to solely an investment function. The intangible property serves an operational function if it is or was held in furtherance of the taxpayer's trade or business as evidenced by the objective characteristics of the intangible property's use or acquisition and its relation to the taxpayer and the taxpayer's activities. The functional test shall not be satisfied if the holding of the property is limited to solely an investment function for a period of five (5) years or more.

(4) If the acquisition, management, employment, development, or disposition of the property is or was related to the operation~~[held for furtherance]~~ of the taxpayer's trade or business, then income from that property is apportionable~~[may be business]~~ income, even though the actual transaction or activity involving that property that gives rise to the income does not occur in Kentucky.

Example (i): A manufacturer purchases raw materials to be incorporated into the product it offers for sale. The nature of the raw materials is such that the purchase price is subject to extreme price volatility. In order to protect itself from extreme price increases (or decreases), the manufacturer enters into future contracts pursuant to which the manufacturer can either purchase a set amount of the raw materials for a fixed price, within a specified time period, or resell the future contracts. Any gain on the sale of the future contracts would be considered apportionable income, regardless of whether the contracts were either made or resold in Kentucky.

Example (ii): A national retailer produces substantial revenue related to the operation of its trade or business. It invests a large portion of the revenue in fixed income securities which are divided into three (3) categories: (a) short-term securities held pending use of the funds in the taxpayer's trade or business; (b) short-term securities held pending acquisition of other companies or favorable developments in the long-term money market, and (c) long-term securities held as an investment. Interest income on the short-term securities held pending use of the funds in the taxpayer's trade or business (a) is apportionable because the funds represent working capital necessary to the operations of the taxpayer's trade or business. Interest income derived from the other investment securities ((b) and (c)) is not apportionable as those securities were not held in furtherance of the taxpayer's trade or business.

(5)(a) An item of property shall be presumed to be related~~[integral]~~ to the taxpayer's trade or business operations if the taxpayer:

1. Takes a deduction from~~[business]~~ income that is apportioned to Kentucky; or

2. Includes the original cost in the property factor, if applicable.

(b) No~~[A]~~ presumption arises~~[shall arise]~~ from the absence of an action described in paragraph (a) of this subsection.

(6) Application of the functional test is generally~~[shall be]~~ unaffected by the form of the property (e.g., tangible or intangible property, real or personal property).

(a) Income arising from an intangible interest as, for example, corporate stock or other intangible interest in an entity~~[a business]~~ or a group of assets, is apportionable~~[shall be business]~~ income when~~[if]~~ the intangible itself or the property underlying or associated with the intangible is or was related to the operation of~~[an integral, functional, or operative component to]~~ the taxpayer's trade or business~~[operations]~~.

(b) While apportionment of income derived from transactions involving intangible property~~[as business income]~~ may be supported by a finding that the issuer of the intangible property and the taxpayer are engaged in the same trade or business, establishment of a~~[similar]~~ relationship is not~~[shall not be]~~ the exclusive basis for concluding that the income is subject to apportionment. It is~~[shall be]~~ sufficient to support the finding of apportionable~~[apportioned]~~ income if the holding of the intangible interest served~~[as]~~ an operational rather than an investment function~~[asset]~~.

Section 5. Examples of Apportionable and Non-apportionable

Income.

(1) Rents from real and tangible personal property. Rental income from real and tangible property is apportionable income if the property with respect to which the rental income was received is or was used in the taxpayer's trade or business.

Example (i): The taxpayer operates a multistate car rental business. The income from car rentals is apportionable income.

Example (ii): The taxpayer is engaged in the heavy construction business in which it uses equipment such as cranes, tractors, and earth-moving vehicles. The taxpayer makes short-term leases of the equipment when particular pieces of equipment are not needed on any particular project. The rental income is apportionable income.

Example (iii): The taxpayer operates a multistate chain of men's clothing stores. The taxpayer purchases a five (5)-story office building for use in connection with its trade or business. It uses the street floor as one of its retail stores and the second and third floors for its general corporate headquarters. The remaining two (2) floors are held for future use in the trade or business and are leased to tenants on a short-term basis in the meantime. The rental income is apportionable income.

Example (iv): The taxpayer operates a multistate chain of grocery stores. It purchases as an investment an office building in another state with surplus funds and leases the entire building to others. The net rental income is not apportionable income of the grocery store trade or business. Therefore, the net rental income is non-apportionable income.

Example (v): The taxpayer operates a multistate chain of men's clothing stores. The taxpayer invests in a twenty (20)-story office building and uses the street floor as one of its retail stores and the second floor for its general corporate headquarters. The remaining eighteen (18) floors are leased to others. The rental of the eighteen (18) floors is not done in furtherance of but rather is separate from the operation of the taxpayer's trade or business. The net rental income is not apportionable income of the clothing store trade or business. Therefore, the net rental income is non-apportionable income.

Example (vi): The taxpayer constructed a plant for use in its multistate manufacturing business and twenty (20) years later the plant was closed and put up for sale. The plant was rented for a temporary period from the time it was closed by the taxpayer until it was sold eighteen (18) months later. The rental income is apportionable income and the gain on the sale of the plant is apportionable income.

(2) Gains or losses from sales of assets. Gain or loss from the sale, exchange or other disposition of real property or of tangible or intangible personal property constitutes apportionable income if the property while owned by the taxpayer was related to the operation of the taxpayer's trade or business.

Example (i): In conducting its multistate manufacturing business, the taxpayer systematically replaces automobiles, machines, and other equipment used in the trade or business. The gains or losses resulting from those sales constitute apportionable income.

Example (ii): The taxpayer constructed a plant for use in its multistate manufacturing business and twenty (20) years later sold the property at a gain while it was in operation by the taxpayer. The gain is apportionable income.

Example (iii): Same as (ii) except that the plant was closed and put up for sale but was not in fact sold until a buyer was found eighteen (18) months later. The gain is apportionable income.

Example (iv): Same as (ii) except that the plant was rented while being held for sale. The rental income is apportionable income and the gain on the sale of the plant is apportionable income.

(3) Interest. Interest income is apportionable income where the intangible with respect to which the interest was received arose out of or was created in the regular course of the taxpayer's trade or business, or the purpose of acquiring and holding the intangible is related to the operation of the taxpayer's trade or business.

Example (i): The taxpayer operates a multistate chain of department stores, selling for cash and on credit. Service charges, interest, or time-price differentials and the like are received with

respect to installment sales and revolving charge accounts. These amounts are apportionable income.

Example (ii): The taxpayer conducts a multistate manufacturing business. During the year the taxpayer receives a federal income tax refund pertaining to the taxpayer's trade or business and collects a judgment against a debtor of the business. Both the tax refund and the judgment bear interest. The interest income is apportionable income.

Example (iii): The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business, the taxpayer maintains special accounts to cover such items as workmen's compensation claims, rain and storm damage, machinery replacement, etc. The funds in those accounts earned interest. Similarly, the taxpayer temporarily invests funds intended for payment of federal, state and local tax obligations pertaining to the taxpayer's trade or business. The interest income is apportionable income.

Example (iv): The taxpayer is engaged in a multistate money order and traveler's check business. In addition to the fees received in connection with the sale of the money orders and traveler's checks, the taxpayer earns interest income by the investment of the funds pending their redemption. The interest income is apportionable income.

Example (v): The taxpayer is engaged in a multistate manufacturing and selling business. The taxpayer usually has working capital and extra cash totaling \$200,000 which it regularly invests in short-term interest bearing securities. The interest income is apportionable income.

Example (vi): In January, the taxpayer sold all of the stock of a subsidiary for \$20,000,000. The funds are placed in an interest-bearing account pending a decision by management as to how the funds are to be utilized. The funds are not pledged for use in the business. The interest income for the entire period between the receipt of the funds and their subsequent utilization or distribution to shareholders is non-apportionable income.

(4) Patent and copyright royalties. Patent and copyright royalties are apportionable income where the patent or copyright with respect to which the royalties were received arose out of or was created in the regular course of the taxpayer's trade or business or where the acquiring and holding the patent or copyright is or was related to the operation of the taxpayer's trade or business, or contributes to the production of apportionable income of the trade or business.

Example (i): The taxpayer is engaged in the multistate business of manufacturing and selling industrial chemicals. In connection with that business, the taxpayer obtained patents on certain of its products. The taxpayer licensed the production of the chemicals in foreign countries, in return for which the taxpayer receives royalties. The royalties received by the taxpayer are apportionable income.

Example (ii): The taxpayer is engaged in the music publishing trade or business and holds copyrights on numerous songs. The taxpayer acquires the assets of a smaller publishing company, including music copyrights. These acquired copyrights are thereafter used by the taxpayer in its trade or business. Any royalties received on these copyrights are apportionable income.

Section 6. Relationship of Transactional and Functional Tests to the U.S. Constitution. The Due Process Clause and the Commerce Clause of the U.S. Constitution restrict states from apportioning income that has no rational relationship with the taxing state. Satisfaction of either the transactional test or the functional test ~~complies[shall comply]~~ with this constitutional requirement, because each test ~~requires[shall require]~~ that the transaction or activity (in the case of the transactional test) or the property (in the case of the functional test) be tied to the same trade or business that is being conducted within this state.

[Section 6. For taxable years beginning after December 31, 2004, corporations defined in KRS 141.010(24)(a) to (h), limited liability entities, limited partnerships, and S corporations, shall include as part of their calculation of taxable income, separately stated items of distributive share income. The separately stated items of distributive share income shall be deemed business income if the

items meet the transactional test, functional test, or a holding period of less than five (5) years in the case of an investment.]

Section 7. Expenses Related to Non-apportionable ~~[Nonbusiness]~~ or Nontaxable Income. (1) KRS 141.039010(213)(cd) ~~[141.010(13)(d)]~~ requires that any deduction allowed under Chapter 1 of the Internal Revenue Code shall be reduced by expenses directly or indirectly related to nontaxable or non-apportionable~~[nonbusiness]~~ income. If actual expenses, including interest, salaries, general and administrative, and other stewardship expenses, is not related directly to the income, one (1) of the following formulas shall be used:

(a) Ratio of non-apportionable~~[nonbusiness]~~/nontaxable assets to total assets times interest expense. Interest expense shall represent all expenses incurred in the stewardship or maintenance of non-apportionable~~[nonbusiness]~~ or nontaxable assets. Other expenses may be used which more fairly reflect expenses attributable to the income or assets producing the non-apportionable~~[nonbusiness]~~/nontaxable income. Assets shall be valued at cost, and the investment account shall exclude equity;

~~(b)[If the total nonbusiness/nontaxable income does not exceed fifty (50) percent of the total gross receipts, the expenses not deductible under paragraph (a) of this subsection may be reduced proportionately but not to exceed fifty (50) percent of the calculated expenses;~~

~~(c) 1.75 percent of the cost of assets producing nonbusiness/nontaxable income;~~

~~(d)[Ratio of non-apportionable[nonbusiness]/nontaxable income to total gross receipts times interest expense, officers' salaries, and general administrative expenses. The sum of these or any reasonable combination of these expenses; or~~

~~(c)[(e)] A flat percentage, one (1) percent to 100 percent, of non-apportionable[nonbusiness]/nontaxable income. The percentage used shall be reasonable and reflect the expenses attributable to the stewardship or maintenance of the assets producing the income.~~

(2) KRS 141.039(2)(c)~~[141.010(13)(d)]~~ requires a corporation to relate expenses to non-apportionable~~[nonbusiness]~~ and nontaxable income. The formulas listed in subsection (1)(a) to (e) of this section for determining related expenses shall be used by the corporation or assist the corporation in developing a method more suitable to its particular situation.

Section 8. Proration of Deductions. Any allowable deduction that applies to both apportionable~~[business]~~ and non-apportionable~~[nonbusiness]~~ income or to more than one (1) trade or business shall be prorated to those classes of income or trades or businesses by the formulas listed in Section 7 ~~6~~ of this administrative regulation.

Section 9. ~~[Revenue Policy 41P150 "Expenses Related to Nonbusiness Nontaxable Income", shall be withdrawn, since the policy has been incorporated into this administrative regulation.~~

~~Section 40.]~~The amendments to this administrative regulation shall apply to tax periods beginning on or after January 1, 2018~~[2005]~~.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: October 12, 2018

FILED WITH LRC: October 12, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on November 26, 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 November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, 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 regulation is essential for providing guidance to multi-state corporations that must allocate and apportion income between multiple jurisdictions.

(b) The necessity of this administrative regulation: This regulation is necessary to guide taxpayers when determining apportionable and non-apportionable income and the manner for treating them on returns filed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes require apportionable income to be apportioned to Kentucky, and this regulation provides guidance for taxpayers to do so consistently.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth objective standards for distinguishing apportionable and non-apportionable income.

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

(a) How the amendment will change this existing administrative regulation: These amendments correct the regulation to use new language contained in HB 487/GA2018. "Business" and "non-business" have been replaced by "apportionable" and "non-apportionable." Furthermore, examples included in the Multistate Tax Commission's ("MTC") model regulation have been incorporated to provide clearer guidance to taxpayers. Other substantive changes rely upon the MTC's model regulation as well.

(b) The necessity of the amendment to this administrative regulation: HB 487/GA2018 substantially changed Kentucky's income tax laws, and the regulation as written is deficient without the proposed amendments.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require the use of apportionable and non-apportionable income concepts.

(d) How the amendment will assist in the effective administration of the statutes: Clear guidance that includes examples will provide better guidance to taxpayers as well as provide unambiguous rules for department staff when verifying compliance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Multi-state businesses will need to comply with the updated language contained in this regulation and the statutes amended by HB 487/GA2018.

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

(a) List 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 concepts are between the existing regulation and its proposed amendments are similar, but the updated language and examples provided will assist taxpayers to better comply with the law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No known costs beyond current compliance costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Taxpayers will pay the correct tax on business activities in Kentucky and will avoid penalties and interest for non-compliance.

(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: The department General Fund budget covers routine compliance costs.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No direct or indirect fees are established or increased by this amendment.

(9) TIERING: Is tiering applied? Tiering was not applied, because all taxpayers are treated equally by 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 Kentucky Department of Revenue will be impacted by implementing and enforcing the provisions of this regulation. No local governmental units 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 141.010(3) and 141.120.

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

(a) How much 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 administrative regulation at any time.

(b) How 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 revenues beyond the current department budget appropriations.

(d) How much will it cost to administer this program for subsequent years? Current staff and department appropriations will be utilized to continue administration in the second year.

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 16:090. Apportionment; payroll factor.

RELATES TO: KRS 141.010, 141.120, 141.121

STATUTORY AUTHORITY: KRS 131.130[(4)], 141.018

NECESSITY, FUNCTION, AND CONFORMITY: All[KRS 141.120(8) requires that all] business or apportionable income of multi-state corporations shall be apportioned to Kentucky by multiplying the income by a fraction[, the numerator of which is the property factor plus the payroll factor plus a double weighted sales factor and the denominator of which is four (4)]. KRS 131.130(1) authorizes the department to promulgate administrative regulations

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to administer and enforce Kentucky's tax laws. This administrative regulation provides a detailed explanation of the payroll apportionment factor.

Section 1. Compensation. (1)(a) Compensation shall not include payments to an independent contractor or any other person not properly classifiable as an employee.

(b) Only amounts paid directly to employees shall be included in the payroll factor. Amounts considered paid directly shall include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the corporation in return for personal services, if the amounts constitute income to the recipient under KRS 141.039[141.010(12) and (13)].

(2)(a) The total amount paid or payable for compensation during the taxable year shall be determined by the corporation's accounting method and shall be the same method used by the corporation for federal taxation purposes. If the corporation has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid.

(b) The corporation shall be consistent in the treatment of compensation paid in filing returns or reports to all states. If the corporation is not consistent in its reporting, it shall disclose in its Kentucky return the nature and extent of the inconsistency.

(3) Compensation paid to employees whose services are performed entirely in a state where the corporation is exempt from taxation, for example, by Pub. L. 86-272, codified as 15 U.S.C. §§ 381 to 384, shall be included in the denominator of the payroll factor.

(4) An individual shall be considered an employee if the individual is included by the corporation as an employee for purposes of the payroll taxes imposed by 26 U.S.C. 3121(d). Independent contractors shall not be considered employees.

Section 2. Payroll Factor-Numerator. (1) The total wages reported by the corporation to Kentucky for unemployment compensation purposes, except for compensation excluded by this administrative regulation, shall be considered as a factor in determining if an employee's compensation is properly reportable to Kentucky.

(2) In determining if a service performed without Kentucky is incidental to the employee's service in Kentucky, a service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction, shall be considered an incidental service.

(3) In determining where the employee's base of operations is located, the place of more or less permanent nature from which the employee starts work and to which the employee customarily returns in order to receive instructions from the corporation or communications from customers or other persons, or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of the employee's trade or profession at some other point or points, shall be considered to be the base of operations.

(4) The place from which the power to direct or control is exercised by the corporation shall be the place from which the service is directed or controlled.

Section 3. This administrative regulation shall be effective for tax periods beginning on or after January 1, 2005.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: October 12, 2018

FILED WITH LRC: October 12, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on November 26, 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 November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, 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 103 KAR 16:090 with recent law changes as a result of the passage of HB 487/GA2018. This regulation provides detailed guidance for calculating the payroll factor for taxpayers able or required to use this factor when apportioning income to Kentucky.

(b) The necessity of this administrative regulation: The detailed considerations of what constitutes compensation for purposes of calculating a payroll apportionment factor must be set forth for taxpayers to understand and comply with the law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes direct certain taxpayers to utilize a payroll factor. Furthermore, some alternative apportionment formulas make use of a payroll apportionment factor. This regulation provides guidance in accordance with statutory requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will help taxpayers better understand how the payroll apportionment factor is calculated.

(2) If 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: This regulation must be amended to be compliant with the requirements of Chapter 13A.

(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: Businesses, particularly providers of telecommunications, cable, and internet services, utilize the payroll factor when apportioning income to 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: No additional actions are required as the guidance is merely updated.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Taxpayers will better understand how to calculate the payroll apportionment factor and will potentially avoid future tax assessments, penalties, and interest.

(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: The department's current budget covers ongoing compliance

related to this 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 required by this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No direct or indirect fees result from this regulation amendment.

(9) TIERING: Is tiering applied? Tiering was not applied, because all taxpayers utilizing the payroll apportionment factor are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Revenue is the only unit, part or division of state or local government impacted by the changes made herein.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. None.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There are no new revenues expected 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? 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 16:230. Intangible expenses, intangible interest expense, and management fees.

RELATES TO: KRS 131.130, 141.205

STATUTORY AUTHORITY: KRS 131.130[(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS 141.205 disallows intangible expenses, intangible interest expenses and management fees when those expenses and fees are directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one (1) or more direct or indirect transactions with one (1) or more related members or with a foreign corporation, unless certain criteria are met. This administrative regulation establishes the requirements for when these expenses and fees are allowed or disallowed.

Section 1. Definitions. (1) "Actual comparables" means transactions between the recipient and unrelated parties that are identical to the subject transaction.

(2) "Comprehensive income tax treaty" means a convention, or agreement, entered into by the United States, and approved by

Congress, with a foreign government for the allocation of all categories of income subject to taxation or the withholding of tax on interest, dividends, and royalties, in order to prevent double taxation of the respective nations' residents, and to promote the sharing of information.

(3) "Measured by, in whole or in part, net income" means that the receipt of the payment by the recipient is reported and included in income for purposes of a tax on net income or in the franchise for purposes of the franchise tax.

(4) "Reported and included in income for purposes of a tax on net income or in the franchise," means:

(a) For a tax on net income, reported and included in the net income apportioned or allocated to the taxing jurisdiction; or

(b) For a franchise tax, reported and included in the franchise apportioned or allocated to the taxing jurisdiction.

(5) "Subject transaction" means the transaction giving rise to the intangible expense, intangible interest expense, or management fee.

Section 2. Disclosure; General. As part of the required disclosure, the entity shall provide a description of the nature of the payment made to the recipient. This description shall contain:

(1) For intangible expenses or intangible interest expenses:

(a) A narrative regarding the subject transaction;

(b) The extent of the rights being transferred, for example, if a patent is being licensed:

1. Whether that license is exclusive or non-exclusive; and

2. Whether the transferee has any rights to sublicense;

(c) How the amount of the payment is calculated; and

(d) If there is a document that sets forth the terms of the subject transaction, a copy of that document; and

(2) For management fees:

(a) A narrative of the services being performed for the entity by the recipient;

(b) How the amount of the payment is calculated; and

(c) If there is a document that sets forth the terms of the transaction, a copy of that document.

Section 3. Disclosure; Arm's Length Transaction. An entity may be required to establish that the subject transaction was made at a commercially reasonable rate and at terms comparable to an arm's length transaction. (1) If there are actual comparables, the actual comparables shall be used.

(2) If there are no actual comparables, the two (2) primary factors to take into account if determining whether the subject transaction was made at a commercially reasonable rate and at terms comparable to an arm's length transaction shall be:

(a) The degree of comparability between the subject transaction and the proposed comparable transactions; and

(b) The quality of the data and assumptions used in the analysis.

Section 4. Disclosure; Intangible Expense, Intangible Interest Expense, or Management Fee. With respect to an intangible expense, intangible interest expense, or management fee, the entity shall make additional disclosures if it cannot utilize any of the other methods to establish that it is entitled to the deduction. The entity shall show that the payment made to the recipient was subject to, in its state or country of commercial domicile, a net income tax, or a franchise tax, measured by, in whole or in part, net income. If the recipient is a foreign corporation, the foreign nation shall have in force a comprehensive income tax treaty with the United States.

Section 5. Corporation or Pass-Through Entity. A corporation or pass-through entity that during the taxable year directly or indirectly paid, accrued, or incurred intangible expenses, intangible interest expenses, or management fees to a related member or foreign corporation shall attach to its tax return filed with the department:

(1) Schedule RPC, Revenue Form 41A720RPC; and ~~(Form number 41A720RPC), incorporated by reference in 103 KAR 3:040; and]~~

(2) Any additional disclosures required by Sections 2, 3, and 4

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of this administrative regulation.

Section 6. The disclosures related to management fees and the provisions of Section 5 of this administrative regulation shall apply to taxable years beginning on or after January 1, 2014.

Section 7. The forms and materials prescribed herein may be inspected, copied, or obtained, subject to applicable copyright law, from 8:00 a.m. to 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 normal operating hours; and on the department's Web site at <http://revenue.ky.gov>.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: October 12, 2018

FILED WITH LRC: October 12, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on November 26, 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 November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, 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 regulation provides guidance to taxpayers about the measurement of "arm's length" transactions between related members in a group of companies, and deletes a reference to a forms regulation that was repealed in 2016.

(b) The necessity of this administrative regulation: This regulation is required to clarify how the department interprets the deductibility of certain related member deductions and comply with the provisions of KRS 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The related party statutes establish rules for deducting expenses between related members in a group of companies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides clarity for determining when related member expenses are deductible and in what amounts by calculation.

(2) If 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) above.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 3000 taxpayers in

Kentucky that comply with the provisions of this regulation annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no new or additional actions required by the taxpayers listed in (3).

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Taxpayers will not inadvertently rely on a repealed regulation for guidance.

(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: The department's current budget will provide the funding necessary to implement this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No direct or indirect fees are established by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not applied, because all taxpayers with related member transactions are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Revenue is the only unit, part, or division of state or local government 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 131.130(1) and 141.205.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no revenue generated for any state or local government entity as a result of this administrative regulation. This amendment only updates 103 KAR 16:230 to conform to statute changes that would render this administrative regulation deficient otherwise.

(b) How 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 16:240. Nexus standard for corporations and pass-through entities.

RELATES TO: KRS 141.010, 141.040, 141.206

STATUTORY AUTHORITY: KRS 131.130, 141.018, 141.050[(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.040(1) requires non-exempt corporations doing business in Kentucky to pay corporation income tax and file the required tax forms for that tax. KRS 141.206 requires pass-through entities doing business in Kentucky to file tax forms to compute the distribution of income to the partners, members or shareholders. KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky's tax laws. KRS 141.018 requires the Department of Revenue to promulgate administrative regulations necessary to implement the provisions of HB 272 from the 2005 regular session and HB 1 from the 2006 extraordinary session of the Kentucky General Assembly. [2005 Ky. Acts ch. 168. KRS 141.010(25) defines "doing business in this state".] This administrative regulation establishes what constitutes nexus in Kentucky under a "doing business" standard and provides examples.

Section 1. Definitions. (1) "Business situs" means in relation to intangible personal property:

(a) The corporation's or pass-through entity's commercial domicile;

(b) The place where the intangible personal property is utilized by the corporation or pass-through entity; or

(c) The state where the intangible personal property is located if possession and control of the intangible personal property is localized in connection with a trade or business so that substantial use or value attaches to the property.

(2) "Commercial domicile" means the principal place from which the trade or business of the corporation or pass-through entity is managed.

(3) "Corporation" is defined by KRS 141.010(4)[141.010(24)].

(4) "Doing business in this state" is defined by KRS 141.010(7)[141.010(25)].

(5) "Foreign corporation" means a corporation incorporated or formed under the authority of another state or country.

(6) "Foreign pass-through entity" means a pass-through entity organized under the laws of another state or country.

(7) "Pass-through entity" is defined by KRS 141.010(21)[141.010(26)].

(8) "Owning or leasing property in this state" means owning or leasing real or tangible personal property in Kentucky, including:

(a) Maintaining an office or other place of business in Kentucky;

(b) Maintaining in Kentucky an inventory of merchandise or material for sale, distribution or manufacture, or consigned goods, regardless of whether kept on the taxpayer's premises, in a public or rented warehouse, or otherwise; or

(c) Owning computer software used in the business of a third party within Kentucky.

(9) "Qualified real estate investment trust subsidiary" is defined by Section 856(i)(2) of the Internal Revenue Code, 26 U.S.C. 856(i)(2).

(10) "Qualified subchapter S subsidiary" is defined by Section 1361(b)(3)(B) of the Internal Revenue Code, 26 U.S.C. 1361(b)(3)(B).

(11) "Related corporation" means a corporation in which another corporation or pass-through entity maintains an ownership interest of fifty (50) percent or more during any portion of the taxable year.

(12) "Single member limited liability company" means a limited liability company with one (1) member.

Section 2. In General; Rules of Construction. (1) For purposes of the corporation income tax imposed by KRS 141.040(1) and the filing requirement imposed on pass-through entities by KRS 141.206(1)[141.206(2)], the term "doing business in this state" or "doing business" shall be used in a comprehensive sense concerning the operation of any profit-seeking enterprise or activity in Kentucky.

(2) In determining if a corporation or pass-through entity is doing business in Kentucky, it shall be immaterial whether the activities actually result in a profit or loss.

(3) Whether a corporation or pass-through entity is doing business in Kentucky shall be determined by the facts in each case.

(4) Whether the activities of a foreign corporation or pass-through entity fall within the scope of "solicitation" within the meaning of Pub. L. 86-272, codified as 15 U.S.C. 381 to 384, shall be a factual determination. The examples in Sections 3 and 4 of this administrative regulation shall be used as guidelines. In applying the guidelines to the particular circumstances and activities of a foreign corporation or pass-through entity, the Department of Revenue shall employ the following rules of construction:

(a) The effect of the activities listed in Sections 3 and 4 of this administrative regulation shall be cumulative. In determining whether a taxpayer is doing business in Kentucky, all of these activities shall be considered as a whole.

(b) If the Department of Revenue determines that a taxpayer is doing business in Kentucky, the taxpayer shall carry the burden of substantiating any claim that these activities in Kentucky do not constitute doing business under either Pub. L. 86-272, codified as 15 U.S.C. 381 to 384, or the United States Constitution.

(c) Documentary evidence shall be given substantial weight in establishing the nature and extent of the taxpayer's activities. Affidavits or other evidence not contemporaneous with the events in question shall be given little weight.

(d) The term "solicitation" shall include only actual requests for purchases and activities that are entirely ancillary to requests for purchases. An activity shall be considered entirely ancillary to the requesting of purchases if it serves no independent business purpose apart from its connection to the soliciting of orders.

(e) Activities conducted by a foreign corporation or pass-through entity with respect to a particular order shall not constitute "solicitation" if the activity occurs after the order has been placed.

(5) Pub. L. 86-272 does not afford immunity from the limited liability entity tax imposed by KRS 141.0401.

Section 3. Exception for Solicitation Activities Protected by Pub. L. 86-272, codified as 15 U.S.C. 381 to 384. (1) General; preemption of state law. This administrative regulation adopts a narrow interpretation of the immunity afforded by Pub. L. 86-272, codified as 15 U.S.C. 381 to 384, which precludes the imposition of Kentucky income tax upon a foreign corporation, or the filing requirement imposed on foreign pass-through entity, if the corporation's or pass-through entity's sole activity in Kentucky is the corporation's or pass-through entity's representatives soliciting orders for the sale of tangible personal property in the name of the corporation or pass-through entity or in the name of a prospective customer if the orders are:

(a) Sent outside of Kentucky for approval or rejection; and

(b) Filled by shipment or delivery from a point outside of Kentucky regardless of the method of shipment or delivery.

(2) Scope of Pub. L. 86-272, codified as 15 U.S.C. 381 to 384.

(a) If a corporation or pass-through entity engages both in protected solicitation activities and in any other activity that is not a protected solicitation activity, it shall not claim the immunity granted by Pub. L. 86-272, codified as 15 U.S.C. 381 to 384.

(b) Solicitation of orders shall not be protected by Pub. L. 86-272, codified as 15 U.S.C. 381 to 384, if the solicitation is for the:

1. Sale or provision of services; or

2. Sale, lease, rental, license, or other disposition of real property or intangibles.

(3) Activities normally considered to be solicitation. The activities listed in this subsection shall serve as examples of

activities that ordinarily fall within the scope of "solicitation" under Pub. L. 86-272, codified as 15 U.S.C. 381 to 384:

- (a) Soliciting orders through advertising;
 - (b) Carrying samples and promotional materials only for display or distribution without charge or other consideration;
 - (c) Soliciting orders by an in-state resident employee or representative of the company, if that person does not maintain or use any office or other place of business in the state other than an "in-home" office as described in subsection (4) of this section;
 - (d) Furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;
 - (e) Checking customer inventories for reorder without a charge therefore, but not for other purposes such as quality control;
 - (f) Recruiting, training or evaluating sales personnel, including occasionally using homes, hotels, or similar places for meetings with sales personnel;
 - (g) Conducting solicitation activities from an employee's in-home work space, if the use of the space is not paid for by the company;
 - (h) Performing missionary sales activities, including the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if the solicitation activities were~~are~~ otherwise immune;
 - (i) Coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;
 - (j) Maintaining a sample or display area for an aggregate of fourteen (14) calendar days or less at any one (1) location within Kentucky during the tax year, if no other activities inconsistent with solicitation take place;
 - (k) Mediating direct customer complaints if the purposes are solely to ingratiate sales personnel with the customer and facilitate requests for orders;
 - (l) Passing orders, inquiries, and complaints on to the home office;
 - (m) Providing automobiles to sales personnel for use solely in solicitation activities; and
 - (n) Owning, leasing, using, or maintaining personal property for use in the employee or representative's "in-home" office or automobile that is solely limited to the conducting of solicitation activities. The use of personal property, such as a cellular telephone, facsimile machine, duplicating equipment, personal computer, or computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to solicitation or permitted by this section shall not, by itself, remove the protection.
- (4) Activities that are not solicitation. The activities listed in this subsection shall serve as examples of activities in this state that fall outside the scope of "solicitation" and are not protected by Pub. L. 86-272, codified as 15 U.S.C. 381 to 384 unless the activity is de minimis within the meaning of Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co., 112 S.Ct. 2447 (1992):
- (a) Making repairs or providing maintenance or service to the property sold or to be sold;
 - (b) Installing or supervising installation at or after shipment or delivery;
 - (c) Collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;
 - (d) Investigating credit;
 - (e) Repossessing property;
 - (f) Conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;
 - (g) Investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints if the sole purpose of the mediation is to ingratiate the sales personnel with the customer;
 - (h) Approving or accepting orders;
 - (i) Securing deposits on sales;
 - (j) Picking up or replacing damaged or returned property, including stale or unsaleable property;
 - (k) Maintaining a sample or display area for an aggregate of

fifteen (15) days or more at any one location within Kentucky during the tax year;

- (l) Providing technical assistance or service, including engineering assistance or design service, if one (1) of the purposes of it is other than the facilitation of the solicitation of orders;
- (m) Hiring, training, or supervising personnel for activities other than solicitation;
- (n) Using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;
- (o) Carrying samples for sale, exchange, or distribution in any manner for consideration or other value;
- (p) Providing shipping information and coordinating deliveries;
- (q) Supervising the operations of a franchisee or similar party;
- (r) Monitoring, inspecting, or approving work performed by an independent contractor under a warranty or similar contractual arrangement;
- (s) Consigning stock of goods or other tangible personal property for sale to any person, including an independent contractor;
- (t) Fulfilling sales orders by shipment or delivery from a point within Kentucky;
- (u) Owning, leasing, maintaining, or otherwise using as part of the business operations in Kentucky any of the following facilities or property:
 1. Repair shop;
 2. Parts department;
 3. Warehouse;
 4. Meeting place for directors, officers, or employees;
 5. Stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation; or
 6. Telephone answering service that is publicly attributed to the company or to an employee or agent of the company in their representative status;
- (v) Maintaining, by any employee or other representative, an office or place of business of any kind other than an in-home office. For the purpose of this subsection, it shall not be relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office. An office shall be considered in-home if it is located within the residence of the employee or representative, and:
 1. Is not publicly attributed to the company or to the employee or representative of the company in an employee or representative capacity. Factors considered in determining if an office is publicly attributed to the company or to the employee or representative of the company in an employee or representative capacity shall include:
 - a. A telephone listing or other public listing within the state for the company, or for an employee or representative of the company in that capacity, or other indications through advertising or business literature that the company or its employee or representative can be contacted at a specific address within the state;
 - b. The normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone and fax numbers, and affiliation with the company shall not, by itself, be considered as advertising or otherwise publicly attributing an office to the company or its employee or representative; or
 - c. The maintenance of any office or other place of business in this state that does not strictly qualify as an "in-home" office as described in this paragraph shall, by itself, cause the loss of protection under this subsection;
 2. The use of the office is limited to:
 - a. Soliciting and receiving orders from customers;
 - b. Transmitting orders outside the state for acceptance or rejection by the company; or
 - c. Other activities that are protected under Pub. L. 86-272, codified as 15 U.S.C.A. 381 to 384 or under this administrative regulation;
 - (w) Entering into franchising or licensing agreements, selling or otherwise disposing of franchises and licenses, or selling or otherwise transferring tangible personal property pursuant to the

franchise or license by the franchisor or licensor to its franchisee or licensee within the state; or

(x) Conducting any other activity, which is not entirely ancillary to the solicitation of orders, even if the activity helps to increase purchases.

Section 4. "Doing Business". An analysis to determine if a corporation or pass-through entity's activities fall within the provisions of KRS 141.010(7)[141.010(25)] shall include the factors established in this section. (1) The activities listed in this subsection shall serve as examples of "doing business" under KRS 141.010(7)(f) [141.010(25)(f)]:

(a) Performing services in Kentucky, whether directly by the corporation or pass-through entity or indirectly by directing activity performed by a third party;

(b) Accepting orders in Kentucky;

(c) Operating a professional sports team, which engages in professional sports activities in Kentucky;

(d) Owning an interest in mineral rights in Kentucky, including interests in coal, oil, or natural gas;

(e) Leasing motion picture films to movie theaters and television stations in Kentucky;

(f) Being the member of a single member limited liability company that is doing business in Kentucky and is disregarded for federal income tax purposes;

(g) Being a member, partner, or shareholder in a pass-through entity doing business in Kentucky; or

(h) Receiving income from intangible personal property if the intangible personal property has acquired a Kentucky business situs.

(2) The activities listed in this subsection shall serve as examples of "doing business" under KRS 141.010(7)(g)[141.010(25)(g)]:

(a) Performing or soliciting orders for services in Kentucky, including those services performed in Kentucky by a third party on behalf of a corporation or pass-through entity;

(b) Selling or soliciting orders for real property;

(c) Selling or soliciting orders for intangible personal property;

(d) Selling tangible personal property; or

(e) Delivering merchandise inventory on consignment to its Kentucky distributors or dealers.

(3) A corporation or pass-through entity may be considered doing business under KRS 141.010(7)(d)[141.010(25)(d)] without having employees in Kentucky. If activities are performed in Kentucky by a third party on behalf of the corporation or pass-through entity, the corporation or pass-through entity shall be considered doing business in Kentucky.

(4)(a) General.

1. The activities in this paragraph shall not, in themselves, subject a corporation to Kentucky corporation income tax or a pass-through entity to a Kentucky filing requirement.

2. These exempted activities shall not relieve a corporation from Kentucky corporation income tax if the corporation is otherwise subject to Kentucky corporation income tax and shall not relieve a pass-through entity from a Kentucky income tax filing requirement if the pass-through entity is otherwise required to file a Kentucky return.

3. Mere ownership of a corporation that is doing business in Kentucky shall not subject the owner to the requirements. However, based on additional facts and circumstances, sufficient contacts with Kentucky may exist to establish that the corporation or pass-through entity is doing business in Kentucky. The activities listed in this subparagraph shall serve as examples of facts and circumstances that establish that the corporation or pass-through entity is doing business in Kentucky:

a. Being the parent corporation of a qualified real estate investment trust subsidiary that is doing business in Kentucky;

b. Being the parent corporation of a qualified subchapter s subsidiary that is doing business in Kentucky;

c. Being the member of a single member limited liability company that is doing business in Kentucky and is disregarded for federal income tax purposes;

d. Being a related corporation doing business in Kentucky,

which is performing activities as the corporation's or pass-through entity's agent in Kentucky;

e. Receiving income from a contract between a corporation or pass-through entity and a related corporation doing business in Kentucky if the income is derived from the related corporation's activities in Kentucky;

f. Being a corporation that is essentially a shell corporation, or other facts indicate that an independent corporate existence is essentially disregarded; or

g. Entering into franchising or licensing agreements and receiving income from franchising or licensing agreements that have acquired a Kentucky business situs.

(b) Employee or independent agent activity. A foreign corporation or pass-through entity that is not otherwise doing business in Kentucky may be considered to not be doing business in Kentucky, even if its employees or independent agents are performing certain de minimis activities in Kentucky. The following items shall serve as examples of de minimis activities:

1. A foreign corporation or pass-through entity sending various employees, e.g., legal staff and witnesses, to assist its independent legal counsel in defending a lawsuit in Kentucky. The law firm providing counsel shall be taxable in Kentucky;

2. A foreign corporation or pass-through entity sending its employees to Kentucky to purchase raw materials and inventory;

3. A foreign corporation or pass-through entity giving its highest performing sales person an expense paid vacation to Lake Barkley, Kentucky; or

4. A foreign corporation or pass-through entity sending its business records to Kentucky for use by its independent auditors.

Section 5. This administrative regulation shall apply to taxable years beginning on or after January 1, 2005.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: October 12, 2018

FILED WITH LRC: October 12, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on November 26, 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 November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, 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 amends 103 KAR 16:240 to update statutory references due to the passage of HB 487/GA2018 as well as clarify that: (1) the limited liability entity tax is not subject to the limitations imposed by Pub. L. 86-272, and (2) shipments into Kentucky are still afforded protection under Pub. L. 86-272 regardless of the method of delivery.

(b) The necessity of this administrative regulation: This regulation is necessary to provide guidance about the department's interpretation of nexus standards and the applicability of protection provided by Pub. L. 86-272 to out-of-state businesses and to

conform to recent statutory changes per KRS Chapter 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes require taxpayers with nexus in Kentucky to pay income and limited liability entity taxes. This regulation provides guidance about the applicability of nexus standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Clear and unambiguous guidance will assist taxpayers comply with Kentucky statutes, and will assist the department to objectively apply nexus standards to all taxpayers equally.

(2) If 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) 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: Out-of-state business taxpayers conducting business in Kentucky will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No substantive changes are included in this amendment that will require different action by regulated entities.

(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): Taxpayers will benefit from accurate statutory references and clarity regarding the applicability of Pub. L. 86-272 to the limited liability entity tax as well as clarity regarding the protection of Pub. L. 86-272 to shipments of goods into Kentucky.

(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: The department's current budget covers compliance efforts related to nexus determinations 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 increased fees or funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No direct or indirect fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering was not applied, because nexus standards are applied equally to all taxpayers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Revenue is the only unit, part or division of state or local government 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 131.130, 141.018, and 141.050(4)

3. Estimate the effect of this administrative regulation on the

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

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

(b) How 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 16:290. Apportionment; property factor.

RELATES TO: KRS 141.120, 141.121
STATUTORY AUTHORITY: KRS 131.130(4),
141.120(4)(b))

[EFFECTIVE: February 10, 2006]

NECESSITY, FUNCTION, AND CONFORMITY: All KRS 141.120(8) requires that all business or apportionable income of multistate corporations be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus a double weighted sales factor and the denominator of which is four (4). KRS 141.120(10)(b) requires the cabinet to promulgate administrative regulations providing how to determine the property factor used in the multistate business income apportionment formula. KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation establishes the requirements for determining the property factor of a multistate corporation.

Section 1. Definitions. (1) "Annual rent" means the actual sum of money or other consideration payable, directly or indirectly, by the corporation for its benefit for the use of the property;

(a) Including:

1. Any amount payable for the use of real or tangible personal property whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise; and

2. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement; and

(b) Not including:

1. Amounts paid as service charges, such as utilities or janitorial services; and

2. Incidental day-to-day expenses such as hotel or motel accommodations, or daily rental of automobiles.

(2) "Net annual rental rate" means the total annual rental paid, less total annual rental received from subrentals, which shall:

(a) Be subtracted if they constitute nonbusiness or non-apportionable income; and

(b) Not be subtracted if they constitute business or apportionable income because the property which produces the subrentals is used in the regular course of a trade or business of the taxpayer when it is producing business or apportionable income.

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(3) "Original cost" means the basis of the property for federal income tax purposes, prior to any federal adjustments, at the time of acquisition by the corporation and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, or abandonment.

Section 2. General. The property factor shall include all real and tangible personal property owned or rented and used during the taxable year, except coin, ~~and currency~~ ~~and pollution control property located in Kentucky for which a tax exemption certificate is issued by the Department of Revenue~~.

Section 3. Property Used. (1) Property shall be included in the property factor if it is actually used or is available for or capable of being used during the taxable year. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed shall be included in the factor.

(2) Inventory in process shall be included in the factor. Property or equipment under construction during the taxable year shall be excluded from the factor until it is actually used or is available for or capable of being used during the taxable year.

(3) Property used shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its sale.

Section 4. Consistency in Reporting. (1) Year-to-year consistency. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property or of excluding property from or including property in the property factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(2) State-to-state consistency. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports are not uniform in the valuation of property and in the exclusion of property from or the inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

Section 5. Property Factor: Numerator. (1) Property in transit between a buyer and seller shall be included in the numerator according to the state of destination. Property in transit between locations of the same corporation shall be considered at the destination location for purposes of the property factor.

(2) The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which is located within and without Kentucky during the taxable year shall be determined, for purposes of the numerator of the factor, on the basis of total time within the state during the taxable year. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

Section 6. Valuation of Owned Property. (1) Property owned by the corporation shall be valued at original cost.

(2) Capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state purposes.

(3) If the original cost of property is not ascertainable, is nominal, or is zero, the property shall be included in the factor at its fair market value at the date of acquisition by the corporation.

(4) Inventory shall be included in the factor by the valuation method used for federal income tax purposes.

(5) Property acquired by gift or inheritance shall be included in the factor at its basis for depreciation for federal income tax purposes.

Section 7. Rented Property. (1) Annual rental rate shall be determined as follows:

(a) If the property is rented for a twelve (12) month period, the annual rent;

(b) If the property is rented for less than a twelve (12) month period, the net rent paid for the actual period of rental; or

(c) If the property is rented for a period of twelve (12) or more months, and the current tax period covers a period of less than twelve (12) months due, for example, to a reorganization or change of accounting period, the net rent paid for the short tax period shall be annualized.

(2)(a) Property rented by a corporation shall be valued at eight (8) times the net annual rental rate.

(b) If this calculation results in a negative value or a clearly inaccurate valuation, any other method which will properly reflect the value may be required by the department or may be requested by the corporation, except the net annual rental rate shall not be less than the total annual rental rate multiplied by a fraction, the numerator of which is the fair market value of rent applicable to rental property used by the corporation divided by the fair market value of rent applicable to all of the corporation's rental property.

(c) If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(3) If property is used at no charge or rented for a nominal rate, the property shall be included in the property factor on the basis of the fair market value of rent for comparable property in the area.

(4) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the corporation regardless of whether the corporation is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. The original cost of a leasehold improvement shall be included in the factor.

Section 8. Monthly Averaging of Property. Averaging by monthly values shall apply if:

(1) Fluctuations in the values of the property exist during the tax period;

(2) Property is acquired after the beginning of the tax period or disposed of before the end of the tax period; or

(3) Fluctuations in the percentage of property used in Kentucky exist during the tax period.

Section 9. This administrative regulation shall be effective for tax periods beginning on or after January 1, 2005.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: October 12, 2018

FILED WITH LRC: October 12, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on November 26, 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 November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, 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 regulation provides detailed guidance for calculating the property factor for

taxpayers able or required to use this factor when apportioning income to Kentucky.

(b) The necessity of this administrative regulation: The detailed considerations of what constitutes "property" for purposes of calculating a property apportionment factor must be set forth for taxpayers to understand and comply with the law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes direct certain taxpayers to utilize a property factor. Furthermore, some alternative apportionment formulae make use of a property apportionment factor. This regulation provides guidance in accordance with statutory requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will help taxpayers better understand how the property apportionment factor is calculated.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this regulation bring it into compliance with recent law changes as a result of the passage of HB 487/GA2018.

(b) The necessity of the amendment to this administrative regulation: This regulation must be amended to be compliant with the requirements of Chapter 13A.

(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: Businesses, particularly providers of telecommunications, cable, and internet services, utilize the property factor when apportioning income to 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: No additional actions are required as the guidance is merely updated.

(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 anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Taxpayers will better understand how to calculate the property apportionment factor and will potentially avoid future tax assessments, penalties, and interest.

(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: The department's General Fund budget covers ongoing compliance related to this 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 required by this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No direct or indirect fees result from this regulation amendment.

(9) TIERING: Is tiering applied? Tiering was not applied, because all taxpayers utilizing the property apportionment factor 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? No government

agencies other than the Department of Revenue are impacted by this regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. None.

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

(a) How much 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 16:330. Apportionment and allocation; alternative apportionment; separate accounting.

RELATES TO: KRS 141.120, 141.901[-]

STATUTORY AUTHORITY: KRS 131.130[(4)], 141.120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120 provides for the division of income of interstate business for tax purposes. KRS 141.120(12)(a)(1)[141.120(9)(a)(4)] states that if the allocation and apportionment provisions do not fairly represent the extent of the taxpayer's[corporation's] business activity in Kentucky, a taxpayer[corporation] may petition for, or the department[of Revenue] may require, in respect to all or any part of the taxpayer's[corporation's] business activity, if reasonable, an alternative method of apportionment[separate accounting]. KRS 131.130(1) authorizes the Kentucky Department of Revenue[department] to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation explains alternative apportionment request procedures and when the separate accounting method shall apply.

Section 1. Petition for Alternative Apportionment.

(1) Before a taxpayer may file a return with an alternative method of allocation or apportionment pursuant to KRS 141.120(12), a taxpayer shall file a petition for the use of alternative apportionment with the department, and the petition shall have been approved or denied by the department. If the taxpayer chooses to be represented by a person or firm outside of its business entity, Form 20A100, Kentucky Declaration of Representative, shall be submitted to the department naming the taxpayer's representative(s). Form 20A100, as prescribed by the department, may be found online at <https://revenue.ky.gov>.

(2) All petitions shall be in written form and submitted to the attention of the Commissioner of the Department of Revenue. A petition submitted as an attachment to a return shall not be considered a valid petition. If the department processes a return which uses an unapproved alternative apportionment method, the action shall not be construed as the department's acceptance of the taxpayer's proposed alternative method.

(3) The department shall notify the taxpayer, in writing, if the requested alternative method has been approved. If approved, the

taxpayer may then file an amended or original return utilizing the approved alternative method.

Section 2. Denial of Petition for Alternative Apportionment. If a taxpayer disagrees with the department's denial of a petition for alternative apportionment, the taxpayer can pay the tax that is due pursuant to the Department's interpretation and seek a refund which, if denied, can be protested; or they can file a return with the denied alternative apportionment method, which will result in an assessment being issued that can then be protested pursuant to KRS 131.110 and 103 KAR 1:010.~~General. (1) A corporation may apply for an alternative apportionment method using separate accounting, or the Department of Revenue may require separate accounting, if the corporation or Department of Revenue establishes either that the business income subject to apportionment, or one (1) or more of the factors, does not fairly represent the activity of the corporation's business activities in Kentucky.~~

~~—(2) The fact that taxable income is greater or lesser, or that the corporation's accounting records reflect income by contracts or by states shall not be sufficient to support a request for separate accounting.]~~

Section 3[2]. Separate Accounting. If a taxpayer[corporation] is permitted or required to use the separate accounting method of apportionment, the authorization or requirement shall be applied prospectively from the date or taxable year it was directed in writing by the department~~[of Revenue]~~ or requested by the taxpayer[corporation]. Income tax returns filed under these conditions shall be subject to audit and review on a separate accounting basis to determine the correctness of income and expenses, but the method of apportioning net income shall not be changed retroactively. The fact that taxable income is greater or lesser, or that the taxpayer's accounting records reflect income by contracts or by states shall not be sufficient to support a request for separate accounting.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: October 12, 2018

FILED WITH LRC: October 12, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on November 26, 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 November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, 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 describes procedures for requesting an alternative apportionment method, and limitations relating to the separate accounting method of apportionment.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update 103 KAR 16:330 to conform to statutory language, and to provide procedures to

taxpayers who may request alternative apportionment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment updates 103 KAR 16:330 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 taxpayer requesting alternative apportionment.

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

(a) List 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): 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 taxpayers impacted by this regulation will be treated exactly the same when filing a petition for an alternative method of apportionment by the department.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue is that only government entity that will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1) and 141.120.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for any other state or local government agencies beyond the Department of

Revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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
(Amendment)**

103 KAR 16:340. [Apportionment and allocation; completed] Completed contract method.

RELATES TO: KRS 141.120[.]

STATUTORY AUTHORITY: KRS 131.130[(4)], 141.120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120 provides for the division of income of interstate business for tax purposes. KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and interpret Kentucky's tax laws. This administrative regulation explains how the apportionable[business] income apportionment factors shall be calculated when net income is reported on a completed contract basis.

Section 1. Definitions. (1) "Completed contract method of accounting" means a method of accounting whereby apportionable[business] income from long-term contracts is reported for the taxable year in which the contract is finally completed and accepted.

(2) "Long-term contracts" means contracts covering a period in excess of one (1) year from the date of execution of the contract to the date on which the contract is finally completed and accepted.

Section 2. General. If a corporation uses the completed contract method of accounting, the apportionable[business] income earned within Kentucky shall be determined by [a weighted fraction; the numerator of which is the weighted sales factor fifty (50) percent, plus the weighted property factor twenty-five (25) percent plus the weighted payroll factor twenty-five (25) percent, and the denominator of which is four (4);] the use of the apportionment factor determined pursuant to KRS 141.120, as modified by the following special rules for apportionable[business] income derived from long term contracts established in Sections 3 to 5[7] of this administrative regulation.

Section 3. Sales Factor. The numerator and denominator of the sales factor shall be determined pursuant to KRS 141.120(9)[141.120(8)(e)] and the following special rules:

(1) Gross receipts derived from the performance of a contract shall be attributable to Kentucky if the construction project is located in Kentucky. If the construction project is located partly within and partly without Kentucky, the gross receipts attributable to Kentucky shall be based upon the ratio which construction costs for the project in Kentucky incurred during the taxable year bear to the total of construction costs for the entire project during the taxable year.

(2) The sales factor shall include the portion of the gross

receipts (progress billings) received or accrued, whichever is applicable, during the taxable year attributable to each contract.

Section 4. ~~Property Factor. The numerator and denominator of the property factor shall be determined pursuant to KRS 141.120(8)(a) and the following special rules:~~

~~(1) The average value of the corporation's cost (including materials and labor) of construction in progress, to the extent that the costs exceed progress billing (accrued or received, depending on whether the taxpayer is on the accrual or cash basis for keeping its accounts), shall be included in the denominator of the property factor.~~

~~(2) The value of any construction costs attributable to construction projects in this state shall be included in the numerator of the property factor.~~

~~(3) Rent paid for the use of equipment directly attributable to a particular construction project shall be included in the property factor at eight (8) times the net annual rental rate even though the rental expense may be capitalized into the cost of construction.~~

Section 5. Payroll Factor. The numerator and denominator of the payroll factor shall be determined pursuant to KRS 141.120(8)(b) and the following special rules:

(1) Compensation paid employees which is attributable to a particular construction project shall be included in the payroll factor even though capitalized into the cost of construction.

(2) Compensation paid employees who, in the aggregate, perform most of their services in a state to which their employer does not report them for unemployment tax purposes, shall be attributable to the state in which the services are performed.

Section 6. ~~(1) The completed contract method of accounting shall require that the reporting of income (or loss) be deferred until the year in which the construction project is completed or accepted.~~

(2) Accordingly, a separate computation shall be made for each contract completed during the taxable year, regardless of whether the project is located within or without Kentucky, to determine the amount of income, which is attributable to sources within Kentucky.

(3) The amount of income from each contract completed during the taxable year apportioned to this state, plus other apportionable[business] income apportioned to this state ~~by the regular three (3) factor formula~~ such as interest income, rents, royalties, income from short-term contracts, etc., plus all non-apportionable[nonbusiness] income allocated to Kentucky, shall be the measure of tax for the taxable year.

(4) The amount of income (or loss) from each contract which is derived from sources within Kentucky using the completed contract method of accounting shall be computed as follows:

(a) In the taxable year in which the contract is completed, the income (or loss) therefrom shall be determined.

(b) The income (or loss) determined by paragraph (a) of this subsection shall be apportioned to Kentucky by the following method:

1. A fraction shall be determined for each year during which the contract was in progress. The numerator shall be the amount of construction costs paid or accrued in each year during which the contract was in progress and the denominator shall be the total of all construction costs for the project.

~~2. [Each percentage determined by subparagraph 1 of this paragraph shall be multiplied by the apportionment formula percentage for that particular year as determined in Section 2 of this administrative regulation.~~

3. ~~The percentages determined by subparagraph 2 of this paragraph for each year during which the contract was in progress shall be totaled.] The amount of total income (or loss) from the contract determined under paragraph (a) of this subsection shall be multiplied by the total percentage determined by subparagraph 1 of this subsection. The resulting income (or loss) shall be the amount of apportionable[business] income from the contract derived from sources within Kentucky.~~

Section 5[7]. Computation for Year of Withdrawal, Dissolution or Cessation of Business. (1) Use of the completed contract method of accounting shall require that income derived from sources within Kentucky from incomplete contracts in progress outside Kentucky on the date of withdrawal, dissolution or cessation of business in Kentucky be included in the measure of tax for the taxable year during which the corporation withdraws, dissolves or ceases doing business in this state.

(2) The amount of income (or loss) from each contract to be apportioned to Kentucky by the apportionment method established in Section 6(4)(b) of this administrative regulation of this administrative regulation shall be determined as follows:

(a) The amount of business income (or loss) for each contract shall be the amount by which the gross contract price from each contract which corresponds to the percentage of the entire contract which has been completed from the commencement thereof to the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made during the period in connection with each contract.

(b) In so doing, account shall be taken of the material and supplies on hand at the beginning and end of the taxable year for use in each contract.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: October 12, 2018

FILED WITH LRC: October 12, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on November 26, 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 November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, 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: HB 487/GA2018 modified Kentucky law to eliminate multi-factor allocation of apportionable (business) income. This amendment removes language about the payroll and property factors for completed contract method taxpayers.

(b) The necessity of this administrative regulation: Chapter 13A requires regulations to have statutory support and conform with statutes. This amendment corrects the regulation for changes brought about by HB 487/GA2018.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes allow the complete contract method of accounting, and this regulation provides technical guidance for determining apportionable (business) receipts under that method.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Taxpayers have a clearer understanding of how receipts are allocated to multi-state business that use the completed contract method of accounting. Furthermore, department personnel gain understanding and process efficiencies through the consistent application of the rules in this area.

(2) If 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) 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: Business taxpayers permitted to utilize the completed contract method of accounting are affected by the guidance provided 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: Substantively, there are no major changes to this regulation as it relates to determining the receipts factor for apportionment. Therefore, no actions need to be taken to comply with this regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clear guidance and updates to current statutory authority assist business taxpayers with calculating their correct tax liability to avoid penalties and interest.

(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: The department's current budget funds regular implementation and enforcement efforts related to the use of the completed contract method of accounting.

(7) Provide an assessment of whether an 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 required to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No direct or indirect fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering was not applied, because all taxpayers utilizing the complete contract method of accounting 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 Finance and Administration Cabinet, Department of Revenue is the only government entity 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 131.130(1) and 141.120

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

(a) How much 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? Only currently budgeted department funds and staff will be used to implement this amendment. An exact dollar amount cannot be determined.

(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
Kentucky Retirement Systems
(Amendment)

105 KAR 1:145. Voluntary Cessation of participation by employers.

RELATES TO: KRS 61.510, 61.522, 61.546, 61.552, 61.555, 61.565, 61.590, 61.598, 61.625, 61.637, 61.675, 78.510 – 78.852, 26 U.S.C. 401

STATUTORY AUTHORITY: KRS 61.522(8), 61.645(9)(e) ~~[61.645(9)(g)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) ~~[61.645(9)(g)]~~ authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705, and 78.510 to 78.852. KRS 61.522 authorizes certain participating employers in the Kentucky Employees Retirement System and the County Employees Retirement System to voluntarily cease participation if that employer pays [they pay] the full actuarial cost of benefits accrued by its current and former employees. KRS 61.522(8) requires the Board [board] to promulgate administrative regulations to administer the provisions of the statute. This administrative regulation establishes the procedures and requirements for voluntary cessation from [of] participation in the Kentucky Employees Retirement System and the County Employees Retirement System [by qualifying employers].

Section 1. Definitions. (1) "Ceased employer" means an employer:

(a) Whose Form 7730, Application for Voluntary Cessation from CERS or KERS, has been approved by Kentucky Retirement Systems [the systems]; and

(b) Who has paid the full actuarial cost [:

1. Has paid the full actuarial cost; or

2. Is currently paying the full actuarial cost by installments for a period of time determined by the board pursuant to KRS 61.522(3)(a)].

(2) "Effective cessation date" means the last day of the Kentucky Employees Retirement Systems' or the County Employees Retirement Systems' plan year.

(3) "Plan year" means the period beginning July 1 and ending June 30.

Section 2. (1) An employer may request an estimate of the actuarial cost of ceasing participation from Kentucky Employees Retirement System or County Employees Retirement System. The request shall be made by completing the Form 7725, Request for Estimated Actuarial Cost of Voluntary Cessation.

(2) Kentucky Retirement Systems shall provide the estimate of the cost as of the next available cessation date.

(3) Kentucky Retirement Systems shall provide the estimate of the cost based on the information currently in its database and projecting the service and salary of all active employees as if they remain employed and continue to earn the same creditable compensation through the next available cessation date.

(4) The estimated actuarial cost of ceasing participation shall

not be binding on Kentucky Retirement Systems.

(5) The employer shall not rely on the estimated actuarial cost of ceasing participation.

(6) Kentucky Retirement Systems shall notify the employer of the administrative cost to process the Form 7725, Request for Estimated Actuarial Cost of Voluntary Cessation. The administrative cost shall be calculated as follows:

(a) If the number of employees and former employees to be submitted to the actuary for purposes of determining the estimated actuarial cost of voluntary cessation equals one (1) to 100 employees, the administrative cost shall be \$1,500.

(b) If the number of employees and former employees to be submitted to the actuary for purposes of determining the estimated actuarial cost of voluntary cessation equals 101 or more employees, the administrative cost shall be \$4,000.

(7) Kentucky Retirement Systems shall process the Form 7725, Request for Estimated Actuarial Cost of Voluntary Cessation, after the employer has remitted its payment for the administrative cost.

Section 3. (1) The governing body of an employer seeking to cease participation in Kentucky Employees Retirement System or County Employees Retirement System shall pass a resolution to voluntarily cease participation in Kentucky Employees Retirement System or County Employees Retirement System.

(2) The resolution shall contain the following statements:

(a) That the employer has decided to voluntarily cease participation in Kentucky Employees Retirement System or County Employees Retirement System;

(b) That the employer acknowledges that the employer is subject to the requirements and restrictions of KRS 61.522 and this administrative regulation;

(c) That the employer acknowledges that in order to voluntarily cease participation in Kentucky Employees Retirement System or County Employees Retirement System the employer shall pay the full actuarial cost of withdrawal and all administrative costs;

(d) That the employer acknowledges that its [the employer's] employees will no longer earn service credit in Kentucky Employees Retirement System or County Employees Retirement System for employment with the employer after its [the employer's] approved effective cessation date from Kentucky Employees Retirement System or County Employees Retirement System under KRS 61.522 and this administrative regulation;

(e) That the employer agrees to cooperate with Kentucky Retirement Systems to educate its [the employer's] employees about the effect of the employer's cessation on the employees' [their] retirement accounts and the employees' [their] options regarding their retirement accounts; and

(f) That the employer shall not mandate, force, or require its employees to take a refund of their accumulated account balance as defined by KRS 61.510(41) or 78.510(38) or retaliate against its employees who chose not to take refunds of their accumulated account balance as defined in KRS 61.510(41) or 78.510(38).

Section 4. (1) An employer seeking to cease participation in Kentucky Employees Retirement System or County Employees Retirement System shall file a completed Form 7730, Application for Voluntary Cessation from CERS or KERS, with the executive director of Kentucky Retirement Systems by December 31 during the plan year containing the employer's selected effective cessation date.

(2) The employer shall submit the following documents with its Form 7730, Application for Voluntary Cessation from CERS or KERS:

(a) The Resolution of the governing body [Board] of the employer resolving to voluntarily cease its participation in Kentucky Employees Retirement System or County Employees Retirement System;

(b) The employer's Articles of Incorporation, if applicable;

(c) The employer's current by-laws, if applicable;

(d) The employer's Certificate of Existence/Authorization from the Kentucky Secretary of State, if applicable;

(e) Documentation of the alternative retirement program

created by or being created by the employer for its employees, such as a written description of the alternative retirement program;

(f) The employer's most recent five (5) audited financial statements and independent auditor's reports;

(g) The employer's most recent five (5) Consolidated Annual Financial Reports, if applicable; and

(h) ~~For employers intending to pay the full actuarial cost by lump sum,~~ Documentation of the source of the funds the employer intends to use to pay the full actuarial cost; ~~and~~

(i) ~~For employers intending to pay the full actuarial costs by installment payment plan, documentation of:~~

1. Source of funds to pay the installment payments;

2. List of real property owned by the employer, including deeds of conveyance, title, all liens or encumbrances on the real property, and any current written contractual lease or rental agreement of the real property identified;

3. List of liabilities of the employer;

4. Inventory of all other chattel and personal property owned by the employer or in which the employer has an interest that may be used as collateral by the employer, including a description of the property, the location of the property, and an estimated value; and

5. A Proposed Detailed Financing Statement.]

(3) The employer shall submit with its Form 7730, Application for Voluntary Cessation from CERS or KERS, an encrypted electronic file listing each current and former full time employee as defined by KRS 61.510(21) and 78.510(21) who were employed during any time period the employer participated in Kentucky Employees Retirement System or County Employees Retirement System, containing:

(a) Full name;

(b) Last known address;

(c) Date of birth;

(d) Social security number or Kentucky Retirement Systems member identification number[id];

(e) Beginning date of employment;

(f) Date employment ended, if applicable;

(g) Sick leave balance;

(h) Beginning and ending dates of any active duty military service when the employee was not employed by the employer filing the Form 7730, Application for Voluntary Cessation from CERS or KERS, if available; and

(i) Beginning and ending dates of any active duty military service when the employee was employed by the employer filing the Form 7730, Application for Voluntary Cessation from CERS or KERS.

(4) The employer shall submit with its Form 7730, Application for Voluntary Cessation from CERS or KERS, a list of pending lawsuits, legal actions, arbitrations, mediations, and other litigation, ~~except for cases in which the employer is seeking to collect a debt owed to it by one (1) of its members,~~ to which the employer is a party including:

(a) Name of the case;

(b) The case number;

(c) The name and address of the court, arbitrator, mediator, or administrative agency in which the case is pending; and

(d) A copy of the complaint or a description of the allegations made in the complaint as well as the type and amount of relief sought by the plaintiff or plaintiffs.

(5) Kentucky Retirement Systems shall not accept or continue processing a Form 7730, Application for Voluntary Cessation from CERS or KERS, for an employer who:

(a) Has not paid or otherwise resolved all its outstanding invoices with Kentucky Retirement Systems;

(b) Has reporting that is not correct in accordance with KRS 61.675, 78.625, and 105 KAR 1:140; or

(c) Is a party to pending legal action in which Kentucky Retirement Systems is an adverse party and the result of which may affect the accounts of the employer's employees, the employer's full actuarial cost of ceasing participation, or the amount of employer contributions owed by the employer.

(6) The Board of Trustees of Kentucky Retirement Systems shall accept or reject the Form 7730, Application for Voluntary Cessation from CERS or KERS, for processing prior to the

effective cessation date following submission of the Form 7730, Application for Voluntary Cessation from CERS or KERS.

Section 5. (1) The employer shall pay the administrative costs incurred by Kentucky Retirement Systems for processing the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS.

(2) The employer shall pay \$10,000 as a deposit with the Form 7730, Application for Voluntary Cessation from CERS or KERS.

(3) Kentucky Retirement Systems shall place the deposit in a designated account and shall utilize the funds to pay the administrative costs of processing the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS.

(4) Kentucky Retirement Systems shall maintain records of all costs associated with the processing of the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, including:

(a) The cost of compensation and benefits of Kentucky Retirement Systems' employees computed on an hourly basis;

(b) Fees incurred by Kentucky Retirement Systems for use of external professional services; and

(c) The costs of postage, printing, and other expenses incurred by Kentucky Retirement Systems.

(5) Kentucky Retirement Systems shall calculate its total administrative costs and send an invoice to the employer either after the employer gives notice to Kentucky Retirement Systems pursuant to Section 10(3) of this administrative regulation or following withdrawal of the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS.

(a) Kentucky Retirement Systems shall apply the deposit received pursuant to subsection (2) of this section to any administrative costs incurred by Kentucky Retirement Systems as a result of the employer seeking to utilize the provisions of KRS 61.522.

(b) Following the application of the deposit to the outstanding administrative costs, Kentucky Retirement Systems shall submit an invoice to the employer for the additional administrative costs and the employer shall pay the invoice for the remaining administrative costs within thirty (30) days of the date of the invoice.

(6)(a) If the total administrative cost is less than the deposit paid by the employer, Kentucky Retirement Systems shall apply the remaining balance of the deposit to the:

1. Full actuarial cost if the employer gives notice of its intention to proceed with the voluntary withdrawal pursuant to Section 10(3) [9(3)] of this administrative regulation; or

2. Amount owed by the employer to Kentucky Retirement Systems for continued participation if the employer gives notice of its intention not to proceed with the voluntary withdrawal pursuant to Section 10(3) [9(3)] of this administrative regulation.

(b) Kentucky Retirement Systems shall refund any remaining balance to the employer after the amounts due pursuant to paragraph (a) of this subsection have been satisfied.

(7) The Board of Trustees of Kentucky Retirement Systems shall not consider the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, until the employer has paid all the administrative costs incurred by Kentucky Retirement Systems.

(8) The costs paid pursuant to this section shall not be refunded to the employer if the employer withdraws its application.

Section 6. (1) Kentucky Retirement Systems shall make [take] reasonable efforts to notify each employee identified on the list provided by the employer that the employer has filed a Form 7730, Application for Voluntary Cessation from CERS or KERS, to voluntarily cease participating in County Employees Retirement System or Kentucky Employees Retirement System.

(2) Kentucky Retirement Systems shall provide notice informing the employee of the employee's right to request an irrevocable refund, pursuant to KRS 61.522(3)(a)5., of their accumulated account balance as defined in KRS 61.510(41) or 78.510(38) within sixty (60) days of the employer's effective cessation date by submitting a completed Form 1500, KRS 61.522 60-Day Transfer Request, to Kentucky Retirement Systems. The

notice shall be sent at least ten (10) days prior to the employer's effective cessation date.

(a) Kentucky Retirement Systems shall send the notice to the active employees listed by the employer who has filed a Form 7730, Application for Voluntary Cessation from CERS or KERS, on its most recent report required by KRS 61.675 or 78.625 filed prior to the date the notices required by KRS 61.522 are mailed.

(b) The employer shall submit the name and contact information of each employee it hires between the date the employer filed its Form 7730, Application for Voluntary Cessation from CERS or KERS, and the employer's effective cessation date within five (5) days of the date the employee begins working for the ceasing employer.

(c) A Form 1500, KRS 61.522 60-Day Transfer Request, submitted on or before the employer's effective cessation date shall be void.

(d) A Form 1500, KRS 61.522 60-Day Transfer Request, submitted after the last day of the sixty (60) day refund period shall be void.

(e) The employee shall be employed by the employer who has filed a Form 7730, Application for Voluntary Cessation from CERS or KERS, on the employer's effective cessation date to be eligible to request a refund of his accumulated account balance pursuant to KRS 61.522(3)(a)5.

(f) If the employee requests a refund of his accumulated account balance pursuant to KRS 61.522(3)(a)5., the employee's accumulated account balance shall be transferred to the employer's alternative retirement plan pursuant to this section even if the employee terminates employment with the employer prior to the date the Board of Trustees of Kentucky Retirement Systems has approved the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, and the employer has become a ceased employer.

(3)(a) The employer who has filed a Form 7730, Application for Voluntary Cessation from CERS or KERS, shall establish an alternative retirement plan that is a qualified plan pursuant to 26 U.S.C. 401 on or before the expiration of the sixty (60) day refund period provided in KRS 61.522(3)(a)5.

(b) The employer shall submit verification that it has established an alternative retirement plan that is a qualified plan pursuant to 26 U.S.C. 401.

(c) Kentucky Retirement Systems shall accept one (1) of the following as verification that the employer has established an alternative retirement plan that is a qualified plan pursuant to 26 U.S.C. 401:

1. A determination letter from the Internal Revenue Service providing that the alternative retirement plan established by the employer is a qualified plan pursuant to 26 U.S.C. 401;

2. A letter from the employer's legal counsel certifying that the alternative retirement plan established by the employer is intended as a qualified plan pursuant to 26 U.S.C. 401 capable of accepting trustee to trustee transfers; or

3. Other reliable verification as determined by Kentucky Retirement Systems.

(d) Refunds requested pursuant to KRS 61.522(3)(a)5. shall be transferred to the alternative retirement plan established by the employer who has filed a Form 7730, Application for Voluntary Cessation from CERS or KERS, by trustee to trustee transfer after the Board of Trustees of Kentucky Retirement Systems has approved the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, and the employer has become a ceased employer.

1. The alternative retirement plan shall accept and separately account for post-tax employee contributions.

2. The employer's legal counsel shall provide written certification that its alternative retirement plan shall accept and separately account for post-tax employee contributions.

(e) If the employer who has filed a Form 7730, Application for Voluntary Cessation from CERS or KERS, fails to establish an alternative retirement plan pursuant to paragraph (a) of this subsection or refuses to accept and separately account for post-tax employee contributions, the refund requests pursuant to KRS 61.522(3)(a)5. shall be void. The employees who filed the refund

requests pursuant to KRS 61.522(3)(a)5. shall remain members of the system and shall be included in the full actuarial cost.

(4) The employer shall not mandate, force, or require its employees to take a refund of their accumulated account balance as defined in KRS 61.510(41) or 78.510(38) or retaliate against any employee who does not take refund of their accumulated account balance as defined by KRS 61.510(41) or 78.510(38).

(5) Former employees of the ceased employer who are currently participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System, due to employment with a participating agency, shall not be eligible to take a refund of their accumulated account balance until terminating employment with the participating employer.

(6) Current employees of the employer who are also employed by another employer participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance.

(7) Current employees of the employer on its effective cessation date may request a refund pursuant to KRS 61.522(3)(a)5.

(8) Former employees of the employer who are not participating in State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance pursuant to KRS 61.522(3)(a)5. ~~(9) Current and former employees shall not be eligible to purchase service credit pursuant to KRS 61.552 after the employer's effective cessation date.~~

~~(a) If the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, is withdrawn by the employer or rejected by the Board of Trustees of Kentucky Retirement Systems, the employee's eligibility to purchase service pursuant to KRS 61.552 shall be reinstated.~~

~~(b) An employee may purchase service credit pursuant to KRS 61.552(23) for service with an employer other than the employer who has filed a Form 7730, Application for Voluntary Cessation from CERS or KERS.~~

~~(10)(a) Former employees shall not be eligible to purchase service after the employer's effective cessation date pursuant to KRS 61.552(1) through (5), (12), (14), (15), (21), (22), (23), (24), (26), (28), and (30) if the service is related to employment with the employer who has filed a Form 7730, Application for Voluntary Cessation from CERS or KERS.~~

~~(b) If the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, is withdrawn by the employer or rejected by the Board of Trustees of Kentucky Retirement Systems, the employee's eligibility to purchase service pursuant to KRS 61.552(1) through (5), (12), (14), (15), (21), (22), (23), (24), (26), (28), and (30) shall be reinstated.]~~

Section 7. (1) The employer shall continue to file reports in accordance with KRS 61.675, 78.625, and 105 KAR 1:140 after the employer's effective cessation date until the Form 7730, Application for Voluntary Cessation from CERS or KERS, is approved by the Board of Trustees of Kentucky Retirement Systems and the employer becomes a ceased employer.

(2) The employer shall continue to remit employer contributions in accordance with KRS 61.675, 78.625, and 105 KAR 1:140 after the effective cessation date until the Form 7730, Application for Voluntary Cessation from CERS or KERS, is finally approved by the Board of Trustees of Kentucky Retirement Systems and the employer becomes a ceased employer.

(a)1. Kentucky Retirement Systems shall hold the employer contributions until the Form 7730, Application for Voluntary Cessation from CERS or KERS, is finally approved by the Board of Trustees of Kentucky Retirement Systems and the employer becomes a ceased employer.

2. Kentucky Retirement Systems shall credit the entire sum of the employer contributions remitted pursuant to this section to the employer's full actuarial cost ~~[if the employer is paying by lump sum as established in Section 10(1)(a) of this administrative regulation~~

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or to the employer's initial payment under the installment payment plan established pursuant to Section 10(1)(b) of this administrative regulation].

(b) If the employer does not become a ceased employer because it withdraws its Form 7730, Application for Voluntary Cessation from CERS or KERS, or if its Form 7730, Application for Voluntary Cessation from CERS or KERS, is rejected by the Board of Trustees of Kentucky Retirement Systems, the employer contributions remitted pursuant to this subsection shall be credited towards any outstanding contributions owed for its continued participation in Kentucky Employees Retirement System or County Employees Retirement System while the Form 7730, Application for Voluntary Cessation from CERS or KERS, was pending.

(c) Kentucky Retirement Systems shall refund any remaining balance to the employer after the amounts due pursuant to paragraphs (a) and (b) of this subsection have been satisfied.

(3)(a) If the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, is withdrawn by the employer or is rejected by the Board of Trustees of Kentucky Retirement Systems, the employer shall resume withholding employee contributions effective the month after the month in which the Form 7730, Application for Voluntary Cessation from CERS or KERS, was withdrawn or rejected.

(b) Pursuant to KRS 61.552(20)~~[61.552(23)]~~, if the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, is withdrawn by the employer or is rejected by the Board of Trustees of Kentucky Retirement Systems, Kentucky Retirement Systems shall provide notice to each employee of the amount of employee contributions due to Kentucky Retirement Systems for the time period between the employer's proposed effective cessation date and the date the Form 7730 was withdrawn or rejected.

(c) The employee shall not receive service credit for the period between the employer's proposed cessation date and the date the Form 7730, Application for Voluntary Cessation from CERS or KERS, was withdrawn or rejected, if the employee does not pay the employee contributions to Kentucky Retirement Systems.

(4)(a) If a member who is an employee of the employer that has filed a Form 7730, Application for Voluntary Cessation from CERS or KERS, files for disability retirement benefits while the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS is pending, Kentucky Retirement Systems shall use the employer's proposed effective cessation date as the member's last day of paid employment if the member has not established a last day of paid employment prior to the employer's effective cessation date.

(b) If the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, is withdrawn by the employer or rejected by the Board of Trustees of Kentucky Retirement Systems, Kentucky Retirement Systems shall determine the member's last day of paid employment pursuant to KRS 61.510(32) if the member has paid the employee contributions due.

(c) If an employee does not pay the employee contributions due, the first day of the month the employer resumes withholding employee contributions shall be a reemployment date for purposes of determining eligibility for disability retirement benefits.

(5) The employer shall continue to pick-up payments for installment purchase of service for any employee who is purchasing service pursuant to KRS 61.552(14)~~[61.552(16)]~~ and 105 KAR 1:150.

(a) The employee shall have sixty (60) days from the date the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, is finally approved by the Board of Trustees of Kentucky Retirement Systems and the employer becomes a ceased employer to pay in full any outstanding balance on the installment purchase agreement pursuant to KRS 61.552(14)~~[61.552(16)]~~ and 105 KAR 1:150.

(b) If the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, is withdrawn by the employer or is rejected by the Board of Trustees of Kentucky Retirement Systems, the employee's installment purchase of service agreement shall remain in effect.

(6)(a) The four (4) percent employer pay credit and applicable

interest accrued while employed with a ceased employer shall vest as of the effective cessation date for those employees who began participating on or after January 1, 2014~~[Employees of the ceased employer who began participating on or after January 1, 2014 shall be vested in the four (4) percent employer pay credit and applicable interest attributable to the time the employee was employed by the ceased employer that had been accrued as of the ceased employer's cessation date].~~

(b) Employees of the ceased employer who began participating on or after January 1, 2014, shall not be vested in the four (4) percent employer pay credit or applicable interest attributable to the time the employee was employed with an employer other than the ceased employer.

Section 8. (1) Employees of an employer that has submitted a Form 7730, Application for Voluntary Cessation from CERS or KERS, shall comply with the provisions of KRS 61.590, 61.625 and 61.637.

(2) Employees of a ceased employer shall terminate employment with all participating employers of the State Police Retirement System, County Employees Retirement System, Kentucky Employees Retirement System and the ceased employer prior to retiring pursuant to KRS 61.590 or taking a refund pursuant to KRS 61.625.

(3)(a) Employees of a ceased employer shall comply with KRS 61.637 and 105 KAR 1:390 after retirement.

(b) The ceased employer shall certify that the employee seeking to retire or take a refund is terminating employment or has terminated employment with no prearranged agreement to return to work for the ceased employer.

Section 9. (1) Employees~~[The employee]~~ shall receive service credit for sick leave accrued pursuant to KRS 61.546 or 78.616 as of the effective~~[employer's]~~ cessation date.

(a) If the employer participates in a sick leave program established in KRS 61.546 or 78.616, the~~[The]~~ employer shall report to Kentucky Retirement Systems the number of hours of each employee's accumulated sick leave as of the effective cessation date~~[if the employer is under one (1) of the sick leave programs established in KRS 61.546 or 78.616(1) through (4)].~~

(b) The employer shall report the number of days of each employee's accumulated sick leave as of the cessation date if the employer elected the sick leave program established in KRS 78.616(5)].

[b](e)] Kentucky Retirement Systems shall credit the months of sick leave service reported pursuant to this section to the employee's total service credit to determine~~[and include the months in the calculation of]~~ the employer's full actuarial cost.

(2) Kentucky Retirement Systems shall credit the months of military service~~[to which the employee is entitled]~~ pursuant to KRS 61.555(1-2)~~[KRS 61.555(1) and (2) if reported by the employer or by the employee]~~ prior to the employer's effective cessation date and include the months in the calculation of the employer's full actuarial cost.

Section 10. (1) The employer shall pay or otherwise resolve all its invoices and correct all reporting in accordance with KRS 61.675, 78.625, and 105 KAR 1:140 by August 31 after the effective cessation date.

(2) Kentucky Retirement Systems shall provide the employer with the amount of the full actuarial cost by sending a notice of actuarial cost and the report of the actuary to the employer.

(3) The employer shall notify Kentucky Retirement Systems in writing of its decision to voluntarily cease participation or withdraw the Form 7730, Application for Voluntary Cessation from CERS or KERS, within sixty (60) days of the date of the notice of actuarial cost.~~[If the employer intends to cease participation, it shall also provide notice of how it intends to pay the full actuarial cost.]~~

(a) If an employer intends to pay the full actuarial cost by installment payment plan, the employer shall provide Kentucky Retirement Systems a list of collateral to use as security for the installment payment plan.

(b) The employer shall take all actions necessary to perfect the

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security interest in the collateral for Kentucky Retirement Systems.]

(4) The employer shall submit the final plan documents for its alternative retirement program with its notification if it intends to cease participation.

(5) The Board of Trustees of Kentucky Retirement Systems shall not consider the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, until the employer has paid all the administrative costs incurred by Kentucky Retirement Systems, pursuant to Section 5 of this administrative regulation.

(6) After the employer has paid all the administrative costs, the Board of Trustees of Kentucky Retirement Systems shall approve or reject the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS.

Section 11. (1) The ceased employer shall pay the full actuarial cost of benefits accrued by its current and former employees by lump sum payment within thirty (30) days of the date the Board of Trustees of Kentucky Retirement Systems approves its application.

(2) If the employer's Form 7730 has not received final approval by the Board of Trustees of Kentucky Retirement Systems or the ceasing employer has not paid the full actuarial cost by lump sum within thirty (30) days of the date of the Board of Trustees of Kentucky Retirement Systems' final approval of its application, the employer's Form 7730 shall be void.[-

(a) Lump sum payment paid within thirty (30) days of the date the Board of Trustees of Kentucky Retirement Systems approves its application; or

(b) Installment payment plan pursuant to KRS 61.522(3).

(2) Kentucky Retirement Systems shall use the assumed rate of return adopted by the Board of Trustees of Kentucky Retirement Systems as of the employer's cessation date as the interest rate for the ceased employer's installment payment plan.

(3)(a) A ceased employer whose full actuarial cost is less than \$40,000,000.00 shall have up to sixty (60) months to pay the full actuarial cost plus interest at the actuarially assumed rate of return by monthly installment payments.

(b) A ceased employer whose full actuarial cost is greater than or equal to \$40,000,000.00 and less than \$70,000,000.00 shall have up to 120 months to pay the full actuarial cost plus interest at the actuarially assumed rate of return by monthly installment payments.

(c) A ceased employer whose full actuarial cost is greater than or equal to \$70,000,000.00 and less than \$100,000,000.00 shall have up to 180 months to pay the full actuarial cost plus interest at the actuarially assumed rate of return by monthly installment payments.

(d) A ceased employer whose full actuarial cost is greater than or equal to \$100,000,000.00 shall have up to 240 months to pay the full actuarial cost plus interest at the actuarially assumed rate of return by monthly installment payments.

(e) The amount of a ceased employer's monthly installment payment shall not be less than the average amount of the monthly employer contributions remitted during in the fiscal year containing the employer's effective cessation date.

(4) The ceased employer shall pay the initial installment payment for the fiscal year after the employer's cessation date within thirty (30) days of the final decision of the Board of Trustees approving the ceased employer's application for voluntary withdrawal.

(5) The ceased employer shall pay installment payments annually for the ensuing fiscal year on July 1 of each year.

(6) If the ceased employer defaults on the installment payment plan agreement, the employer shall be responsible for all administrative and legal fees incurred by Kentucky Retirement Systems to enforce the agreement.[-

Section 12. (1) A person eligible to purchase service credit pursuant to KRS 61.552 related to employment with the ceasing employer, must either complete the purchase or enter into a service purchase agreement with Kentucky Retirement Systems no later than the employer's effective cessation date.

(2) Current and former employees shall not be eligible to purchase service credit related to employment with a ceased

employer, pursuant to KRS 61.552 after the employer's effective cessation date.

(3) A person may purchase service credit pursuant to KRS 61.552(20) if the service is not related to employment with the ceased employer.

(4) A former employee of a ceased employer who becomes employed with a participating employer after terminating employment with the ceased employer may purchase service credit pursuant to KRS 61.552 that is not related to employment with a ceased employer.

(5) An employee's eligibility to purchase service credit pursuant to KRS 61.552 shall be reinstated if the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, is withdrawn by the employer or rejected by the Board of Trustees of Kentucky Retirement Systems.[-(1) A person shall not purchase service pursuant to KRS 61.552(1) through (5), (12), (14), (15), (21), (22), (23), (24), (26), (28), and (30) if the service was with a ceased employer.

(2) An employee who becomes employed with a participating employer after terminating employment with a ceased employer may purchase service credit the employee would otherwise be eligible to purchase pursuant to KRS 61.552(8), (11), (18), (19), (20), (25), and (29).

Section 13. ~~If the ceased employer was the last participating employer for the employee prior to the employee's retirement, the additional actuarial costs resulting from annual increases over ten (10) percent as established in KRS 61.598 shall not be invoiced to the ceased employer, but shall be collected pursuant to KRS 61.565.]~~

Section 13[14]. (1) If an employer files legal action against Kentucky Retirement Systems regarding the provisions of KRS 61.522 or this administrative regulation, the employer shall pay all administrative costs and legal fees incurred by Kentucky Retirement Systems if the employer's legal action against Kentucky Retirement Systems is unsuccessful or is dismissed for any reason other than by the agreement of the parties.

(2) The Board of Trustees of Kentucky Retirement Systems shall not approve or deny the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, until the legal action is resolved.[Section 15. ~~If the employer's Form 7730 has not received final approval by Kentucky Retirement Systems' Board of Trustees or the withdrawing employer has not paid either the full actuarial cost by lump sum or the initial payment pursuant to the installment plan on or before June 30 of the year following the requested withdrawal date, the employer's Form 7730 shall be void.]~~

Section 14[16]. If any due date or time period deadline provided in KRS 61.522 or this administrative regulation falls on a Saturday, Sunday, or day that Kentucky Retirement Systems is closed due to state holiday, the due date or time period deadline shall extend to the close of business of the next business day.

Section 15[17]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 7725, "Request for Estimated Actuarial Cost of Voluntary Cessation", October 2015;

(b) Form 7730, "Application for Voluntary Cessation from CERS or KERS", July 2018[March 2016]; and

(c) Form 1500, "KRS 61.522 60-Day Transfer Request", March 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

November 27, 2018 at 10:30 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky. 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 until November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mark C. Blackwell, Executive Director Office of Legal Services, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, email mark.blackwell@kyret.ky.gov, phone (502) 696-8800 ext. 8645, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mark C. Blackwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the processes and procedures for an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System to voluntarily cease participation in accordance with KRS 61.522.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the processes and procedures for an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System to voluntarily cease participation in accordance with KRS 61.522.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the processes and procedures for an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System to voluntarily cease participation in accordance with KRS 61.522.

(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 processes and procedures for an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System to voluntarily cease participation in accordance with KRS 61.522.

(2) If 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 provisions regarding installment payments to accurately reflect KRS 61.522(3)(a)6., which removed the option of installment payments and requires payment of the actuarial cost by the employer by lump sum.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove the provisions regarding installment payments to accurately reflect KRS 61.522(3)(a)6., which removed the option of installment payments and requires payment of the actuarial cost by the employer by lump sum.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by removing the provisions regarding installment payments to accurately reflect KRS 61.522(3)(a)6.

(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 removing the option of payment through installments and clearly indicating that the employer must pay the full actuarial cost by lump sum.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: Kentucky Retirement Systems and employers wishing to cease participation in the Kentucky Employees Retirement System or the County Employees Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The employer must now pay only by lump sum and Kentucky Retirement Systems will not administer an installment payment plan.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Neither the employer or Kentucky Retirement Systems should incur additional cost due to the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The employer will be allowed to voluntarily cease participating in the Kentucky Employees Retirement System and the County Employees Retirement System. As a result of the amendment, Kentucky Retirement Systems will not be required to administer an installment payment plan.

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

(a) Initially: The cost of filing the application and completing the process of voluntary withdrawal.

(b) On a continuing basis: There will be no continuing cost to the employer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and agency funds).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees. The employer must pay the administrative costs incurred by Kentucky Retirement Systems pursuant to KRS 61.522.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers seeking to voluntarily cease participation are subject to the same processes and procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Retirement Systems and employers eligible to voluntarily cease participation in the Kentucky Employees Retirement System or the County Employees Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.522.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 employer will have to pay its internal administrative costs and Kentucky Retirement Systems' administrative costs. The administrative regulation generates no revenue, but will allow employers to cease participation, which will eliminate the requirement for them to pay continuing employer contributions after cessation. The employer is required by statute to pay the full actuarial cost.

(a) How much 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? Ultimately, the cost to Kentucky Retirement Systems should be negligible, as KRS 61.522 requires voluntary ceasing employers to pay its internal administrative costs and Kentucky Retirement Systems' administrative costs related to cessation.

(d) How much will it cost to administer this program for subsequent years? KRS 61.522 requires the ceasing employer to pay its internal administrative costs and Kentucky Retirement Systems' administrative costs so the cost to Kentucky Retirement Systems should be negligible.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET
Board of Examiners of Psychology
(Amendment)**

201 KAR 26:130. Grievances and administrative complaints[Grievance procedure].

RELATES TO: KRS 319.005, 319.032, 319.082, 319.118, 319.990.

STATUTORY AUTHORITY: KRS 319.032(1)(k)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(k) requires the board to promulgate administrative regulations that establish the procedure for investigating complaints or suspected violations of KRS Chapter 319 and notifying proper law enforcement authorities. KRS 319.005 prohibits unlicensed persons from engaging in the practice of psychology or using the title of psychologist, licensed psychologist, certified psychologist, licensed psychological practitioner or licensed psychological associate. KRS 319.082 delineates the causes for which disciplinary action may be taken against a credential holder. KRS 319.118 authorizes the board to institute and maintain actions to restrain or enjoin violations of applicable statutes, administrative regulations, and orders of the board. KRS 319.990 sets forth the criminal penalty for violations and authorizes prosecution of violators. KRS 319.032 authorizes the board to develop guidelines for use in complaints involving alleged sexual misconduct by a licensed holder, and for training of investigators in these matters. This administrative regulation is established to protect and safeguard the health and safety of the citizens of Kentucky and to provide procedures for filing, evaluating, and disposing of administrative complaints asserted against credential holders or applicants for licenses.

Section 1. Definitions. (1) "Administrative complaint" means a formal administrative pleading authorized by the board that sets forth charges against a credential holder or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

(2) "Board" is defined in KRS 319.010(2), and for purposes of this administrative regulation, shall also refer to a hearing panel.

(3) "Charge" means a specific allegation contained in any document issued by the board or hearing panel alleging a violation of a specified provision of the KRS Chapter 319 or 201 KAR Chapter 26.

(4) "Grievance" means any allegation alleging misconduct by a licensed holder or applicant or alleging that an unlicensed person is engaging in the practice of psychology or using the title of psychologist.

(5) "Order" means the whole or any part of a final disposition of

a hearing.

(6) "Person" means any individual, partnership, corporation, association, or public or private organization of any character other than an agency.

(7) "Respondent" means the person against whom a grievance or administrative~~[an initiating or a formal]~~ complaint has been made.

Section 2. Grievance. (1) ~~Source~~~~[of grievance]~~. A grievance may be initiated by:

(a) The board;

~~(b) [-by] The public; [-] or~~

~~(c) [by] Any governmental agency. [A certified copy of a court record for a misdemeanor or felony conviction relating to the practice of psychology shall be considered a valid grievance.]~~

(2) ~~Form~~~~[of a grievance]~~.

(a) A grievance shall:

1. Be in writing; ~~[and shall]~~

2. Clearly identify the person against whom the grievance is being made; ~~[- Further, the grievance shall]~~

3. Contain the date; ~~[- and]~~

4. ~~[shall]~~ Identify by printed name and signature the person making the grievance; ~~[-] and [shall]~~

5. Contain a clear and concise statement of the facts giving rise to the grievance.

~~(b) A certified copy of a court record for a misdemeanor or felony conviction relating to the practice of psychology shall be considered a valid grievance.~~

~~(c) The board shall not accept or process anonymous grievances or administrative complaints.~~

(3) ~~Receipt~~~~[of a grievance]~~. A grievance may be received by any:

~~(a) [any] Board member; [-]~~

~~(b) Credential holder designated by the board; [- by the Office of the Attorney General;] or~~

~~(c) [by any] Staff member.~~

(4) ~~Response~~~~[of respondent]~~. A copy of the grievance shall be provided~~[mailed]~~ to the respondent by the board. The respondent shall have fifteen (15) days to file~~[with the board]~~ a written response to the grievance with the board~~[within fifteen (15) days of the date on which the grievance was mailed]~~.

(5) Initial review~~[Consideration of a grievance]~~. At the next regularly-scheduled meeting of the board or as soon thereafter as practicable, the board or a panel of the board shall review the grievance and response. At that time, the board shall determine if an investigation is warranted, and if so, the board may appoint one (1) of its members or any agent or representative of the board to conduct an investigation of the grievance.

(6) Investigation.

(a) The respondent~~[person about whom the grievance has been considered]~~ shall be contacted. With the consent of the respondent, a meeting may be scheduled at which time he or she may respond further to the allegations of the grievance. The board and the respondent shall have the right to be represented at the meeting by legal counsel.

(b) Report of investigation. Upon the completion of the investigation, the person or persons making that investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(c) Consideration of grievance and investigative report.

1. The board shall determine if there has been a prima facie violation of KRS 319.082 based on consideration of the:

a. Grievance;

b. Investigative report, if an investigation was warranted under subsection (5) of this section; and

c. Psychological or physical examination, if one was ordered under Section 6 of this administrative regulation.

2. If the investigator is a member of the board, the investigating member shall not vote on disposition of the grievance.

3. If it is determined that the facts alleged in the grievance or investigative report do not constitute a prima facie violation, the board shall notify the person making the grievance and the respondent that no further action shall be taken at the present time.

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4. If it is determined that there is a prima facie violation, the board shall:

- a. Issue an administrative complaint against the credential holder or applicant; or [and]
- b. File suit to enjoin the violator; or
- c. Seek criminal prosecution pursuant to KRS 319.990.

Section 3. Administrative Complaint. If the board determines that the grievance shall be made an administrative complaint, the administrative complaint shall be adjudicated pursuant to KRS Chapter 13B [the actions listed in this section shall be initiated.

~~(1) Issuance of administrative complaint. The board shall provide the respondent with a written administrative complaint which shall set forth:~~

- ~~(a) Each offense charged;~~
- ~~(b) Notice of the respondent's right to be represented by counsel;~~
- ~~(c) Notice of the respondent's right to subpoena witnesses in the respondent's behalf; and~~
- ~~(d) Notice of the respondent's right to appeal after an adverse adjudication.~~

~~(2) Service of administrative complaint. Service of process shall be provided in accordance with KRS 13B.050(2).~~

~~(3) Issuance of hearing notice. Notice of the hearing shall be provided as required by KRS 13B.050(1) and (3)].~~

Section 4. Administrative Response. Within twenty (20) days of service of the formal administrative complaint, the respondent shall file with the board a written response to the specific allegations set forth in the administrative complaint. Allegations not properly responded to shall be deemed admitted, and may form the basis for a default adjudication against the person subject to the administrative complaint if the requisite elements of a violation are admitted. The board may, for good cause, permit the late filing of a response.

Section 5. Allegations of Sexual Misconduct by a License Holder. (1) To assure confidentiality for the complainant, the alleged victim's name shall not be used in any written document. This individual shall be identified by initials only or by some other mechanism for identification adopted by the board~~[for identification]~~.

(2) Upon request, the testimony of the alleged victim may be taken by deposition in order to assure his or her confidentiality.

(3) To protect the confidentiality of all parties, the board may issue an order restraining all parties and their representatives, including counsel, from any discussion or release of information about the allegations outside of the investigative and hearing processes.

(4) In accordance with the provisions of KRS 319.032(1)(d), the board may hold some or all of the hearing procedures in closed session.

Section 6. Fitness for Duty Examination. (1) If there is reasonable cause to believe that a credential holder or applicant for a license is physically or mentally incapable of practicing psychology with reasonable skill and safety to clients, the board may order the credential holder or applicant to submit to an examination by a psychologist or other health care provider designated by the board to determine the credential holder's or applicant's fitness and competence to practice psychology.

(2) The expense of this examination shall be borne by the board.

(3) The board shall then consider the findings and conclusion of the examination.

(4) A copy of the examination shall be provided by the board~~[mailed]~~ to the respondent. The respondent may file with the board a written response to the examination within fifteen (15) days of the date on which the findings and conclusion of the examination was mailed to the respondent.

(5)(a) Based on consideration of the psychological or physical examination, the board shall determine if there has been a prima facie violation of KRS 319.082.

(b) If it is determined that the findings and conclusion of the examination do not constitute a prima facie violation of KRS 319.082, the board shall so notify the person.

(c) If it is determined that there is a prima facie violation of KRS 319.082, the board shall issue an administrative complaint against the credential holder or applicant.

Section 7. Board Member Training for Cases of Sexual Misconduct. (1) Within six (6) months of their appointment, all board members and investigators shall undergo specialized training to cover the content specified by KRS 319.032(1)(e).

(2) An investigator shall not be assigned to cases where sexual misconduct has been alleged until the required training has been completed.

(3) Training shall consist of a three (3) hour course which includes the content specified by KRS 319.032(1)(e) and may be delivered by means of either live presentation, individual tutorial, or electronic media,~~[or videotape.]~~

ELIZABETH MCKUNE, ED.D. Chair

APPROVED BY AGENCY: October 12, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 26, 2018, at the hour of 10:00 a.m., at the Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by no later than five (5) business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by five (5) business days prior to the hearing, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation amendment. A transcript of the public hearing will not be made unless a written request for a transcript is made five (5) business days prior to the hearing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation amendment. Written comments shall be accepted until November 30, 2018. Send written notification of intent to attend the public hearing, and/or written comments on the proposed administrative regulation amendment to:

CONTACT PERSON: David C. Trimble, General Counsel, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601; phone (502) 782-8823; fax (502) 564-4818; email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets requirements for review and disposition of complaints against licensed psychologists.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to create a process for the review and disposition of complaints against licensed psychologists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032(1)(k) requires the board to promulgate administrative regulations that establish the procedure for investigating complaints or suspected violations of KRS Chapter 319. This administrative regulation is established to protect and safeguard the health and safety of the citizens of Kentucky and to provide procedures for filing, evaluating, and disposing of complaints against licensed psychologists and applicants for a license to practice psychology.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Kentucky Board of Examiners of Psychology is charged with regulating the profession and practice of psychology in the Commonwealth of Kentucky. This administrative regulation sets requirements for review and disposition of complaints against licensed psychologists

and applicants for a license to practice psychology.

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

(a) How the amendment will change this existing administrative regulation: The amendments are made to correct and clarify the existing regulation with regard to specific complaint procedures, and organizational changes in legal representation of the Board.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make regulations consistent with administrative procedures in effect for the Board.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032(1)(k) requires the Board to promulgate administrative regulations that establish the procedure for investigating complaints or suspected violations of KRS Chapter 319.

(d) How the amendment will assist in the effective administration of the statutes: The amendments are made to correct and clarify the existing regulation with regard to specific complaint procedures, and organizational changes in legal representation of the Board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are One Thousand Five Hundred and Thirty-Seven (1,537) licensees under the Kentucky Board of Examiners of Psychology. To the extent any of these licensees are subject of a complaint or grievance, or make a complaint or grievance, these corrections and clarifications should make the process easier to understand and follow.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not have to take additional actions to comply with this administrative regulation, which sets forth procedures the Board will use for addressing complaints received.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The regulated entities will not face any additional cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question: Licensees and consumers will have clearer processes and procedures regarding grievance procedures.

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

(a) Initially: There will be no cost to initially implement this regulation.

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

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No, it does not directly or indirectly establish fees.

(9) TIERING: Is tiering applied? No. The administrative regulation applies equally to all persons or entities involved in the practice of psychology.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Examiners of Psychology is responsible to implement this administrative regulation. Units or divisions of government impacted would include those that employ or contract with licensed psychologists, including for example, school psychologists.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1)(k) requires the board to promulgate administrative regulations that establish the procedure for investigating complaints or suspected violations of KRS Chapter 319.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional administrative cost will be incurred by amending this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional administrative cost will be incurred by amending 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 Board of Examiners of Psychology (Amendment)

201 KAR 26:140. Procedures for disciplinary hearings.

RELATES TO: KRS Chapter 13B, 319.092

STATUTORY AUTHORITY: KRS 319.032

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.092 mandates a hearing upon the filing of a grievance alleging a violation of KRS Chapter 319 to be conducted in accordance with the provisions of KRS Chapter 13B. KRS 319.032(2) authorizes the board to promulgate administrative regulations necessary to administer KRS Chapter 319. This administrative regulation establishes procedures which supplement the provisions of KRS Chapter 13B.

Section 1. Composition of the Hearing Panel.

(1) Disciplinary actions may be heard by a hearing panel consisting of either a hearing officer and at least one (1) board member appointed by the board, or upon unanimous decision of the board, only by a hearing officer. ~~[(2) A board member who has participated in the investigation of a grievance or who has personal knowledge of the facts giving rise to the grievance or for other reasons is unable to render a fair and impartial decision shall not sit as a member of the panel hearing that particular complaint.]~~

~~[(3) Separation of functions. A member, officer, or employee of the board who is engaged in the performance of investigative or prosecutorial functions for the board in a particular case or a factually related case, shall not participate in or advise in the decision of the disciplinary action, except as a witness or counsel in the hearing.]~~

Section 2. Right of Administrative Hearing from a Denial of Initial Licensure or Refusal to Renew, Restore, or Reinstate a License.

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(1) The board shall issue written notice of the denial of a license informing the applicant:

(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 denial is based; and

(b) That the applicant may appeal the pending denial to the board within twenty (20) calendar days after receipt of this notification, excluding the day he or she receives notice.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice of denial of a license. 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 appeal is not timely filed, the notice of denial of a license shall become a final order of the board~~[be effective]~~ upon the expiration of the time for the certificate holder to request an appeal.

(4)~~[The]~~ Documentary evidence for an appeal shall be limited to the application and supporting documents submitted to the board during the application process.

(5) A renewal applicant may petition the board, in writing, for a stay of the denial of the license until completion of the administrative hearing process.

Section 3. Revocation of Probation.

(1) If the board moves to revoke probation of a probationee, 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;

(c) Of the sanction to be imposed; and

(d) That the probationee may appeal the revocation to the board within twenty (20) calendar days of the date of notification of revocation, excluding the day he or she receives notice. The notification shall be sent to the last known address on file with the board for the credential holder.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice of the revocation of probation. 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 of probation shall become a final order of the board~~[be effective]~~ upon the expiration of the time for the credential holder to request an appeal.

Section 4. A request for an administrative hearing shall be sent to the Kentucky Board of Examiners of Psychology by mail to P.O. Box 1360, Frankfort, Kentucky 40602 or by hand-delivery to 911 Leawood Drive, Frankfort, Kentucky 40601.

Section 5. An administrative hearing shall be governed in accordance with KRS Chapter 13B.

Section 6. Hearing Fee. If the final order of the board is adverse to a credential holder or applicant, or if the hearing is scheduled at the request of a credential holder or applicant for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 319, a hearing fee in an amount equal to the costs of stenographic services, the costs of the services of a hearing officer, if any, and the board's attorney fees shall be assessed against the credential holder or applicant~~[respondent]~~. In case of financial hardship, the board may waive all or part of the fee.

Section 7. Notification of Action Taken. A public notification describing all final disciplinary actions taken by the board to suspend, revoke, or refuse to issue or renew a license, restrict, or place a credential holder on probation shall be provided as mandated by KRS 319.092(6)[,] and to the Association for State and Provincial Psychology Boards for publication in their data base.

ELIZABETH MCKUNE, ED.D., Chair

APPROVED BY AGENCY: October 12, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation amendment shall, if requested, be held on November 26, 2018, at the hour of 10:00 a.m., at the Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by no later than five (5) business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by five (5) business days prior to the hearing, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation amendment. A transcript of the public hearing will not be made unless a written request for a transcript is made five (5) business days prior to the hearing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation amendment. Written comments shall be accepted until November 30, 2018. Send written notification of intent to attend the public hearing, and/or written comments on the proposed administrative regulation amendment to:

CONTACT PERSON: David C. Trimble, General Counsel, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601; phone (502) 782-8823; fax (502) 564-4818; email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets procedures for disciplinary hearings based upon complaints against licensed psychologists.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to create a process for disciplinary hearings based upon complaints against licensed psychologists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.092 mandates a hearing upon the filing of a grievance alleging a violation of KRS Chapter 319 to be conducted in accordance with the provisions of KRS Chapter 13B. This administrative regulation establishes procedures which supplement the provisions of KRS Chapter 13B.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Kentucky Board of Examiners of Psychology is charged with regulating the profession and practice of psychology in the Commonwealth of Kentucky. This administrative regulation sets requirements KRS 319.092 mandates a hearing upon the filing of a grievance alleging a violation of KRS Chapter 319 to be conducted in accordance with the provisions of KRS Chapter 13B. This administrative regulation establishes procedures which supplement the provisions of KRS Chapter 13B complaints against licensed psychologists.

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

(a) How the amendment will change this existing administrative regulation: The amendments remove provisions that are duplicative of KRS Chapter 13B and clarify that failure to timely request a hearing or an appeal of a license denial shall render the notice of denial a final order of the board.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make administrative regulations consistent with disciplinary hearing procedures in effect for this Board.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032(1)(k) requires the board to promulgate administrative regulations that establish the procedure for disciplinary hearings regarding complaints or suspected violations of KRS Chapter 319.

(d) How the amendment will assist in the effective administration of the statutes: The amendments are made to

correct and clarify the existing administrative regulation with regard to specific disciplinary hearing procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are One Thousand Five Hundred and Thirty-Seven (1,537) licensees under the Kentucky Board of Examiners of Psychology. To the extent any of these licensees are subject of a complaint or grievance, or make a complaint or grievance, these corrections and clarifications should make the process easier to understand and follow.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not have to take additional actions to comply with this administrative regulation, which sets forth procedures the department will use for addressing complaints received.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The regulated entities will not face any additional cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question: Licensees will have clearer processes, procedures, and consequences for failure to file a hearing request or appeal in a timely manner.

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

(a) Initially: There will be no cost to initially implement this administrative regulation.

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

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No, it does not directly or indirectly establish fees.

(9) TIERING: Is tiering applied? No. The amendment applies equally to all persons or entities involved in the athlete agent business.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Examiners of Psychology is responsible to implement this administrative regulation. Units or divisions of government impacted would include those that employ or contract with licensed psychologists, including for example, school psychologists.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1)(k) requires the board to promulgate administrative regulations that establish the procedure for disciplinary hearings for suspected violations of KRS Chapter 319.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional administrative cost will be incurred by amending this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional administrative cost will be incurred by amending 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 Board of Examiners of Psychology (Amendment)

201 KAR 26:171. Requirements for supervision.

RELATES TO: KRS 319.032(1)(l), 319.050(3), (6), 319.056(4), (5), 319.064(3), (5), 319.082(1), 319.092(3)(d), 319.118(1)

STATUTORY AUTHORITY: KRS 319.032(1)(l)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(l) requires the board to promulgate an administrative regulation governing the supervision of a certified psychologist, licensed psychological associate, candidate for licensure, or a credential holder sanctioned by the board. This administrative regulation establishes the requirements for supervision.

Section 1. Board Approval Required.

(1) Except for graduate students as provided in Section 14[15] of this administrative regulation, a supervisory arrangement shall have the prior approval of the board, with both supervisor and supervisee petitioning the board in writing.

(2) If there is a change in supervisor or in the supervisory arrangement, the supervisor and supervisee shall ~~submit a Request for Change of Supervisor and/or Frequency to the board describing the change at least thirty (30) days prior to the effective date of the change.] proceed with the change as soon as practicable so as to avoid a lapse of supervision for the supervisee, and shall thereafter notify the board within thirty (30) days of the change for approval of the change of supervisor or supervisory arrangement.~~

(3) It shall be the joint responsibility of the supervisor and supervisee to assure that all reports, plans and goals, or other records of a supervisory relationship required by KRS Chapter 319 or these administrative regulations, are complete and are filed with the board in a timely manner.

Section 2. Supervision Requirements.

(1) All supervision requirements shall:

(a) Be met with individual, face-to-face, weekly contact between supervisor and supervisee except as provided in subsection (2) of this section and Sections 12 and 15 of this administrative regulation; and

(b) Include additional supervision sessions as needed.

(2) An alternative format of supervision, including two (2) way interactive video, may be substituted for the supervisory contact, required by subsection (1) of this section, upon specific approval by the board.

Section 3. Relief from supervision Requirements During Inactive Period.

(1) A certified psychologist or licensed psychological associate may petition the board to be relieved of his or her obligation to maintain supervision during which period he or she shall not practice psychology.

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(2) The certified psychologist or licensed psychological associate shall obtain a supervisor approved by the board before the resumption of practice.

(3) Upon resumption of practice, the certified psychologist or licensed psychological associate shall document compliance with continuing education requirements and shall report on his or her activities and employment related to psychology during the period without supervision.

Section 4. Training and Continuing Education for Supervisors.

(1) A licensed psychologist with health service provider designation who has been approved by the board as a supervisor shall attend a board approved training session in supervisory practices within twelve (12) months of obtaining approval as a supervisor.

(2) A board approved supervisor shall obtain a minimum of three (3) continuing education hours in supervision theory or techniques in each three (3) year renewal cycle as required by 201 KAR 26:175, Section 2(5)(a). The board shall suspend its approval of a supervisor if the supervisor does not complete the required continuing education.

Section 5. Supervisor Obligations.

(1) The supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.

(2) The supervisor shall report to the board an apparent violation of KRS 319.082(1) on the part of the supervisee.

(3) The supervisor shall inform the board immediately of a change in the ability to supervise, or in the ability of a supervisee to function in the practice of psychology in a competent manner.

(4) The supervisor shall control, direct, or limit the supervisee's practice as appropriate to ~~ensure~~insure that the supervisee's practice of psychology is competent.

(5) The supervisor of record shall be responsible for the practice of psychology by the supervisee. If the board initiates an investigation concerning a supervisee, the investigation shall include the supervisor of record.

(6) For each person supervised pursuant to KRS 319.050(3), (6), 319.056(4), (5), 319.064(3), (5), or 319.092(3)(d), the supervisor shall maintain a record of each supervisory session that shall include the type, place, and general content of the session. This record shall be maintained for a period of not less than six (6) years after the last date of supervision.

Section 6. Supervisory Report.

(1) In calculating the amount of time spent in full-time practice while under supervision, 1,800 hours of supervised practice shall be equivalent to one (1) year of experience.

(2) The supervisor shall submit a Supervisory Report to the board of the supervision of each supervisee according to the following schedule:

CREDENTIAL STATUS	REPORTING PERIOD	REPORT DUE DATE(S)
(a) Licensed psychological associate or certified psychologist with 4 or more years of full-time practice, or its equivalent	Every 2 years (with prior board approval)	Anniversary date of supervisee's licensure
(b) Licensed psychological associate or certified psychologist with fewer than 4 years of full-time practice, or its equivalent	Yearly	Anniversary date of supervisee's licensure
(c) Temporarily licensed psychologist	Every 6 months and 1 month prior to structured exam	
(d) Temporarily licensed psychological associate	Every 6 months	
(e) Sanctioned credential holder	Quarterly	January, April, July, and October 15th

(3) The report shall include:

(a) A description of the frequency, format, and duration of supervision;

(b) An assessment of the functioning of the supervisee, including the strengths and weaknesses of the supervisee; and

(c) Other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. Multiple Supervisors.

(1) If a supervisee has more than one (1) board-approved supervisor, the supervisors shall be in direct contact with one another at least once every six (6) months, and they shall provide Supervisory Plans and Goals to the board and copies to one another.

(2) A request to have more than two (2) supervisors at one (1) time shall require a special application to the board which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 8. Supervisor Responsibilities.~~[If the supervisee is a licensed psychological associate or a certified psychologist with less than four (4) years of full-time, postlicensure practice, or its equivalent, or a licensure candidate with temporary permission to practice.]~~ The supervisor of record shall:

(1) ~~Review~~Read and countersign~~[all]~~ psychological assessments as appropriate based on the supervisee's level of experience;

(2) Review treatment plans, progress notes, and correspondence as needed~~[on an as-needed basis]~~ to assess the competency of the supervisee to render psychological services;

(3) Jointly establish with the supervisee Supervisory Plans and Goals that shall be submitted to the board at the beginning of the supervisory relationship. The Supervisory Plans and Goals shall:

(a) Be updated or revised and submitted to the board with the regular report of supervision;

(b) Include intended format~~[-]~~ and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;

(4) Have direct observation of the supervisee's work;

(a) For a licensed psychological associate or a certified psychologist with less than four (4) years of full-time, postlicensure practice, or its equivalent, or a licensure candidate with temporary permission to practice, direct observation shall take place at least once every two (2) months;

(b) For a licensed psychological associate or certified psychologist with more than four (4) years of full-time, postlicensure practice, or its equivalent, direct observation shall take place as needed;

~~(c)[at least once every two (2) months.]~~ Direct observation ~~may~~can be accomplished through audiotaping, video camera, videotaping, one (1) way mirror, or as a cotherapist;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload as appropriate to the supervisee's level of competence;

(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and

(8) Have knowledge of the supervisee's physical and emotional well-being when it has a direct bearing on the supervisee's competence to practice.

Section 9. Supervisee Responsibilities.~~[If the supervisee is a licensed psychological associate or certified psychologist with more than four (4) years of full-time, postlicensure practice, or its equivalent, the supervisor of record shall:~~

~~(1) Review and countersign psychological assessments as needed or appropriate;~~

~~(2) Review treatment plans, notes, and correspondence as needed or appropriate;~~

~~(3) Jointly establish with the supervisee Supervisory Plans and Goals that shall be submitted to the board to the board at the~~

~~beginning of the supervisory relationship. The Supervisory Plans and Goals shall:~~

- ~~(a) Be updated or revised and submitted to the board with the regular report of supervision;~~
- ~~(b) Include intended format, and goals to be accomplished through the supervisory process; and~~
- ~~(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;~~
- ~~(4) Have direct observation of the supervisee's work on an as-needed basis;~~
- ~~(5) Have direct knowledge of the size and complexity of the supervisee's caseload;~~
- ~~(6) Limit and control the caseload as appropriate to the supervisee's level of competence;~~
- ~~(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and~~
- ~~(8) Have knowledge of the supervisee's physical and emotional well-being when it has a direct bearing on the supervisee's competence to practice.~~

Section 10.]

(1) The supervisee shall:

- (a) Keep the supervisor adequately informed at all times of his or her activities and ability to function; and
- (b) Seek supervision as needed in addition to a regularly scheduled supervisory session.

(2) The supervisee shall:

- (a) Participate with the supervisor in establishing Supervisory Plans and Goals and in completing the regular Supervisory Reports;

(b) Be jointly responsible with the supervisor for ensuring that a Supervisory Report has been sent to the board in accordance with the reporting schedule established in Section 6(2) of this administrative regulation; and

(c) Report to the board an apparent violation of KRS 319.082(1) on the part of the supervisor.

Section 10[44]. Identification of Provider. The actual deliverer of a service shall be identified to the client. A billing for a rendered service shall identify which service was performed by the certified psychologist, licensed psychological associate, temporary licensed psychologist, trainee, or other provider and supervised by the licensed psychologist.

Section 11[42]. Frequency of Supervision.

(1) A licensed psychological associate or certified psychologist shall have a minimum of one (1) hour of individual face-to-face supervision on a weekly basis for the first two (2) years of full-time practice or its equivalent following licensure.

(2) After two (2) years of full-time, postlicensure practice, or its equivalent, the supervisor and supervisee may petition the board using a Request for Change of Supervisor and/or Frequency to alter the format, frequency, or duration of supervision if the proposed change includes a minimum of two (2) one (1) hour individual face-to-face meetings every four (4) weeks, and the total amount of supervision is not less than four (4) hours per four (4) week period. This petition may include a request to change the format from individual to group supervision. Supervision requirements for part-time practice may be modified at the discretion of the board upon approval of the submitted plan.

(3)(a) After four (4) years of full-time, postlicensure practice, or its equivalent, the supervisor and supervisee may petition the board for further modification of the format, frequency, or duration of supervision using a Request for Change of Supervisor and/or Frequency, if the proposed change includes a minimum amount of one (1) hour of face-to-face supervision per month. Additional modifications of the format, frequency or duration of supervision may be submitted for approval by the board.

(b) Upon a change of supervisor, a new Supervisory Plans and Goals shall be submitted by the supervisor and supervisee to the board for approval. This plan may require additional supervision than was previously approved by the board.

(c) Upon termination of the supervisor-supervisee relationship,

the final Supervisory Report shall be submitted to the board within thirty (30) days of the termination.

(4) Any change in the frequency or duration of supervision under this section may not occur automatically, but only upon a written request to the board and approval of the request by the board.

Section 12[43]. Supervision of a Disciplined Credential Holder.

(1) The board shall appoint an approved supervisor to supervise a disciplined credential holder for the period of time defined by the board.

(2) The disciplined credential holder shall be responsible for paying the fee for supervision.

(3) The supervisor shall have completed the board approved training course in supervision.

(4) The supervisor shall:

(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;

(b) Meet with the disciplined credential holder and the board liaison to:

1. Summarize the actions and concerns of the board;

2. Review the goals and expected outcomes of supervision submitted by the board liaison;

3. Develop a specific plan of supervision; and

4. Review the reporting requirements that shall be met during the period of supervision;

(c) Meet with the disciplined credential holder at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;

(d) Submit a quarterly report to the board which reflects progress, problems, and other information relevant to the need for board-mandated supervision;

(e) Make all reasonable efforts to ~~ensure~~^{insure} that the disciplined credential holder's practice is in compliance with KRS Chapter 319 and 201 KAR Chapter 26;

(f) Report to the board any apparent violation of KRS 319.082(1) on the part of the disciplined credential holder;

(g) Immediately report to the board in writing[:] a change in the ability to supervise, or in the ability of the disciplined credential holder to function in the practice of psychology in a competent manner;

(h) Review and countersign psychological assessments as needed or appropriate;

(i) Review treatment plans, notes, and correspondence as needed or appropriate;

(j) Have direct observation of the disciplined credential holder's work on an as-needed basis;

(k) Have direct knowledge of the size and complexity of the disciplined credential holder's caseload;

(l) Have knowledge of the therapeutic modalities and techniques being used by the disciplined credential holder; and

(m) Have knowledge of the disciplined credential holder's physical and emotional well-being when it has direct bearing on the disciplined credential holder's competence to practice.

(5) The supervisor shall control, direct, or limit the disciplined credential holder's practice as appropriate to ensure that the disciplined credential holder's practice is competent.

(6) The supervisor shall contact the board liaison with any concern or problem with the disciplined credential holder, his or her practice, or the supervision process.

(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined credential holder, and board liaison. A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 13[44]. Board Liaison for Disciplined Credential Holder.

The board shall appoint a board member to serve as a liaison between the board and the approved supervisor. The board liaison shall:

(1) Recruit the supervising psychologist from a list provided by the board;

(2) Provide the supervising psychologist with the originating complaint, agreed order, or findings of the hearing and supply other material relating to the disciplinary action as deemed appropriate by the liaison;

(3) Ensure that the supervising psychologist is provided with the necessary documentation for liability purposes to clarify that he or she is acting as an agent of the board pursuant to KRS 319.118(1) and has immunity commensurate with that of a board member;

(4) Provide the supervising psychologist with a written description of the responsibilities of the supervisor and a copy of the responsibilities of the liaison;

(5) Ensure that the board has sent a written notification letter to the disciplined credential holder. The notification letter shall:

(a) State the name of the supervising psychologist; and

(b) Specify that the disciplined credential holder shall meet with the supervising psychologist and the liaison within thirty (30) days of the date of the notification letter;

(6) Meet with the supervising psychologist and disciplined credential holder within thirty (30) days of the date of the notification letter to summarize the actions of the board, review the applicable statutes and administrative regulations regarding supervision requirements for a disciplined credential holder, and assist with the development of a plan of supervision. The plan of supervision shall be written at the first meeting;

(7) Submit the report of supervision to the board for approval. The liaison shall place the report of supervision on the agenda for review and approval at the next regularly scheduled board meeting. In the interim, the supervising psychologist and disciplined credential holder shall continue to meet;

(8) Remain available to the supervising psychologist to provide assistance and information as needed;

(9) Report any problem or concern to the board regarding the supervision and communicate a directive of the board to the supervising psychologist;

(10) Review the quarterly report of supervision and forward the report to the supervision committee of the board for approval; and

(11) Meet with the supervising psychologist and the disciplined credential holder at the end of the term of supervision to summarize the supervision.

Section 14[45]. Psychology Graduate Students. Graduate-level psychology students who are providing services in psychological health care settings including independent practice settings shall:

(1) Be supervised by a psychologist licensed by the Board of Examiners of Psychology with health service provider status, licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists, or by a licensed mental health professional approved by the training program who is affiliated with either the university training program or the practice setting;

(2) Be registered for credit in his or her course of study;

(3) Clearly identify their status as unlicensed psychology trainees to all clients and payors;

(4) Give to all clients and payors the name of the licensed psychologist responsible for their work; and

(5) Not accept employment or placement to perform the same or similar activities following the completion of their university-sanctioned placement, regardless of the job title given, unless the student holds a license from the board.

Section 15[46]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Supervisory Plans and Goals", October 2018[February 2017];

(b) "Supervisory Report", October 2018[October 2016]; and

(c) "Request for Change of Supervisor and/or Frequency", October 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ELIZABETH MCKUNE, ED.D., Chair

APPROVED BY AGENCY: October 12, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 26, 2018, at the hour of 10:00 a.m., at the Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by no later than five (5) business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by five (5) business days prior to the hearing, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation amendment. A transcript of the public hearing will not be made unless a written request for a transcript is made five (5) business days prior to the hearing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation amendment. Written comments shall be accepted until November 30, 2018. Send written notification of intent to attend the public hearing, and/or written comments on the proposed administrative regulation amendment to:

CONTACT PERSON: David C. Trimble, General Counsel, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601; phone (502) 782-8823; fax (502) 564-4818; email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets requirements for various levels of supervision required for licensure by the board.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to specify the various levels, frequency, and duration of supervision required for licensure by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032(1)(l) requires the board to promulgate an administrative regulation governing the supervision of a certified psychologist, licensed psychological associate, candidate for licensure, or a credential holder sanctioned by the board. This administrative regulation establishes the requirements for supervision.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Kentucky Board of Examiners of Psychology is charged with regulating the profession and practice of psychology in the Commonwealth of Kentucky. KRS 319.032(1)(l) requires the board to promulgate an administrative regulation governing the supervision of a certified psychologist, licensed psychological associate, candidate for licensure, or a credential holder sanctioned by the board.

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

(a) How the amendment will change this existing administrative regulation: The amendments are made to correct and clarify the existing administrative regulation with regard to levels, duration, and frequency of required supervision.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make administrative regulations consistent with actual supervision requirements and remove confusion among practitioners regarding the same.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032(1)(l) requires the board to promulgate an administrative regulation governing the supervision of a certified psychologist, licensed psychological associate, candidate for licensure, or a credential holder sanctioned by the board.

(d) How the amendment will assist in the effective administration of the statutes: The amendments are made to correct and clarify the existing administrative regulation with regard

to specific supervision of a certified psychologist, licensed psychological associate, candidate for licensure, or a credential holder sanctioned by the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 1,537 licensees under the Kentucky Board of Examiners of Psychology. To the extent any of these licensees are subject to supervision in their respective practices, these corrections and clarifications should make the process easier to understand and follow.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: The regulated entities may have to take additional actions to comply with this administrative regulation, which sets forth required levels, duration, and frequency of supervision, in the form of adjusting their supervision relationships to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The regulated entities will not face any additional cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question: Clarification of supervision requirements.

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

(a) Initially: There will be no cost to initially implement this regulation.

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

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No, it does not directly or indirectly establish fees.

(9) TIERING: Is tiering applied? No. The amendment applies equally to all similarly situated psychology applicants or licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Examiners of Psychology is responsible to implement this administrative regulation. Units or divisions of government impacted would include those that employ or contract with licensed psychologists, including for example, school psychologists.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1)(l) requires the board to promulgate an administrative regulation governing the supervision of a certified psychologist, licensed psychological associate, candidate for licensure, or a credential holder sanctioned 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? This administrative regulation will not generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? No additional administrative cost will be incurred by amending this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional administrative cost will be incurred by amending 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 Board of Examiners of Psychology (Amendment)

201 KAR 26:175. Continuing education.

RELATES TO: KRS 210.366, 319.032(1)(f), 319.050, 319.053, 319.064, 319.071

STATUTORY AUTHORITY: KRS 319.032(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(f) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license. This administrative regulation establishes the continuing education requirements for renewal of a license.

Section 1. Definitions. (1) "Continuing education" means participation in an approved program of professional education beyond the basic educational requirements that meets the requirements established in Section 2(1) of this administrative regulation.

(2) "Continuing education hour" means a fifty-five (55) minute clock hour of instruction.

Section 2. (1) Each credential holder shall document the completion of at least thirty-nine (39) continuing education hours approved by the board pursuant to this administrative regulation within each three (3) year renewal period.

(2) A credential holder~~[holder]~~~~person holding a license~~ shall complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management within the first year of licensure and every six (6) years thereafter as required by KRS 210.366.

(a) A credential holder shall be exempted from the requirement to complete a continuing education course in suicide assessment, treatment, and management for the credential holder's first six (6) years of licensure if the credential holder completes a three (3) semester hour graduate course in suicide and crisis assessment, prevention, and intervention during the course of the credential holder's~~[licensee's]~~ graduate education.

(b) A credential holder shall be exempted from the requirement to complete a continuing education course in suicide assessment, treatment, and management from the six year continuing education if, during the six (6) year period~~[requirement]~~, the credential holder:

1. Is primarily employed in a clinical setting accredited by the Joint Commission or another nationally accrediting healthcare entity that requires the completion of a suicide risk assessment with each patient being seen within the setting;

2. Teaches a graduate-level psychology course in suicide assessment, training, and management; or

3. Teaches a continuing education course in suicide assessment, training, and management at least once during the six (6) year period.

(c) The continuing education course in suicide assessment,

treatment, and management shall be approved in accordance with Section 5 of this administrative regulation.

(3) The continuing education shall:

(a) Provide specific content planned and evaluated to improve the credential holder's professional competence;

(b) Make possible the acquisition of new skills and knowledge required to maintain competence;

(c) Strengthen the habits of critical inquiry and balanced judgment; and

(d) Include a minimum of three (3) hours in either ethical practice or risk management with each three (3) year renewal period.

(4)(a) Except as provided in paragraph (b) of this subsection, a licensed psychologist with the health service provider designation who provides supervision to an applicant for licensure, or a certified psychologist or a licensed psychological associate shall include as part of the thirty-nine (39) hours of continuing education required by subsection (1) of this section a minimum of three (3) continuing education hours in the area of supervision theory or techniques for each three (3) year renewal period.

(b) The requirement established in paragraph (a) of this subsection shall begin with the renewal period immediately following the period in which the original supervisory training required by 201 KAR 26:171, Section 4(1) and (2), is received.

Section 3. (1) Hours required to satisfy the continuing education requirement shall be completed prior to the renewal date of a license.

~~(2) [A credential holder shall certify in the renewal application that the continuing education requirement has been satisfied.~~

~~(3) A credential holder who is being audited shall submit copies of the certificate of completion received from the continuing education course.~~

(4) The credential holder shall:

(a) Maintain and provide adequate records including certificates of attendance and documentation of completion of the required continuing education hours; or

(b) Provide documentation through a board-approved registry, which shall certify the name and license number of the license holder, date and title of each program and the number of hours earned, and confirmation that the programs were given by a board-approved provider.

Section 4. Only~~[All]~~ continuing education activities approved by the board shall be accepted toward the continuing education requirements for renewal of a license.~~[A credential holder shall determine prior to attending a specific continuing education program that the program:~~

~~(1) Has been approved by the board; or~~

~~(2) Is approved, offered, or sponsored by an organization approved by the board to sponsor continuing education programs.]~~

Section 5. Approved Sponsoring Organizations and Approved Programs. (1) Participation in a continuing education program that is approved, offered, or sponsored by an organization listed in this subsection shall be accepted toward the requirement for continuing education established in Section 2(1) of this administrative regulation:

(a) An affiliated state chapter of the American Psychological Association, American Medical Association, American Psychiatric Association, or National Association of Social Workers;

(b) A recognized state, regional, national, or international psychological association;

(c) A state or provincial psychology licensure board; and

(d) A course for graduate-level academic credit in psychology or psychiatry offered by a national, regional, or state accredited academic institution.

(2)(a) The board may approve an organization that is not listed in subsection (1) of this section as a sponsor of continuing education for a twelve (12) month period if the organization:

1. Files a completed Continuing Education Sponsorship Application;

2. Pays an initial application fee of \$250; and

3. Proposes to sponsor continuing education programs that

meet the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) An approved sponsor shall submit an annual report of the continuing education programs offered during that year.

(c) A sponsor that is approved pursuant to paragraph (a) of this subsection may request renewal of its approval for subsequent years by filing a \$150 renewal fee annually.

(d) A workshop in psychology or psychiatry offered by a national, regional, or state accredited academic institution's medical center or affiliated hospital shall comply with paragraph (a)1 of this subsection. The fees required under paragraphs (a)2 and (c) of this subsection are waived.

(3)(a) The board may approve a specific continuing education program that is not approved, offered, or sponsored by an organization listed in subsection (1) of this section or an approved organization under subsection (2) of this section if the sponsor or a participant of the program:

1. Files a completed Continuing Education Program Application;

2. Pays an application fee of fifty (50) dollars; and

3. Provides information about a continuing education program that it proposes to sponsor which meets the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) The approval of a program pursuant to paragraph (a) of this subsection shall permit the sponsor to offer the program one (1) time. The sponsor shall submit a request for renewal and a ten (10) dollar renewal fee for each subsequent request to offer the same approved program.

Section 6. (1) A continuing education program that satisfies the requirements for license renewal shall be:~~be:~~

~~(1) Be:~~

(a) Approved, offered, or sponsored by an organization that has been approved by the board; or

(b) A specific program approved by the board;

(2)(a) Have a clearly-stated purpose and defined content area; and

(b) Be consistent with the overall goals of continuing education as defined in Section 1 of this administrative regulation;

(3) Have a presenter who is a professional qualified in the defined content area;

(4) Clearly state the program's time. Actual contact time shall be a minimum of one (1) continuing education hour;

(5) Include attendance recorded by the program's sponsor;

(6) Document completion that shall be provided to the participant; and

(7) Include each participant's evaluation of the program.

Section 7. Equivalencies. (1) A graduate-level psychology course taken at an accredited academic institution shall earn continuing education hours pursuant to paragraphs (a) and (b) of this subsection.

(a) Each one (1) hour semester course shall be the equivalent of fifteen (15) continuing education hours for the purposes of meeting the requirements of this administrative regulation.

(b) Each one (1) hour quarter course shall be the equivalent of nine (9) continuing education hours for the purposes of meeting the requirements of this administrative regulation.

(2) A person who teaches a three (3) hour semester or quarter graduate-level course in psychology at an accredited academic institution shall:

(a) Earn six (6) continuing education hours for teaching the course; and

(b) Not receive:

1. Credit more than once for teaching a particular course during a renewal period; and

2. More than nine (9) total continuing education hours for these teaching activities.

(3) A person who teaches an approved continuing education workshop or program shall:

(a) Earn continuing education hours on a one (1) to one (1) basis; and

(b) Not receive:

1. Credit more than once for teaching a particular workshop or program during a renewal period; and

2. More than nine (9) total continuing education hours for these teaching activities.

(4) A person who completes home study or internet-based courses approved, offered, or sponsored by an organization listed in Section 5(1) shall not receive:

(a) Credit for repeating a specific study course during a renewal period; and

(b) More than twelve (12) total continuing education hours through home study or internet-based courses in a renewal period.

(5) A person who participates in videoconferencing in an interactive setting shall:

(a) Earn one (1) continuing education hour for each clock hour of participation; and

(b) Not receive more than twenty-four (24) continuing education hours through interactive videoconferencing participation.

Section 8. Carry-over of Continuing Education Hours, Prohibited. There shall not be a carry-over of continuing education hours earned in excess of those required under Section 2 of this administrative regulation into the immediately following renewal period.

Section 9. The board shall audit a minimum of ten (10) percent of all credential holders' documentation supporting the completion of the appropriate number of continuing education hours through a random audit process.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Continuing Education Program Application", October 2016; and

(b) "Continuing Education Sponsorship Application", October 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ELIZABETH MCKUNE, ED.D., Chair

APPROVED BY AGENCY: October 12, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation amendment shall, if requested, be held on November 26, 2018, at the hour of 10:00 a.m., at the Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by no later than five (5) business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by five (5) business days prior to the hearing, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation amendment. A transcript of the public hearing will not be made unless a written request for a transcript is made five (5) business days prior to the hearing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation amendment. Written comments shall be accepted until November 30, 2018. Send written notification of intent to attend the public hearing, and/or written comments on the proposed administrative regulation amendment to:

CONTACT PERSON: David C. Trimble, General Counsel, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601; phone (502) 782-8823; fax (502) 564-4818; email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets requirements for continuing education required to maintain licensure by the Board.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to specify the continuing education required to maintain licensure by the Board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032(1)(f) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license. This administrative regulation establishes the continuing education requirements for renewal of a license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Kentucky Board of Examiners of Psychology is charged with regulating the profession and practice of psychology in the Commonwealth of Kentucky. KRS 319.032(1)(f) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license. This administrative regulation establishes the continuing education requirements for renewal of a license.

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

(a) How the amendment will change this existing administrative regulation: The amendments are made to correct and clarify the existing administrative regulation with regard to continuing education required of credential holders.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct previous errors in the administrative regulation for continuing education required of credential holders.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032(1)(f) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license.

(d) How the amendment will assist in the effective administration of the statutes: The amendments are made to correct and clarify the existing administrative regulation with regard to continuing education as a condition for renewal of a license.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are One Thousand Five Hundred and Thirty-Seven (1,537) licensees under the Kentucky Board of Examiners of Psychology. To the extent any of these licensees are subject to renewal requirements for renewal of their licenses, this administrative regulation specifies the requirements for continuing education.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: The regulated entities are required to complete the identified continuing education for renewal of their license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The regulated entities will not face any additional cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question: Clarification of continuing education requirements.

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

(a) Initially: There will be no cost to initially implement this administrative regulation.

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

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No, it does not directly or indirectly establish fees.

(9) TIERING: Is tiering applied? No. The amendment applies equally to all similarly situated psychology applicants and licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Examiners of Psychology is responsible to implement this administrative regulation. Units or divisions of government impacted would include those that employ or contract with licensed psychologists, including for example, school psychologists.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1)(f) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional administrative cost will be incurred by amending this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional administrative cost will be incurred by amending 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 Board of Examiners of Psychology (Amendment)

201 KAR 26:200. Education requirements~~[for licensure as a psychologist]~~.

RELATES TO: KRS 319.050, 319.064

STATUTORY AUTHORITY: KRS 319.032, 319.050(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements, standards, and tests to determine the moral, intellectual, educational, scientific, technical, and professional qualifications of applicants for licensure. KRS 319.050 establishes requirements for licensed psychologists~~(2)(b) requires that to obtain licensure, a psychologist shall have a doctoral degree in psychology from a regionally accredited educational institution]~~. KRS 319.064 establishes requirements for licensed psychological associates.

This administrative regulation establishes education requirements for licensure ~~by the board~~~~[as a psychologist]~~.

Section 1. Degree Requirements. For purposes of licensure, a~~[doctoral]~~ degree in psychology shall:

(1) Be from a recognized institution of higher learning as established in this administrative regulation;

(2) Be clearly identified by the granting institution as a psychology program wherever the program may be administratively housed;

(3) Be specified in pertinent institutional catalogs and brochures as intended to educate and train professional psychologists;

(4) Require a dissertation for the degree as psychological in method and content and an expected product of doctoral training in psychology;

(5) Any thesis required for the degree shall be psychological in method and content and an expected product of master's training in psychology.

(6) Stand as a recognizable, coherent, organized entity within the institution;

(7)~~[(6)]~~ Require within the psychology faculty clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

~~[(7)]~~ Be an integrated, organized sequence of study;

~~[(8)]~~ Require an identifiable psychology faculty and a psychologist responsible for the program;

~~[(9)]~~ Require an identifiable body of students who are matriculated in that program for a degree; and

~~[(10)]~~ Include educational experiences with titles, such as practicum, internship, or field training, including:

(a) For a doctoral degree, require a three (3) graduate semester-hour practicum.

(b) For a master's degree, require a minimum of 600 supervised hours in course-related field experience, practica, and formal internship, as part of the degree program.

Section 2. Curriculum Requirements.

(1) In determining the approval of curricular experiences and course work, the board shall consider:~~[compliance with the requirements established in paragraphs (a) through (d) of this subsection.]~~

~~(a) The duration of [curriculum shall encompass a minimum of three (3) academic years of full-time] graduate study;~~

1. For a doctoral degree, a minimum of three (3) years, including a minimum of one (1) full academic year in residence at the institution, consisting of a minimum of 250 contact hours or its equivalent of curricular experiences and course work delivered through face-to-face in person context with other students and with faculty of the institution, without regard to the specific physical location in which the course work is conducted; or

2. For a master's degree, a minimum of forty-five (45) semester hours.

~~(b) [A minimum of one (1) full academic year shall be spent in residence at the institution. The year in residence shall consist of a minimum of 250 contact hours or its equivalent of curricular experiences and course work delivered through face-to-face in person context with other students and with faculty of the institution, without regard to the specific physical location in which the course work is conducted.]~~

~~(c) In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence by including a minimum of three (3) or more graduate semester hours (five (5) or more graduate quarter hours) in each of these four (4) areas:~~

1. Biological bases of behavior, including the subject matters of physiological psychology, comparative psychology, neuropsychology, sensation and perception, and psychopharmacology;

2. Cognitive-affective bases of behavior, including the subject matters of learning, thinking, motivation, and emotion;

3. Social bases of behavior, including the subject matters of

social psychology group process and organizational psychology and systems; and

4. Individual differences, including the subject matters of personality theory, human development, and abnormal psychology.

(c)(d) In addition to the core program, the curriculum shall include appropriate course work in the specialty area of training. For candidates who seek to deliver or supervise psychological health services, such[that] training shall include specific training in diagnosis, psychological testing, assessment of individual differences, and the design and implementation of appropriate intervention techniques, such as psychotherapy, counseling, and consultation.

(2) The applicant shall provide any relevant documentation requested by the board to confirm compliance with or satisfaction of the requirements of this administrative regulation.

(3) A deficiency in course work or other requirements shall be corrected by appropriate remedial work.

Section 3. Accreditation Requirements.

(1) A regionally accredited educational institution shall be accredited by one (1) of the following, or an equivalent accreditation entity:

- (a) Southern Association of Colleges and Schools;
- (b) Middle States Commission on Higher Education;
- (c) Middle States Association of Colleges and Schools;
- (d) New England Association of Schools and Colleges;
- (e) North Central Association of Colleges and Schools;
- (f) Northwest Commission on Colleges and Universities;
- (g) Northwest Accreditation Commission; and
- (h) Western Association of Schools and Colleges.

(2) Accreditation shall include accreditation by one (1) of the agencies established in subsection (1) of this section at:

- (a) Level 3, master's degree granting accreditation;
- (b) Level 4, doctoral degree granting accreditation;[+] or
- (c)[at] Level 5, graduate or professional degree granting accreditation.

ELIZABETH MCKUNE, ED.D., Chair

APPROVED BY AGENCY: October 12, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation amendment shall, if requested, be held on November 26, 2018, at the hour of 10:00 a.m., at the Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by no later than five (5) business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by five (5) business days prior to the hearing, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation amendment. A transcript of the public hearing will not be made unless a written request for a transcript is made five (5) business days prior to the hearing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation amendment. Written comments shall be accepted until November 30, 2018. Send written notification of intent to attend the public hearing, and/or written comments on the proposed administrative regulation amendment to:

CONTACT PERSON: David C. Trimble, General Counsel, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601; phone (502) 782-8823; fax (502) 564-4818; email DavidC.Trimble@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets educational requirements for licensure as a psychologist or a psychological associate by the Board.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to specify the educational requirements for licensure by the Board as a psychologist or a psychological associate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032(1)(a) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements, standards, and tests to determine the moral, intellectual, educational, scientific, technical, and professional qualifications of applicants for licensure. KRS 319.050 establishes requirements for licensed psychologists. KRS 319.064 establishes requirements for licensed psychological associates. This administrative regulation establishes education requirements for licensure by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Kentucky Board of Examiners of Psychology is charged with regulating the profession and practice of psychology in the Commonwealth of Kentucky. KRS 319.032(1)(a) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements for licensure.

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

(a) How the amendment will change this existing administrative regulation: This amendment consolidates education requirements for psychologists and psychological associates in a single regulation for administrative efficiency, concurrent with the repeal of 201 KAR 26:210. This amendment also allows for accreditation by an entity equivalent to those listed in Section 3 of the existing regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide clarity and broader accreditation of educational programs for psychologists and psychological associates.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032(1)(a) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements for licensure.

(d) How the amendment will assist in the effective administration of the statutes: The amendments are made to provide clarity for broader accreditation of educational programs in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are One Thousand Five Hundred and Thirty-Seven (1,537) licensees under the Kentucky Board of Examiners of Psychology. This amendment facilitates understanding of educational requirements for applicants and licensees seeking licensure as a psychologist or psychological associate.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: The regulated entities are required to complete the appropriate identified education from an acceptable institution for their license as a psychologist or psychological associate.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The regulated entities will not face any additional cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question: Clarification of education requirements.

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

(a) Initially: There will be no cost to initially implement this regulation.

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

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation.

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

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

(9) TIERING: Is tiering applied? No. The amendment applies equally to similarly situated persons.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Examiners of Psychology is responsible to implement this administrative regulation. Units or divisions of government impacted would include those that employ or contract with licensed psychologists, including for example, school psychologists.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1)(a) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements for licensure.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional administrative cost will be incurred by amending this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional administrative cost will be incurred by amending 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 Board of Examiners of Psychology (Amendment)

201 KAR 26:280. Licensed psychological associate: application procedures and temporary license.

RELATES TO: KRS 319.064

STATUTORY AUTHORITY: KRS 319.032(1)(a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the Board of Examiners of Psychology to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychological associate. This administrative regulation establishes the requirements for applicants for licensure and the conditions for a temporary license.

Section 1. Application. (1) An application for a credential to perform certain functions as a licensed psychological associate may be submitted after the requirements established in KRS 319.064(2) are met.

(2) The application required by subsection (1) of this section shall be made by submitting a completed Application for Licensure as a Psychological Associate to the board. The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160;

2. Three (3) letters of reference or completed "Recommendation Form for Licensure as a Psychological Associate" from persons qualified to evaluate the applicant's professional ability, including two (2) persons who have received a doctorate in psychology (Ph.D. Psy.D., or Ed.D.); and

3. An official transcript for all levels of education required for licensure.

Section 2. Temporary Licensure. (1) An applicant may request permission to perform functions as a licensed psychological associate on a temporary basis pursuant to KRS 319.064(3).

(2) The request for a temporary credential shall be co-signed by the candidate and the proposed supervisor, who shall be a licensed psychologist approved by the board and who holds the health services provider designation.

(3)(a) A temporary license shall be valid for one (1) year from the date of the notice of approval by the board.

(b) During the period of temporary licensure, a candidate shall:

1. Successfully complete all credentials and examination procedures; and

2. Pass the EPPP. ~~[(c)1. A candidate shall score at least an eighty (80) percent to pass the structured examination of Kentucky mental health law.~~

~~2. A candidate shall score a 100 percent to pass the oral examination on ethical principles and professional practice.]~~

(4)(a) Under exceptional circumstances and upon written request cosigned by the board approved supervisor, the board may approve an extension of the period of temporary licensure.

(b) A licensee shall submit a completed Request for Extension of Temporary Licensure as a Psychological Associate to the board to request an extension.

Section 3. Grace Period for Submission of Credentials. In order to allow for processing of the candidate's materials by the board, there shall be a grace period not to exceed sixty (60) days within which a candidate who has completed his or her degree requirements may begin employment by an agency to practice psychology under supervision with a board-approved supervisor.

(1) Upon acceptance of employment, the candidate and the licensed psychologist who shall serve as the supervisor shall immediately submit a letter of notice to the board indicating that he or she has begun to practice in Kentucky and that application materials are forthcoming. Failure to submit this notice may be grounds for disciplinary action against the candidate and the supervisor.

(2) It shall be the responsibility of the candidate to ensure that all materials are forwarded to the board within thirty (30) days from the date of agency employment. Once the application is complete, the board shall review the material at its next scheduled meeting and, if appropriate, issue either a temporary or permanent credential. If the candidate does not meet the requirements for the credential, or if his or her~~[their]~~ application material is insufficient to take any action, he or she shall be directed to cease practice until the requirements are met.

(3) The grace period shall not be extended beyond sixty (60) days. A candidate who fails to achieve approval within this timeframe shall not practice psychology until credentialed by the

board.

(4) Upon filing the notice set forth in subsection (1) of this section, the candidate shall be practicing psychology under the jurisdiction of the board, and shall be subject to KRS Chapter 319 and 201 KAR Chapter 26.

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

(a) "Application for Licensure as a Psychological Associate", February 2017;

(b) "Recommendation for Licensure as a Psychological Associate", February 2017; and

(c) "Request for Extension of Temporary Licensure as a Psychological Associate", February 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ELIZABETH MCKUNE, ED.D., Chair

APPROVED BY AGENCY: October 12, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation amendment shall, if requested, be held on November 26, 2018, at the hour of 10:00 a.m., at the Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by no later than five (5) business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by five (5) business days prior to the hearing, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation amendment. A transcript of the public hearing will not be made unless a written request for a transcript is made five (5) business days prior to the hearing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation amendment. Written comments shall be accepted until November 30, 2018. Send written notification of intent to attend the public hearing, and/or written comments on the proposed administrative regulation amendment to:

CONTACT PERSON: David C. Trimble, General Counsel, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601; phone (502) 782-8823; fax (502) 564-4818; email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets application procedures for licensure and temporary licensure as a licensed psychological associate by the Board.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to specify the application procedures for licensure and temporary licensure by the Board as a licensed psychological associate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032(1)(a) and (c) require the Board of Examiners of Psychology to promulgate administrative regulations establishing the application procedures for an applicant for licensure as a psychological associate. This administrative regulation establishes the requirements for applicants for licensure and the conditions for a temporary license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Kentucky Board of Examiners of Psychology is charged with regulating the profession and practice of psychology in the Commonwealth of Kentucky. KRS 319.032(1)(a) and (c) require the Board of Examiners of Psychology to promulgate administrative regulations establishing the application procedures for an applicant for

licensure as a psychological associate.

(2) If 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 is a correction of an erroneously-included requirement for an oral examination for licensed psychological associates.

(b) The necessity of the amendment to this administrative regulation: The amendment is a correction of an erroneously-included requirement for an oral examination for licensed psychological associates.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032(1)(a) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements for licensure.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is a correction of an erroneously-included requirement for an oral examination for licensed psychological associates.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are One Thousand Five Hundred and Thirty-Seven (1,537) licensees under the Kentucky Board of Examiners of Psychology. To the extent any of these licensees are seeking licensure as a psychological associate, this regulation now correctly specifies the application and testing 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 questions (3) will have to take to comply with this administrative regulation or amendment: The regulated entities are required to complete the application steps for their license as a psychological associate.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The regulated entities will not face any additional cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question: Correction of testing requirements to be licensed as a psychological associate.

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

(a) Initially: There will be no cost to initially implement this administrative regulation.

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

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No, it does not directly or indirectly establish fees.

(9) TIERING: Is tiering applied? No. The amendment applies equally to all persons or entities involved in the practice of psychology.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Examiners of Psychology is responsible to implement this administrative regulation. Units or divisions of government impacted would include those that employ or contract with licensed psychologists, including for example, school psychologists.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1)(a) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements for licensure.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional administrative cost will be incurred by amending this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional administrative cost will be incurred by amending 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

**GENERAL GOVERNMENT CABINET
Board of Licensure for Occupational Therapy
(Amendment)**

201 KAR 28:060.[Requirements for] Licensure, Renewals, and Reinstatements.

RELATES TO: KRS 319A.080, 319A.100, 319A.110, 319A.120, 319A.140, 319A.150, 319A.160, 319A.170

STATUTORY AUTHORITY: KRS 319A.070(1), (3)(a), 319A.100, 319A.160, 319A.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3)(a) authorizes the board to promulgate administrative regulations and administer the provisions of KRS Chapter 319A. KRS 319A.100 authorizes the board to issue a temporary permit to certain applicants for licensure. KRS 319A.170 requires the board to determine and collect licensure fees. KRS 319A.160 authorizes the board to set fees for renewals, late renewals, reinstatement, and activation of an inactive license. This administrative regulation sets forth the procedure by which applicants shall apply for, renew, or reinstate a temporary permit or license administered by the board under the provisions of KRS Chapter 319A.

Section 1. Initial Licensure[of an OT/L]. An applicant for licensure administered by the board who[as an OT/L that] has not previously been licensed, certified, or registered in any state shall submit[meet the following requirements]:

(1)[Submit] A completed[OT/L] Application Form, Form OTB-1;

(2)[Submit](a) A certified copy of an official academic[the applicant's] transcript from an occupational therapy or occupational therapy assistant program accredited by the ACOTE or its equivalent indicating that the applicant successfully completed educational and fieldwork requirements; or

(b) For applicants trained at an educational facility outside the United States, evidence of legal permission, as furnished by the U.S. Department of Immigration and Naturalization, for employment in the United States[for an OT/L has a baccalaureate degree, postbaccalaureate certificate, master's degree, or doctorate degree from an occupational therapy program accredited by the ACOTE or its equivalent];

(3)[Submit] Electronic verification by the NBCOT.[stating] that the applicant;

(a) Meets the requirements of certification as an OTR/L or COTA;

(b) Is authorized to take the NBCOT or equivalent exam required by KRS 319A.120; or

(c) Has requested an official NBCOT Score Transfer Report be sent to the board.

(4) The appropriate fee for licensure:

(a) Fifty (50) dollars for an OT/L; or

(b) Thirty-five (35) dollars for an OTA/L[Successfully complete the jurisprudence exam]; and

(5) Evidence of successful completion of the NBCOT or equivalent exam.[Submit the appropriate fee for licensure as required by 201 KAR 28:110.]

Section 2. Temporary Licensure.

(1) An applicant for licensure may request a temporary permit by submitting the materials and fee required in subsections (1) through (5) of this section and a completed Supervision Temporary Permit Form, Form OTB-2, signed by a licensed occupational therapist in good standing with the board.

(2) A temporary permit holder shall be licensed by the board upon successful completion of the NBCOT or equivalent certification exam.

(3) A temporary permit holder shall have the permit revoked upon two (2) unsuccessful attempts to pass the NBCOT or equivalent certification exam.

Section 3.[2. Licensure of OTA/L. An applicant for licensure as an OTA/L that has not previously been licensed in any state shall meet the following requirements:

(1) Submit a completed OTA/L Application Form;

(2) Submit a certified copy of the applicant's official academic transcript indicating that the applicant has graduated from an occupational therapy assistant educational program approved by the ACOTE or its equivalent;

(3) Submit electronic verification by the NBCOT stating that the applicant meets the requirements of certification as a COTA;

(4) Successfully complete the jurisprudence exam; and

(5) Submit the appropriate fee for licensure as required by 201 KAR 28:110.

Section 3.[2. Reciprocal Licensure[of Persons Licensed, Certified, or Registered in Other States]. An applicant for licensure administered by the board[as an OT/L or OTA/L] that is or has been licensed, certified, or registered in another state shall submit[meet the following requirements]:

(1)[Submit] A completed[OT/L] Application Form, Form OTB-1[or OTA/L Application Form];

(2)[Submit] An official statement from the body responsible for licensure of occupational therapists in every jurisdiction in which the applicant has held a license or credential that the individual is in good standing in that jurisdiction;

(3)[Submit] A current copy of the certificate issued by the NBCOT stating that the individual met the initial requirements for certification as an OTR or a COTA;

(4) Evidence of successful completion of[Successfully complete] the NBCOT or equivalent[jurisprudence] exam; and

(5)[Submit] The appropriate fee for licensure;

(a) Fifty (50) dollars for an OT/L; or

(b) Thirty-five (35) dollars for an OTA/L[as required by 201 KAR 28:110].

Section 4. License Renewal and Grace Period.

(1) An individual licensed by the board shall submit annually, on or before October 31:

(a) A completed Annual OT/OTA Renewal Application, Form OTB-3;

(b) The appropriate fee for renewal:

1. Fifty (50) dollars for an OT/L;

2. Thirty-five (35) dollars for an OTA/L; and

(c) Evidence of completion of twelve (12) continuing

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competence units.

(2) An individual licensed by the board fewer than (90) days prior to the annual renewal date shall not be required to renew during the first year of licensure.

(3) An individual licensed by the board who has failed to renew as required by subsection (1) of this section shall be granted a sixty (60) day grace period to submit:

- (a) All items required by Subsection (1) of this section; and
- (b) A late renewal fee of twenty-five (25) dollars.

Section 5[4]. Expired and Inactive Licenses.

(1) A license not renewed by the conclusion of the grace period shall expire.

(2) The board shall send the individual holding a terminated license a notice of expiration with instructions to cease and desist the practice of occupational therapy.

(3) Pursuant to KRS 319A.160(10), a license may be placed in inactive status for up to three (3) years upon petition to the board on the Annual OT/OTA Renewal Application, Form OTB-3. An individual holding an inactive license shall submit annually on or before October 31:

- (a) The Annual License Renewal Application, Form OTB-3; and
- (b) An inactive renewal fee of ten (10) dollars.[Foreign-trained Applicants.

(1) An applicant for licensure as an occupational therapist who was trained at an educational facility in a country or nation other than the United States shall meet the following requirements:

- (a) Submit a completed OT/L Application Form;
- (b) Submit a current copy of the certificate issued by the NBCOT stating that the individual met the initial requirements for certification as an OTR or a COTA;
- (c) Submit the appropriate fee for licensure as required by 201 KAR 28:140;
- (d) Successfully complete the jurisprudence exam; and
- (e) Submit evidence of legal permission, as furnished by the U.S. Department of Immigration and Naturalization, for employment in the United States as documented by:
 - 1. An I-94 form;
 - 2. An alien registration card;
 - 3. A temporary resident card;
 - 4. An NBCOT Visa Verification; or
 - 5. A stamp on their passport.

(2) A foreign-trained applicant who is or has been licensed, certified, or registered in another jurisdiction of the United States shall comply with the requirements of Section 3(3) of this administrative regulation.]

Section 6[5]. License Reinstatement and Activation. (1) An expired license shall be reinstated upon submission of:

- (a) Completed License Reinstatement Application, Form OTB-4;
- (b) Late renewal fee of twenty-five (25) dollars;
- (c) Reinstatement fee of seventy-five (75) dollars;
- (d) Documentation of employment from time of expiration to present;
- (e) Documentation of current or initial certification by NBCOT or its equivalent;
- (f) Completion of NBCOT or equivalent exam; and
- (g) Evidence of completion of continuing competence requirements pursuant to 201 KAR 28:200, Section 2(3).

(2) An inactive license shall be reactivated upon submission of:

- (a) Written notification to the board of the licensee's intent to return to active status;
- (b) Identification of the licensee's proposed place of employment;
- (c) Reinstatement fee of seventy-five (75) dollars; and
- (d) Evidence of completion of continuing competence requirements pursuant to 201 KAR 28:200, Section 2(3).[Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "OT/L Application Form", February 2015; and
- (b) "OTA/L Application Form", February 2015.

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure of Occupational Therapist, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

Section 7. License Termination.

(1) A license not reinstated within five (5) years of expiration shall terminate.

(2) Terminated licenses shall not be eligible for reinstatement.

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

- (a) "Application Form", Form OTB-1, (edition Sept 2018);
- (b) "Supervision Temporary Permit Form," Form OTB-2, (edition Sept 2018);
- (c) "Annual OT/OTA Renewal Application," Form OTB-3 (edition Sept 2018);
- (d) "Reinstatement Application", Form OTB-4; (edition Sept 2018)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure of Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STACY GRIDER, Chair

APPROVED BY AGENCY: October 8, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2018, at 10:00 a.m., EDT, at the Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Jared Downs, Counsel, Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40601-5412, phone 502-564-3296, fax 502-564-4818, email Jared.Downs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jared Downs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedure by which applicants shall apply for, renew, or reinstate a temporary permit or license administered by the board under the provisions of KRS Chapter 319A.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure a consistent and straightforward application process for licensed occupational therapists and occupational therapist assistants in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is an amendment that conforms with the board's authority in KRS 319A.070.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists licensees and the board by providing specific rules for licensure.

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

(a) How the amendment will change this existing administrative regulation: This amendment will bring all requirements for occupational therapy licensure into a single regulation, significantly facilitating compliance for applicants and licensees.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure specific process for all potential licensure applicants.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the board's statutory mandate in KRS 319A.070 to promulgate administrative regulations relating to professional conduct to carry out the provisions of KRS Chapter 319A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make compliance more straightforward for applicants and licensees, and will make administration easier for the board and staff.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All 3,777 holders of and applicants for licenses issued by the Board of Licensure for Occupational Therapy will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees and applicants will not have to take additional action to comply with this amendment; the amendment relocates and consolidates requirements previously scattered across multiple regulations in 201 KAR Chapter 28. By placing all licensure requirements and fees in one regulation, this amendment will facilitate compliance by all licensees and applicants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Licensees and applicants will have no new costs as a result of this amendment; licensure fees have now been consolidated with licensure requirements for ease of use in one regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will be able to more efficiently find information and procedures for license application, renewal, and reinstatement in a single 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 implementation cost from this amendment.

(b) On a continuing basis: There will be no implementation cost on a continuing basis from this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for 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: No increase in fees or funding is necessary for the implementation of 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 directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied because this amendment treats equally situated persons equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

be impacted by this administrative regulation? The Board of Licensure for Occupational Therapy will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 319A.070.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not anticipated to generate additional revenue for state or local government for the first year; although licensing fees have been relocated to this regulation for ease of use, their amounts have not changed.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not anticipated to generate revenue for state or local government for subsequent years; although licensing fees have been relocated to this regulation for ease of use, their amounts have not changed.

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

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

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

Revenues (+/-): (\$200.00)

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET Board of Licensure for Occupational Therapy (Amendment)

201 KAR 28:170. Deep physical agent modalities.

RELATES TO: KRS 319A.010(8), 319A.080(4), 319A.170(1)(c)
STATUTORY AUTHORITY: KRS 319A.070(1), (3)(a), 319A.080(4)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3)(a) authorizes the board to promulgate administrative regulations to administer the provisions of KRS Chapter 319A. KRS 319A.080(4) requires the board to promulgate administrative regulations to set forth content guidelines for the training and instruction necessary for the use of deep physical agent modalities. This administrative regulation establishes the requirements for obtaining certification in deep physical agent modalities.

Section 1. Definition. "DPAM Specialty Certification" means the certification issued to a Kentucky-licensed occupational therapist or licensed occupational therapy assistant who meets the standards set forth in KRS 319A.080 and this administrative regulation and who has been certified by the board.

Section 2. Application. A licensee, before utilizing deep physical agent modalities, shall submit to the board a DPAM Specialty Certification Application. (1) The application shall be accompanied by:

(a) Payment of the certification fee of twenty-five (25) dollars as required by KRS 319A.170(1)(c); and

(b) Proper documentation that the applicant has met all educational and clinical requirements for certification which shall include:

1. Successful completion of the requisite hours of training and

instruction required by KRS 319A.080(4) for the level of licensure held by the applicant; and

2. Successful completion of the five (5) treatment sessions that are signed off by the DPAM supervisor and meet the requirements specified in Section 4 of this administrative regulation.

(2) The documentation shall include:

(a) The name and address of the person or organization presenting the course, workshop, seminar, or training attended by the applicant;

(b) A copy of the course syllabus or a description of the course, workshop, or seminar which includes a summary of the learning objectives and teaching methods employed in the course, workshop, or seminar, a timed agenda of the course, workshop, or seminar with the content areas identified in Section 3(2)(a) to (j) of this administrative regulation clearly detailed within the timeframes, the qualifications of the instructors, and KBLOT course approval documentation provided by the board to the person or organization presenting the course, workshop, or seminar;

(c) The name, address, and credentials of the person identified as the DPAM supervisor who supervised the five (5) treatment sessions;

(d) Proof of successful completion of the training or course of instruction required by KRS 319A.080(4); and

(e) A statement signed by the DPAM supervisor confirming that the applicant has completed five (5) supervised treatment sessions and that the criteria set forth in Section 4 of this administrative regulation have been met.

(3) A DPAM Specialty Certification shall be issued by the board before the individual can begin using deep physical agent modalities except when a qualified licensee is performing those modalities as part of a supervised program to complete the five (5) supervised treatment sessions required for a DPAM Specialty Certification under this administrative regulation.

(4) The board shall maintain a roster of persons who have been issued DPAM Specialty Certification for the use of deep physical agent modalities.

Section 3. Training and Instruction. (1) The training and instruction shall be earned by direct personal participation in courses, workshops, or seminars.

(2) The content of the courses, workshops, or seminars shall include hands on training and instruction. Training shall not consist of all on-line courses that do not provide hands on lab instruction. Training shall include the following subject areas:

(a) Principles of physics related to specific properties of light, water, temperature, sound, and electricity;

(b) Physiological, neurophysiological, and electrophysiological changes which occur as a result of the application of each of the agents identified in KRS 319A.010(8);

(c) Theory and principles of the utilization of deep physical agents which includes guidelines for treatment or administration of agents within the philosophical framework of occupational therapy;

(d) The ~~rationale~~[rational] and application of the use of deep physical agents;

(e) The physical concepts of ion movement;

(f) Critical thinking and decision making regarding the indications and contraindications in the use of deep physical agents;

(g) Types selection and placement of various agents utilized;

(h) Methods of documenting the effectiveness of immediate and long-term effects of interventions;

(i) Characteristics of equipment including safe operation, adjustment, and care of the equipment; and

(j) Application and storage of specific pharmacological agents.

(3) The training and instruction shall include at a minimum eight (8) hours for an OTA/L and four (4) hours for an OT/L of hands on laboratory experience using DPAMs.

(4) All courses, workshops, or seminars utilized for DPAM Specialty Certification shall meet the requirements of subsection (2)(a) to (j) of this section, be at least four (4) hours in length, and be approved by the board.

(5) A person or organization who is seeking board approval for training and instruction for DPAM courses, workshops, or seminars

which are intended to meet the requirements of KRS 319A.080(4) shall submit a DPAM Course, Workshop, or Seminar Provider Approval Application Form to the board prior to the first occurrence of the DPAM course, workshop, or seminar. Once approved by the board, a DPAM course, workshop, or seminar may occur multiple times throughout the year of approval. A DPAM course, workshop, or seminar approval shall expire one (1) year after the approval date. A new DPAM Course, Workshop, or Seminar Provider Approval Application Form shall be submitted to the board on an annual basis.

Section 4. Supervised Treatment Sessions. (1) The supervised treatment sessions required for DPAM Specialty Certification shall be sufficiently detailed to allow the DPAM supervisor to determine that the supervisee has demonstrated the following skills:

(a) The ability to evaluate or contribute to the evaluation of the client, depending upon the applicant's licensure status as an OT/L or an OTA/L and make an appropriate selection of the deep physical agent to be utilized;

(b) A thorough knowledge of the effects of the deep physical agent which is to be utilized;

(c) The ability to explain the precaution, contraindication, and rationale of the specific deep physical agent utilized;

(d) The ability to formulate and justify the occupational therapy intervention plan specifically delineating the adjunctive strategy associated with the use of each deep physical agent;

(e) The capability to safely and appropriately administer the deep physical agent;

(f) The ability to properly document the parameters of intervention which include the client's response to treatment and the recommendations for the progression of the intervention process; and

(g) The skills identified in paragraphs (d) and (f) of this subsection are not applicable to an OTA/L's practice and an OTA/L is not required to demonstrate the skill in a supervised treatment session.

(2) The supervised treatment sessions shall include one (1) session for each of the following areas:

(a) Iontophoresis;

(b) Ultrasound; and

(c) Electrical stimulation.

(3) The remaining two (2) sessions may cover any deep physical agent identified in KRS 319A.010(8) including those identified in subsection (2)(a) to (c) of this section.

(4) Supervised treatment sessions may be completed in a laboratory portion of an instructional course, provided that the instructor meets the board's requirements for a DPAM supervisor and that all of the requirements of this administrative regulation have been met.

(5) Treatment sessions shall be completed under the direct supervision of an OT/L who meets the requirements of subsection (6) of this section and is approved by the board.

(6) Before an OT/L may be a DPAM supervisor for the treatment sessions specified in this administrative regulation, he or she shall:

(a) Have a DPAM Specialty Certification issued by the board;

(b) Be in good standing with the board;

(c) Submit a DPAM Specialty Certification Supervisor Application; and

(d) Have one (1) year of clinical experience in the use of deep physical agent modalities.

(7) Individuals other than OT/Ls who have previously been approved as a DPAM supervisor under this administrative regulation shall maintain the status as a DPAM supervisor until June 1, 2015. After this time, only OT/Ls who meet the requirements of subsection (6) of this section shall remain active DPAM supervisors and be approved by the board.

(8) The issuance of the DPAM specialty certification by the board only shows that the applicant has met the minimum requirements of KRS 319A.080(4)(a). It shall be the duty of the individual licensee to determine his or her competency to provide a specific DPAM for a client.

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Section 5. An OTA/L certified to use DPAMs under this administrative regulation may only use DPAMs when supervised by an OT/L certified to use DPAMs under this administrative regulation.

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

(a) "DPAM Specialty Certification Application", Form OTB-5, Sept 2018~~[February 2015]~~;

(b) "DPAM Course, Workshop, or Seminar Provider Approval Application Form", Form OTB-6, September 2018~~[February 2015]~~; and

(c) "DPAM Specialty Certification Supervisor Application", February 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STACY GRIDER, Chair

APPROVED BY AGENCY: October 10, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2018, at 10:00 a.m., EDT, at the Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Jared Downs, Counsel, Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40601-5412, phone: 502-564-3296, fax 502-564-4818, email Jared.Downs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jared Downs, Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation revises two application forms that are incorporated by reference in order to eliminate several typographical errors, clarify the statutes and administrative regulations underlying application requirements, and generally make the application easier to use.

(b) The necessity of this administrative regulation: This administrative regulation is intended to eliminate several typographical errors, clarify the statutes and administrative regulations underlying application requirements, and generally make two applications incorporated by reference easier to use.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is an amendment that conforms to the Board's authority in KRS 319A.070 and 319A.080.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The revisions to the two applications incorporated by reference will eliminate several typographical errors, clarify the statutes and administrative regulations underlying application requirements, and generally make the application easier to use

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

(a) How the amendment will change this existing administrative

regulation: It will make two applications incorporated by reference easier to complete.

(b) The necessity of the amendment to this administrative regulation: It will make two applications incorporated by reference easier to complete. The amendment is necessary to ensure specific process for all potential licensure applicants.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the board's statutory mandate in KRS 319A.070 and 319A.080 to promulgate administrative regulations relating to professional conduct to carry out the provisions of KRS Chapter 319A.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will make two applications incorporated by reference easier to complete.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All applicants for DPAM specialty certification and those seeking to hold a DPAM course, workshop, or seminar will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment of this administrative regulation will not require the regulated entities identified in question (3) to take any new action to comply.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will find it easier to complete their application for DPAM specialty certification and approval for a DPAM course, workshop, or seminar.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: Nothing.

(a) Initially: There will be no initial implementation cost from this amendment.

(b) On a continuing basis: There will be no implementation cost on a continuing basis from this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for 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: No increase in fees or funding is necessary for the implementation of 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 directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied because this amendment treats equally situated persons equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Licensure for Occupational Therapy will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 319A.070 and KRS 319A.080.

3. Estimate the effect of this administrative regulation on the

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

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

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

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

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

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

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

301 KAR 2:132. Elk hunting seasons, permits, zones, and requirements.

RELATES TO: KRS 150.010, 150.170(4), 150.180, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.177, 150.178, 150.390(3)

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 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits may be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

Section 1. Definitions.

(1) "Antlered elk" means an elk having visible polished antler protruding above the hairline.

(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.

(3) "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.

(4) ~~"At-large" means any portion of the elk zone not included in a limited entry area.~~

(5) "Bait":

(a) Means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that could lure, entice, or attract wildlife; and

(b) Does not mean the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planning or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively

consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

(5) ~~[(6)]~~ "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(6) ~~[(7)]~~ "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

(7) ~~[(8)]~~ "Elk" means *Cervus canadensis* ~~[elaphus]~~ *nelsoni*.

(8) ~~[(9)]~~ "Elk Management Unit" or "EMU" means a designated area in the restoration zone with specific management restrictions for a post-season antlerless elk quota hunt.

(9) ~~[(40)]~~ "Elk Restoration Permit" or "ERP" means an elk permit given to a landowner or lessee who allows the department to capture elk on the landowner or lessee's property for restoration or restocking purposes.

(10) ~~[(44)]~~ "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(11) ~~[(42)]~~ "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters into an agreement with the department to allow public access and hunting for at least five (5) years.

(12) ~~[(43)]~~ "Limited Entry Area" or "LEA" means a designated area in the restoration zone with specific management restrictions.

(14) "Muzzleloader" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(13) ~~[(45)]~~ "Out-of-zone" means all counties not included in the restoration zone.

(14) ~~[(46)]~~ "Restoration zone" means the Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

(15) "Shed" means an antler that has naturally been cast off the skull as a part of the annual growth and replacement process.

(16) ~~[(47)]~~ "Spike" means an elk having one (1) or two (2) antler points on each side.

(17) "Unit" means a designated area in the restoration zone with specific management restrictions.

(18) "Voucher cooperator" means a landowner or lessee who owns or leases at least 100 acres of land in the restoration zone and enters into an agreement with the department to allow elk hunting access.

(19) "Youth" means a person under the age of sixteen (16) by the first date of the hunt.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk that are causing property damage. A person authorized to destroy an elk shall:

(1) Attach a department-issued destruction tag to an elk prior to moving the carcass; and

(2) Not remove the destruction tag until the carcass is processed.

Section 3. Elk Quota Hunts.

(1) The elk quota hunt application period shall be January 1 to April 30.

(2) An applicant shall:

(a) Complete the elk quota hunt application process on the department's Web site at fw.ky.gov; and

(b) Pay a nonrefundable application fee of ten (10) dollars.

(3) The commissioner shall extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.

(4) There shall be a random electronic drawing from each applicant pool.

(5) Youth may enter a separate drawing pool for ~~up to ten (10)~~ either-sex elk permits ~~that~~ ~~These permits~~ shall be valid for use during all elk seasons:

~~(a) Anywhere in the at-large portion of the restoration zone; or~~

~~(b) Within an LEA if the youth applies for and is drawn for an LEA,~~ pursuant to Section 7(4) of this administrative regulation.

(6) A youth ~~applicant~~ shall not apply for the youth-only elk quota hunt more than once per application period.

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(7) An applicant for the youth-only elk quota hunt may also apply for a regular quota hunt. ~~The regular quota hunts shall be~~ as established in subsection (12) of this section.

(8) A youth ~~applicant~~ drawn for the youth-only elk quota hunt shall not be drawn in any other elk quota hunt held during the same calendar year.

(9) A youth drawn for the youth-only elk quota hunt shall be ineligible to be drawn in the youth-only elk quota hunt in subsequent years.

(10) Nonresidents shall not comprise more than ten (10) percent of all drawn applicants in each quota hunt pool.

(11) A quota hunt permit awarded from any department-administered drawing shall not be transferable.

(12) In addition to the youth-only quota hunt, there shall be ~~three (3)~~ ~~four (4)~~ separate regular elk quota hunts consisting of:

(a) ~~Antlered archery and crossbow;~~

(b) ~~Antlered firearms;~~

(b) ~~(c) Antlerless archery and crossbow; and~~

(d) ~~Antlerless firearms; and~~

(c) Either-sex archery and crossbow.

(13) An applicant shall:

(a) Apply only once for an individual elk quota hunt;

(b) Not be eligible to be drawn in more than one (1) of the ~~three (3)~~ ~~four (4)~~ quota hunt pools;

(c) Only be selected by a random electronic drawing; and

(d) Pay a nonrefundable application fee of ten (10) dollars for each entry.

(14) A person who is drawn for an elk quota hunt shall be ineligible to be drawn for any elk quota hunt for the following three (3) years.

(15) A person who does not have access to the department's Web site to apply for any quota hunt may contact the department toll free at ~~(800)~~ ~~1-800-~~858-1549 for assistance in applying.

Section 4. Landowner Cooperator Permits.

(1) With the approval of the commission, the commissioner shall issue to a landowner cooperator:

(a) One (1) either-sex permit annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement;

(b) Two (2) antlerless-only permits annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement; or

(c) One (1) antlerless-only permit annually per 5,000 acres of land enrolled with the department in an elk hunting access agreement for the duration of the agreement.

(2) A recipient of a landowner cooperator permit shall comply with the season, bag limit, and hunter requirements in Sections 7 and 8 of this administrative regulation.

(3) A landowner cooperator permit shall only be used on the land that is established in the agreement, except that it may be used on adjacent property if:

(a) The adjacent property is owned by a different landowner; and

(b) The adjacent landowner has granted permission to the permit holder.

(4) A landowner cooperator permit may be transferred to any person eligible to hunt in Kentucky, but prior to hunting, the landowner cooperator or person who has received the transferred permit shall provide the department with the hunter's:

(a) Name;

(b) Fish and Wildlife customer identification number ~~[Social Security number]~~;

(c) Address; and

(d) Telephone number.

(5) The landowner cooperator permit shall not be transferable if it was already used for the harvest of ~~an~~ ~~one (1)~~ elk.

(6) Public access agreements with the department shall be recorded in writing.

Section 5. Voucher Cooperator Permits.

(1) A voucher cooperator shall accrue one (1) voucher point for each legally harvested elk.

(2) A voucher cooperator who accrues ten (10) total points on land enrolled pursuant to Section 1(18) of this administrative regulation shall receive one (1) either-sex elk permit from the department.

(3) A recipient of a voucher cooperator elk permit shall comply with all of the requirements established in Sections 7 and 8 of this administrative regulation.

(4) A voucher cooperator elk permit shall only be used on:

(a) The property enrolled with the department per agreement; or

(b) Other property that the landowner or lessee owns or leases.

(5) A voucher cooperator permit may be transferable to any person eligible to hunt in Kentucky.

(6) If a voucher cooperator permit is to be transferred, then the landowner, lessee, or person who has received the transferred permit shall provide to the department by August 15 the hunter's:

(a) Name;

(b) Fish and Wildlife customer identification number ~~[Social security number]~~;

(c) Address; and

(d) Telephone number.

(7) A permit shall not be transferable after being used for the harvest of an elk.

Section 6. Elk Restoration Permits.

(1) A landowner or lessee who allows the department to capture elk on the landowner or lessee's property shall accrue one (1) point for each captured elk.

(2) A landowner or lessee who accrues ten (10) total points shall receive one (1) either-sex elk permit from the department that shall only be used the following hunting season.

(3) A recipient of an ERP shall comply with all the requirements established in Sections 7 and 8 of this administrative regulation.

(4) An ERP shall only be used on property that the ERP recipient owns or leases.

(5) An ERP recipient may transfer the permit to any person eligible to hunt in Kentucky.

(6) If an ERP recipient transfers an ERP to another hunter, then the ERP recipient shall provide to the department by August 15 the hunter's:

(a) Name;

(b) Address;

(c) Telephone number; and

(d) Fish and Wildlife customer identification number ~~[Social security number]~~.

(7) An ERP shall be invalid if it has already been used to harvest an elk.

Section 7. Hunter Requirements.

(1) A person shall carry proof of purchase of a valid Kentucky hunting license and valid elk permit while hunting, unless exempted by KRS 150.170.

(2) The statewide bag limit shall be one (1) elk per hunter per license year.

(3) If a legal elk hunter kills any elk, then:

(a) The person shall immediately cease hunting elk for the remainder of the elk season; and

(b) ~~The~~ ~~All~~ elk ~~permit~~ ~~permits~~ held by that individual shall immediately become invalid.

(4) A drawn hunter may apply to hunt in up to ~~two (2) units~~ ~~four (4) areas in any combination of the limited entry areas~~ by completing the application process on the department's Web site at fw.ky.gov.

(a) Up to three (3) drawn hunters may apply for their unit ~~[LEA]~~ choices as a party.

(b) If the party is drawn for a unit ~~[the LEA]~~, then all hunters in the party shall be assigned to that same unit ~~[LEA]~~.

(c) If the number of slots remaining in the quota is less than the number of hunters in the next party selected, the entire party shall be assigned to the party's next choice ranking or be assigned to a unit by the department ~~[to the at-large area]~~.

(5) A drawn hunter who does not apply for a unit ~~[an LEA or is~~

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~~not drawn for an LEA]~~ shall be assigned to a unit by the department~~[the at-large area]~~.

(6) A hunter drawn for a unit~~[an LEA]~~ may hunt only in the assigned unit~~[LEA]~~, except that a person who is drawn for any elk quota hunt may hunt on his or her land within the restoration zone.

(7) An elk hunter or any person accompanying an elk hunter shall comply with hunter orange requirements established in 301 KAR 2:172.

(8) An elk hunter shall not:

(a) Take elk except during daylight hours;
(b) Use dogs, except to recover wounded elk using leashed tracking dogs;

(c) Hunt over bait inside the elk restoration zone;

(d) Drive elk from outside the assigned area;

(e) Take an elk while it is swimming;

(f) Use electronic calls or electronic decoys; or

(g) Take an elk if the hunter is in a vehicle, boat, or on horseback, except that a disabled hunter who has a hunting method exemption permit issued pursuant to 301 KAR 3:027 may use a stationary vehicle as a hunting platform.

(9) A person shall:

(a) Obtain a vehicle tag from the department prior to hunting elk in the restoration zone; and

(b) Display the vehicle tag in the windshield of the vehicle while hunting elk.

(10) A youth shall be accompanied by an adult who shall remain in a position to take immediate control of the youth's firearm.

(11) An adult accompanying a youth shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(12) A person shall only use the weapons and ammunition established in paragraphs (a) through (e) of this subsection to take an elk:

(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;

2. Of .270 caliber or larger; and

3. Loaded with centerfire, single projectile ammunition designed to expand upon impact;

(c) A muzzleloader of .50 caliber or larger;

(d) A shotgun of twenty (20) gauge or larger loaded with a shell containing one (1) projectile; or

(e) A handgun loaded with:

1. Centerfire cartridges;

2. Bullets of .270 caliber or larger designed to expand upon impact; and

3. Cartridges with a case length of 1.285 inches or larger.

(13) A crossbow shall contain a working safety device.

(14) An elk hunter shall not use a magazine capable of holding more than ten (10) rounds.

(15) A quota elk hunter shall only take an elk of the type and sex determined by the permit drawn.

(16) A hunter drawn for a firearms elk permit shall hunt elk pursuant to that permit only during the five (5)~~[seven (7)]~~ day period assigned during the initial drawing.

(17) An individual who receives or is transferred a landowner cooperator permit, a voucher cooperator permit, an elk restoration permit, or a special commission permit may hunt in all of the~~[antlered-only or antlerless-only]~~ quota hunts and shall hunt in accordance with the seasons~~[and]~~ limits~~, and weapons~~ established in Section 7 of this administrative regulation.

(18)~~(a)~~ [A person who is drawn for an archery or crossbow permit or has a landowner cooperator permit, a special commission permit, an elk restoration permit, or voucher cooperator permit may hunt with a crossbow during all archery and crossbow seasons, if at the time of the hunt, the person:]

~~(a) Is a youth;~~

~~(b) Is sixty-five (65) years or older; or~~

~~(c) Has a crossbow hunting method exemption permit for hunting deer pursuant to 301 KAR 3:027.~~

~~(19)(a)~~ A person who is drawn for an elk quota hunt permit or

was issued a landowner cooperator permit, a special commission permit, an elk restoration permit, or voucher cooperator permit shall complete and submit a post-season elk hunting survey on the department's Web site~~[website]~~ at fw.ky.gov no later than the last day of February.

(b) A person who fails to comply with the requirements established in paragraph (a) of this subsection shall be ineligible to apply for any quota hunt or no-hunt option the following year.

Section 8. Elk Quota Hunt Seasons and Limits.

(1) A person drawn for an either-sex archery and crossbow permit shall use archery or crossbow equipment to take either-sex elk from the:

(a) Second Saturday in September through the fourth Friday in September; and

(b) First Saturday in December through the second Friday in December.

~~(2)[antlerless or antlered archery and crossbow permit shall not hunt when an elk firearms season is open.~~

~~(2) A person drawn for an antlered archery and crossbow permit shall use:~~

~~(a) Archery equipment to take an antlered elk beginning the third Saturday in September through December 31; and~~

~~(b) A crossbow to take an antlered elk from the fourth Saturday in September through December 31.~~

~~(3) A person drawn for an antlerless archery and crossbow permit shall use:~~

~~(a) Archery equipment to take an antlerless elk beginning the second Saturday in October through December 31; and~~

~~(b) A crossbow to take an antlerless elk from the second Saturday in October through December 31.~~

~~(4) A person drawn for an antlered firearms permit shall use any legal weapon as established in Section 7(12) of this administrative regulation to take an antlered elk during one (1) of two (2) five (5)~~[seven (7)]~~ day periods randomly assigned by the department from the:~~

~~(a) Last Saturday in September for five (5)~~[seven (7)]~~ consecutive days; or~~

~~(b) First Saturday in October for five (5)~~[seven (7)]~~ consecutive days.~~

~~(3)~~(5)~~ A person drawn for an antlerless firearms permit shall use any legal weapon as established in Section 7(12) of this administrative regulation to take an antlerless elk during one (1) of two (2) five (5)~~[seven (7)]~~ periods randomly assigned by the department from the:~~

~~(a) Last~~[Second]~~ Saturday in November~~[December]~~ for five (5)~~[seven (7)]~~ consecutive days; or~~

~~(b) Last~~[Third]~~ Saturday in December for five (5)~~[seven (7)]~~ consecutive days.~~

Section 9. Unit~~[LEA]~~ Boundaries and Elk Viewing Areas.

(1) Hunting unit boundaries and the boundaries of the Appalachian Wildlife Center Viewing Area are incorporated by reference~~[Hazard LEA – Starting at the intersection of State Hwy 476 and State Hwy 80, the boundary proceeds east on Hwy 80 to the intersection with State Hwy 3209. The boundary then goes west on Hwy 3209 to the intersection with State Hwy 1087. The boundary then goes east on Hwy 1087 to the intersection with State Hwy 1098 near Yellow Mountain. The boundary then follows Hwy 1098 north and west to the intersection with State Hwy 15 near Quicksand. The boundary then goes south on Hwy 15 to the intersection with State Hwy 476 near Lost Creek. The boundary then goes south on Hwy 476 to the intersection with State Highway 80, completing the boundary].~~

(2) Elk viewing areas shall be closed to all elk hunting~~[Levisa Fork LEA – Starting at the intersection of State Hwy 1789 and State Hwy 460 at Millard, the boundary proceeds south and east on Hwy 460 to the intersection of Hwy 460 and State Hwy 1499 at Mouthcard. The boundary then runs north along State Hwy 1499 to the intersection of State Hwy 1499 and State Hwy 194. It then runs west and north on Hwy 194 to the intersection of Hwy 194 and State Hwy 3418 (Ridge Line Road). The boundary then runs west on Hwy 3418 to the intersection of State Hwy 3418 and Raccoon~~

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~~Road. The boundary then runs west on Raccoon Road to the intersection of Raccoon Road and State Hwy 1441. The boundary then runs south along Hwy 1441 to the intersection of State Hwy 1441 and State Highway 1789. The boundary then runs west to the intersection of Hwy 1789 and State Highway 460, completing the boundary.~~

~~(3) Middlesboro LEA — Starting at the intersection of US Hwy 25E and the Tennessee border at Middlesboro, the boundary proceeds southward and westward on the Tennessee and Kentucky border until the intersection of State Hwy 190. The boundary proceeds northward and westward on State Hwy 190 to the intersection of US Hwy 25E. The boundary then goes south on US Hwy 25E to the Tennessee border, completing the boundary.~~

~~(4) Prestonsburg LEA — The area shall be within the boundary of the Czar Hunter Access Area as indicated by signage.~~

~~(5) Straight Creek LEA — Starting at the intersection of State Hwy 66 and State Hwy 221 at Straight Creek, the boundary proceeds east on State Hwy 221 to the intersection with State Hwy 2009. The boundary then proceeds north along State Hwy 2009 to the intersection with US Route 421. The boundary then proceeds north on US Route 421 to the intersection with State Hwy 406 near Stinnett. The boundary then follows State Hwy 406 west to the intersection with State Highway 66. The boundary then follows State Hwy 66 south to the intersection with Hwy 221 to complete the boundary.~~

~~(6) Tug Fork LEA — The area shall be within the boundary of the Revelation Energy Hunter Access Areas in Martin, Pike, and Floyd Counties, as established by signage.~~

Section 10. Post-season Quota Hunt on Private Land.

(1) A modern firearms quota hunt for antlerless elk and spikes shall take place beginning on the fourth Saturday in January for fourteen (14) consecutive days.

(2) Each hunter shall be randomly drawn from the pool of applicants who:

(a) Were not drawn for the previous elk quota hunts; and

(b) Are residents of counties included, wholly or in part, within an EMU boundary.

(3) A drawn applicant shall comply with the requirements in Section 7 of this administrative regulation except that an applicant may hunt only in the assigned EMU or on land the applicant owns within another EMU.

(4) The EMU boundaries shall be as incorporated by reference in this administrative regulation.

(5) Any public hunting area within an EMU shall be closed to elk hunting during this season.

Section 11. Tagging and Checking Requirements.

(1) Immediately after taking an elk, a hunter shall record on a hunter's log:

(a) The species harvested;

(b) The sex of the animal;

(c) Date of harvest; and

(d) County of harvest.

(2) A hunter shall check a harvested elk before midnight on the day the elk 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.

(3) A hunter who has checked in an elk shall record the confirmation number on a hunter's log.

(4) If the hide or head is removed from the carcass before the elk is checked in, then the hunter shall be required to demonstrate proof of the sex of the elk.

(a) For antlered elk the hunter shall retain the:

1. Head with antlers; or

2. Testicles, scrotum, or penis attached to the carcass; or

(b) For antlerless elk the hunter shall retain the:

1. Head;[or]

2. Udder or vulva attached to the carcass; or

3. Testicles, scrotum, or penis attached to the carcass.

(5) If a harvested elk leaves the possession of the hunter, the hunter shall attach to the carcass a hand-made tag that contains

the hunter's:

(a) Confirmation number;

(b) Name; and

(c) Telephone number.

(6) A person shall not provide false information in:

(a) Completing the hunter's log;

(b) Checking an elk; or

(c) Creating a carcass tag.

Section 12. Elk Hunting on Public Land.

(1) A person drawn for an elk quota hunt or the recipient of a special commission permit may hunt on the areas listed in paragraphs (a) through (f) of this subsection within the restoration zone pursuant to the conditions of the permit received:

(a) Wildlife Management Areas;

(b) Hunter Access Areas;

(c) State forests;

(d) Big South Fork National River and Recreation Area;

(e) Daniel Boone National Forest; or

(f) Jefferson National Forest.

(2) Portions of Paintsville Lake WMA that lie out of the restoration zone shall be subject to the requirements established in Section 13 of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

~~(4) Paul Van Booven WMA and Fishtap Lake WMA shall be designated as an elk viewing area and shall be closed to all elk hunting. [(a) The archery and crossbow seasons shall be open as established in Section 8 of this administrative regulation.~~

~~(b) A firearm shall not be used to hunt elk.]~~

(5) A person shall not mimic the sound of an elk on public land open to elk hunting from September 1 until the opening of the elk archery season.

Section 13. Out-of-zone Elk Hunting.

(1) The methods for taking deer and the deer seasons established in 301 KAR 2:172 shall apply to a person taking elk outside of the restoration zone, except that a hunter shall comply with the weapons and ammunition requirements established in Section 7 of this administrative regulation.

(2) Unless exempted by KRS 150.170, a person who is hunting out-of-zone elk shall possess:

(a) A valid Kentucky hunting license; and

(b) An out-of-zone elk permit.

(3) A person may take an elk of either sex, which shall not count toward the person's deer bag limit.

(4) Any elk harvested out-of-zone shall be telechecked pursuant to Section 11 of this administrative regulation.

Section 14. Elk Antlers.

(1) A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours ~~to obtain a disposal permit~~.

(2) An elk shed shall be legal to possess.

Section 15. Elk Permit Deferral. A person who is the recipient of a valid elk quota hunt permit, landowner cooperator permit, voucher cooperator permit, an ERP, or special commission permit may defer use of the permit to the following year if:

(1) There is a death of the permit holder's:

(a) Spouse;

(b) Child; or

(c) Legal guardian, if the permit holder is under eighteen (18) years old; and

(2) The permit holder provides to the department a death certificate and one (1) of the following documents prior to May 1 of the year following the hunting season:

(a) A marriage certificate;

(b) A birth certificate; or

(c) An affidavit of paternity or maternity.

Section 16. Incorporation by Reference. (1) The following

material is incorporated by reference:

- (a) "Knott-Floyd Elk Management Unit 2017 Edition" map;[and]
- (b) "Mayking Letcher Elk Management Unit 2017 Edition" map;
- (c) "Elk Hunting Units" map, 2019 edition; and
- (d) "Appalachian Wildlife Center Viewing Area" map, 2019 edition

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8:00[8] a.m. to 4:30 p.m., Eastern Time.

FRANK JEMLEY III, Acting Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 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 November 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission permits, landowner cooperator permits, elk restoration permits, and cooperator voucher permits can be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage elk populations in Kentucky, while providing optimal elk hunting and tourism opportunities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the statutes by establishing all the requirements for elk hunting, and the procedures for elk damage abatement and any postseason hunt held after the quota hunts.

(2) If 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 elk hunting permits for the quota elk hunt. It modifies the elk hunting areas, creates elk viewing areas and changes how hunters are distributed in the elk zone. Additionally, it shortens the season length for all elk permits and clarifies that it is legal to possess an elk shed.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to better manage hunter distribution and better manage the elk herd. The creation of the elk viewing areas will establish places where wildlife watchers can go view elk. Additionally, many people have picked up elk sheds and the allowance to possess those sheds needs to be clarified.

(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: There are approximately 35,000 to 45,000 people who apply for the elk permit drawing in Kentucky each year, of which approximately 600 are drawn. Additionally, it creates designated elk viewing areas to allow wildlife watchers to have a place to go and view elk. It is currently unknown how many people go to view elk.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Elk quota hunt applicants will have 3 permits to apply for, instead of 4. Additionally drawn elk hunters will have a shorter timeframe to hunt elk. Lastly, hunters will not be allowed to hunt in elk viewing areas.

(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 alter any costs for the entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Elk hunters should experience a higher harvest success rate and it creates a place for wildlife watchers to go and view elk.

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

(a) Initially: Other than a minor administrative cost, there will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no 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: Additional fees for direct implementation of this regulation are not necessary, as infrastructure for conducting all aspects of elk management and quota hunts already exists.

(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? Yes. Residents of the counties within the EMUs who are not drawn for the regular quota hunt shall be eligible for a late season depredation hunt. This hunt allows residents to assist landowners in removing elk causing property damage in 2 areas with chronic nuisance elk problems. These tags can only be used on private land within one of the 2 Elk Management Units (EMUs). The number of tags to be issued will be determined by the level of nuisance elk cases or property damage caused by elk documented within the EMUs prior to January each year.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, KRS 150.177, KRS 150.178, and KRS 150.390.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? For the 2017 elk season, approximately 78,353 applications were purchased at \$10 per application (\$783,530 of revenue to the department). Approximately 622 of the 710 drawn hunters paid for elk permits, generating \$70,000 in additional revenue to the department. Total revenue directly generated by the elk hunts for the department was over \$853,600 for the 2017 season. There is also a positive economic impact to cities, counties and local businesses in and near the elk restoration zone as hunters and tourists visit. This economic impact is estimated at \$2.5 million annually.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is estimated that approximately \$600,000 to \$850,000 will be generated from quota hunt applications and elk permits for the department in subsequent years. There is also a positive economic impact to cities, counties and local businesses in and near the elk restoration zone as hunters and tourists visit. This economic impact is estimated at \$2.5 million annually in or near the elk zone.

(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:

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)**

401 KAR 39:060. General requirements.

RELATES TO: KRS 61.870, 61.884, 224.1-400, 224.10, 224.40-310, 224.46, 224.99, 40 C.F.R. Parts 124, 260, 261, 268, 270, 42 U.S.C. 2011 et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-510(3), 224.46-520, 224.50-130, 224.50-135

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 authorizes the Energy and Environment Cabinet to promulgate administrative regulations for the generation, treatment, storage, recycling, and disposal of hazardous wastes. KRS 224.46-510(3) and 224.50-130 require the cabinet to identify the characteristics of and to list hazardous wastes. KRS 224.46-505 and 224.46-520 authorize the cabinet to control land disposal of hazardous waste to be protective of human health and the environment. KRS 224.46-520 requires that persons engaging in the treatment, storage, disposal, and recycling of hazardous waste obtain a permit, and to establish standards for these permits, to require adequate financial responsibility, and to establish minimum

standards for closure for all facilities, and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This administrative regulation establishes the general requirements for hazardous waste management systems.

Section 1. Applicability. This administrative regulation shall apply to a person, state, or federal agency that engages in the generation, treatment, storage, disposal, transportation, or management of waste defined or identified as hazardous in KRS Chapter 224 or 401 KAR Chapter 39, including hazardous substances spilled into the environment that meet the criteria of hazardous waste.

Section 2. Hazardous Waste Management System. (1) Except as established in subsections (2) through (6) of this section and Section 6 of this administrative regulation, the requirements for hazardous waste management systems shall be as established in 40 C.F.R. Part 260, except:

(a) 40 C.F.R. 260.34(a)(1) to (3);

(b) 260.10; and

(c) The last sentence of 40 C.F.R. 260.34(a).

(2) The public notice requirements established in 40 C.F.R. 260.20(c) shall be replaced with the requirements established in paragraphs (a) and (b) of this subsection. If the tentative decision is to:

(a) Deny the petition, the cabinet shall notify the petitioner in writing and notify the public as required by subsection (3)(b) of this section; or

(b) Grant the petition, the cabinet shall propose a regulatory amendment, and file the proposed amendment with the Legislative Research Commission pursuant to KRS Chapter 13A, including the rule making and public comment process contained therein.

(3) The final decision making procedure established in 40 C.F.R., 260.20(e) shall be replaced with procedures established in paragraphs (a) and (b) of this subsection.

(a) The cabinet shall make a final decision after evaluating all public comments.

(b) The final decision shall be published either in the Kentucky Administrative Register, a daily or weekly major local newspaper of general circulation, or other methods reasonably calculated to give actual notice of the action to the persons potentially affected by it.

(4) A check made payable to the Kentucky State Treasurer in the amount required by KRS 224.46-014 shall be submitted to the cabinet with the submission of a completed petition for each hazardous waste that is petitioned for delisting.

(5) Upon approval by the cabinet of a petition to exclude a waste from a particular facility in accordance with 401 KAR Chapter 39, the excluded waste shall be subject to the disposal requirements established in 401 KAR Chapter 47 and the conditions as specified in the approved exclusion.

(6) A variance shall be a written waiver from a requirement of 401 KAR Chapters 39 and 40, upon the finding by the cabinet that the absence of the provision shall provide adequate protection to human health and the environment consistent with KRS Chapter 224.

(a)1. A request for variance from a requirement of 401 KAR Chapters 39 and 40 shall be submitted in a report in sufficient detail to provide to the cabinet the analyses, procedures, controls, and other pertinent data necessary to support the request for variance.

2. The granting of a request by the cabinet shall be in writing and shall specify appropriate conditions, including duration, limitations, and review procedures to provide adequate protection to human health and the environment.

(b) The cabinet shall grant a variance or permit modification from the requirements of 401 KAR Chapters 39 and 40 if a waste permit requirement, or the process and equipment used, is determined by the cabinet to be:

1. Insignificant as a potential hazard to human health or the environment because of its small quantity, low concentration, physical, biological, or chemical characteristics, or method of operation used; or

2. Handled, processed, or disposed of pursuant to

administrative regulations of another governmental agency, if the administrative regulations of other agencies comply with the requirements of the waste management administrative regulations, including federal exemption rule-making actions pertaining to hazardous waste management.

(c) The cabinet shall not grant any request for a variance that shall:

1. Make the hazardous waste program less stringent than the federal hazardous waste management program;
2. Conflict with Kentucky Revised Statutes;
3. Conflict with a regulatory provision stating that no variance shall be granted; or
4. Vary the financial responsibility requirements in a manner conflicting with 401 KAR 39:090 or Section 3 of this administrative regulation.

Section 3. Identification and Listing of Hazardous Waste. (1) Except as established in subsections (2) through (8) of this section and Section 6 of this administrative regulation, the requirements for identification and listing of hazardous waste shall be as established in 40 C.F.R. Part 261, except:

- (a) 40 C.F.R. 261.4(b)(17);
- (b) 40 C.F.R. 261.149; and
- (c) 40 C.F.R. 261.150.

(2) Wastes shall be considered radioactive mixed wastes if the wastes contain both hazardous wastes subject to KRS Chapter 224 and radioactive wastes subject to the Atomic Energy Act, 42 U.S.C. 2011 et. seq. Unless specifically exempted by 401 KAR 39:090, Section 3, radioactive mixed wastes shall be subject to the requirements of 401 KAR Chapters 39 and 40.

(3) Facilities required to comply with the export notification requirements referenced in 40 C.F.R. 261.39(a)(5) and 40 C.F.R. 261.41, shall also notify the cabinet.

(4) In addition to those substances listed in 40 C.F.R. 261, Subpart D, substances identified in Table I shall be listed hazardous wastes in the Commonwealth of Kentucky.

Table I	
Ky. Hazardous Waste No.	Substance
N001	GB (isopropyl methyl phosphonofluoridate) and related compounds (H)
N002	VX (O-ethyl-S-(2-diisopropyl-aminoethyl)-methyl phosphonothiolate) and related compounds (H)
N003	H (bis (2-chloroethyl) sulfide) and related compounds (H)
N101	Uncontaminated M67 Rocket Motor Assembly, Propellant Component of the Rocket Motor, Shipping Firing Tubes, and End-Caps associated with GB munitions
N102	Uncontaminated M67 Rocket Motor Assembly, Propellant Component of the Rocket Motor, Shipping Firing Tubes, and End-Caps associated with VX munitions
N201	Metal Parts Treater Residue associated with GB munitions or related wastes
N202	Metal Parts Treater Residue associated with VX munitions or related wastes
N203	Static Detonation Chamber Residue and Ash associated with H munitions
N301	Agent Hydrolysate associated with GB munitions
N302	Agent Hydrolysate associated with VX munitions
N401	Energetic Hydrolysate associated with GB munitions
N402	Energetic Hydrolysate associated with VX munitions
N501	Aluminum Precipitate associated with treated GB wastes
N502	Aluminum Precipitate associated with treated VX wastes
N601	Reverse Osmosis Reject or Supercritical Water Oxidation Effluent associated with treated GB wastes

N602	Reverse Osmosis Reject or Supercritical Water Oxidation Effluent associated with treated VX wastes
N701	Lab Wastes associated with treated GB wastes <u>and GB-containing lab wastes treated to destroy agent with caustic</u>
N702	Lab Wastes associated with treated VX wastes <u>and VX-containing lab wastes treated to destroy agent with caustic</u>
N703	Lab Wastes associated with treated H wastes <u>and H-containing lab wastes treated to destroy agent with caustic</u>
N801	<u>Off-gas Treatment (OTM) condensate associated with treated GB wastes</u>
N802	<u>Off-gas Treatment (OTM) condensate associated with treated VX wastes</u>
N901	<u>Spent Decontamination Solution associated with treated GB wastes</u>
N902	<u>Spent Decontamination Solution associated with treated VX wastes</u>

(5) In addition to the agricultural wastes established in 40 C.F.R. 261.4(b)(2), prunings and crop residues shall be agricultural wastes.

(6) In addition to the copy of the written state agreement required in 40 C.F.R. 261.4(b)(11)(ii) being submitted to the U.S. EPA, a copy shall be submitted to the cabinet at the same time.

(7) If multiple facilities are covered by the same financial assurance mechanism as referenced in 40 C.F.R. 261.143(g), 40 C.F.R. 261.147(a)(1)(i), and 40 C.F.R. 261.147(b)(1)(i), evidence of financial assurance shall be submitted to the cabinet and, as appropriate, to the Regional Administrator and other state directors.

(8) In addition to the excluded hazardous wastes in 40 C.F.R. Part 261, Appendix IX, the cabinet granted an exclusion for the multi-source landfill leachate (EPA Hazardous Waste F039) generated after February 2, 2017, at Ashland Route 3 Landfill, Kentucky 3, Catlettsburg, Kentucky. This subsection shall serve as publication of the exclusion in accordance with Section 2(3)(b) of this administrative regulation.

(9) Any special waste identified as a hazardous waste as established in this administrative regulation shall be:

- (a) Regulated pursuant to 401 KAR Chapter 39; and
- (b) Exempt from the assessment of the Kentucky hazardous waste management fund as established in KRS 224.46-580(7).

Section 4. Land Disposal Restrictions. Except as established in Section 6 of this administrative regulation, the requirements for land disposal restrictions shall be as established in 40 C.F.R. Part 268.

Section 5. Hazardous Waste Permit Programs and Procedures. (1) Except as established in subsections (2) through (18) of this section and Section 6 of this administrative regulation, the requirements for hazardous waste permit programs and procedures shall be as established in 40 C.F.R. Parts 124 and 270, except:

- (a) 40 C.F.R. 270.1(c)(2)(ix);
- (b) 40 C.F.R. 270.14(b)(18); and
- (c) 40 C.F.R. 124, Subparts C and D.

(2) In addition to public notice requirements of 40 C.F.R. 124, the statement contained in KRS 224.40-310(5)(e) shall be included in each public notice.

(3) The applicant or facility shall reimburse the cabinet for the costs of newspaper advertisements, duplication, and postage for any required public notice or distribution to a mailing list.

(4) In addition to the requirements of 40 C.F.R. 124.10(a)(1)(iii), public notice shall be given if a hearing has been granted pursuant to 401 KAR Chapters 4 and 5 or 805 KAR Chapter 1.

(5) In addition to the federal appeal procedures referenced in 40 C.F.R. Parts 124 and 270, the cabinet appeal procedures shall be as established in KRS 224.10-420 through 224.10-470 and 400 KAR Chapter 1 for cabinet issued permits.

(6)(a) Any owner or operator required to obtain a permit shall complete and submit to the cabinet:

1. EPA form 8700-23 as referenced in 40 C.F.R. 270.13; and
2. Part A Application Addendum, DWM 7058A.

(b) If any of the information required by paragraph (a) of this subsection changes, the owner or operator shall submit revised forms, established in paragraph (a) of this subsection, to the cabinet within sixty (60) days of the change, except as established in 401 KAR 39:080, Section 5(4).

(7) In addition to the noncompliance reporting requirements referenced in 40 C.F.R. 270.30(l)(6), the permittee shall immediately notify the cabinet of a release as established in KRS 224.1-400.

(8) In addition to the requirements established in 40 C.F.R. 270.10, any person applying for a construction and operation permit shall submit the information and documentation required in KRS 224.46-520(1) to include documentation of the applicant's decisions with respect to the proposal and justification for actions taken.

(9) In addition to the requirements of 40 C.F.R. Parts 124 and 270, for a hazardous waste disposal site or facility, that meets the criteria established in paragraph (a) of this subsection, a permit shall not be approved or issued by the cabinet, or a permit-by-rule applied, prior to the determinations established in KRS 224.40-310(6).

(a) This subsection shall apply to an owner or operator of:

1. A hazardous waste disposal site or facility that meets the definition of a waste disposal facility as defined by KRS 224.40-310(1); and

2.a. A new or proposed hazardous waste landfill, incinerator, or other site or facility for the land disposal of hazardous waste;

b. An existing hazardous waste landfill, incinerator, or other site or facility for the land disposal of hazardous waste that requests a permit modification that does not meet the criteria of a Class 1 or 2 modification; or

c. A new or existing hazardous waste treatment facility or hazardous waste storage facility that requests a permit modification to include a disposal facility instead of or in addition to any permitted hazardous waste activity already conducted by the owner or operator.

(b) The applicant shall obtain local government approval for incinerators or land disposal facilities, as specified in KRS 224.40-310(7).

(10) An emergency permit shall specify that:

(a) All remaining hazardous waste and residues shall be removed at the end of the term of the emergency permit to a properly permitted hazardous waste site or facility in order to be exempted from the financial requirements of 401 KAR 39:090;

(b) The permittee shall comply with the closure performance standards established in 401 KAR 39:090, Section 8; and

(c) The cabinet shall recover its actual and necessary costs associated with the permittee's failure to properly close the unit specified in the emergency permit.

(11) Upon collection of trial burn data, referenced in 40 C.F.R. 270.62(b)(9), the data shall become part of the Part B permit application.

(12)(a) In accordance with 401 KAR 39:090, the applicant shall establish financial assurance prior to issuance of a permit or sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal.

(b) The amount of financial assurance established for closure or post-closure shall be in accordance with the plan prepared pursuant to 401 KAR 39:090.

(c) The owner or operator of the hazardous waste site or facility shall submit a demonstration of financial assurance as established in KRS 224.46-520(3) and 401 KAR 39:090.

(13) An owner or operator of existing hazardous waste sites or facilities that close under interim status without submitting Part B of the permit application shall, at a minimum, comply with the corrective action requirements established in 401 KAR 39:090, Section 1.

(14) In addition to the requirements in 40 C.F.R. 270.10[270.30] and KRS 224.40-330, any initial, renewal, or

change to ownership permit application shall include the following background information and past compliance record:

(a) Organizational structure:

1. If the applicant is a sole proprietor, a detailed listing of any general or limited partnership, joint venture, or corporation in which the applicant holds as much as or more than a twenty-five (25) percent interest, whether ownership or otherwise;

2. If the applicant is a general or limited partnership, a detailed listing of:

a. Each of the partners and their respective interests, whether ownership or otherwise;

b. Any corporation, joint venture, limited liability corporation, general or limited partnership, or proprietorship in which any of the constituent partners of the applicant holds as much as or more than a twenty-five (25) percent interest whether ownership or otherwise; and

c. Any corporation, joint venture, proprietorship, limited liability corporation, or general or limited partnership that holds as much as or more than a twenty-five (25) percent interest, whether ownership or otherwise in any of the non-individual constituent partners comprising the applicant;

3. If the applicant is a corporation, a detailed listing of:

a. The officers, directors, and major stockholders holding as much as or more than a twenty-five (25) percent interest;

b. Any corporation of which the applicant is either a subsidiary or which holds as much as or more than a twenty-five (25) percent interest, either in stock or assets, in the applicant;

c. Any corporations that are either subsidiaries of the applicant or in which the applicant holds as much as or more than a twenty-five (25) percent interest, either in stock or assets; and

d. Any proprietorship, general or limited partnership, or joint venture in which the applicant holds as much as or more than a twenty-five (25) percent interest, whether ownership or otherwise; or

4. If the applicant is a joint venture, a detailed listing of:

a. All other joint ventures, and the respective interests, whether ownership or otherwise of each; and

b. Any proprietorship, general or limited partnership, joint venture, or corporation in which the applicant holds as much as or more than a twenty-five (25) percent interest, whether ownership or otherwise;

(b) For each individual or other entity listed in paragraph (a) of this subsection, a detailed listing of all violations of federal or state laws, rules, or administrative regulations concerning the areas established in subparagraphs 1. through 5. of this paragraph, whether judicial or administrative proceedings are pending or completed, that have resulted or may result in either criminal convictions or civil or administrative fines as much as or more than \$1,000:

1. Solid or hazardous waste management;

2. Air pollution;

3. Water;

4. Occupational Safety and Health Administration with respect to hazardous materials or hazardous substances; or

5. Transportation with respect to hazardous materials or hazardous substances; and

(c) For each individual or other entity listed in paragraph (a) of this subsection, a current financial statement prepared by a certified public accountant.

(15) The owner or operator of the hazardous waste site or facility shall complete and submit an evaluation of subsurface geologic formations and surface topography for solution or karst terrain.

(a) If the owner or operator demonstrates to the cabinet that the facility is not underlain by soluble limestone, the owner or operator shall be exempt from the requirements of this subsection.

(b) Except as established in paragraph (a) of this subsection, the owner or operator shall demonstrate that:

1. The facility has been designed to withstand any gradual or sudden land subsidence, which is characteristic of areas underlain by soluble limestone; and

2. Contamination into or through any fractures, channels, or solution features shall not occur.

(c) Except as established in paragraph (a) of this subsection,

the owner or operator shall:

1.a. Establish the presence and extent of all fractures, channels, and solution features in the bedrock beneath the facility and describe how these features shall be sealed, filled, isolated, or otherwise neutralized to prevent subsidence; and

b. Describe how solution features shall be monitored to demonstrate compliance with the criteria established in paragraph (b) of this subsection; or

2.a. Design, operate, and maintain a double-liner system, which shall be installed beneath the facility and that shall include a leak detection system that meets the criteria established in paragraph (b) of this subsection; and

b. Comply with all of the requirements of 401 KAR 39:090, Section 1, for the design of the double-lined facility as applicable.

(16) The owner or operator of the hazardous waste site or facility shall submit the actual test data demonstrating the liner is or will be compatible with the waste, if applicable.

(17)(a) The applicability established in 40 C.F.R. 124.31(a) shall be replaced with this paragraph.

1. The requirements in 40 C.F.R. 124.31 shall apply to all RCRA part B applications seeking:

a. An initial permit for a hazardous waste management unit;

b. A renewal of a permit for a unit with a significant change in facility operations;

c. A RCRA standardized permit as referenced in 40 C.F.R. 270, Subpart J; or

d. A renewal of a standardized permit for a unit with a significant change in facility operations, as defined by 40 C.F.R. 124.211(c).

2. The requirements in 40 C.F.R. 124.31 shall not apply to permit modifications pursuant to 40 C.F.R. 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) The applicability established in 40 C.F.R. 124.32(a) shall be replaced with this paragraph.

1. The requirements in 40 C.F.R. 124.32 shall apply to RCRA part B applications seeking:

a. An initial permit for a hazardous waste management unit; or

b. A renewal of a permit for a unit pursuant to 40 C.F.R. 270.51.

2. The requirements in 40 C.F.R. 124.32 shall not apply to a hazardous waste unit for which a facility owner or operator is seeking:

a. A RCRA standardized permit referenced in 40 C.F.R. part 270, subpart J;

b. A permit modification pursuant to 40 C.F.R. 270.42; or

c. A permit application submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(c) The applicability established in 40 C.F.R. 124.33(a) shall be replaced with this paragraph. The requirements in 40 C.F.R. 124.33 shall apply to applications seeking RCRA permits for hazardous waste management units.

(18) The biennial reporting referenced in 40 C.F.R. 270.60(a)(3)(v) shall be replaced with annual reporting.

Section 6. Exceptions and Additions. (1) In the event of a release or threatened release of a hazardous substance, pollutant, or contaminant to the environment in a quantity that may present an imminent or substantial danger to human health or the environment, the facility authorized representative shall:

(a) Immediately notify the cabinet's twenty-four (24) hour emergency response line as required by KRS 224.1-400; and

(b) Provide a written report of the incident or accident within seven (7) days of the release, if required by the cabinet pursuant to KRS 224.1-400.

(2) Dates included in the federal regulations referenced in 401 KAR Chapter 39 that occurred before the effective date of this administrative regulation shall not be construed as creating a retroactive right or obligation in accordance with 401 KAR Chapter 39 if that right or obligation did not exist in this administrative regulation prior to the date the federal regulations were referenced.

(3) If a right or obligation existed in accordance with federal

regulations based on a date in federal regulations, and there is a period from the date cited in the text until the date the requirements initially became effective in 401 KAR Chapter 39, these administrative regulations shall not contravene or countermand the legal application of the federal regulation for that period.

(4)(a) For initial issuance, modification, revocation and reissuance, or termination, of a permit, the applicable administrative regulations shall be those regulatory provisions that are in effect upon the date that the cabinet makes a final determination upon the permit action and are applicable to those specific permit conditions being modified or revoked and reissued.

(b) The procedures that shall be used for permit modification, revocation and reissuance, or termination shall be those regulatory procedures that are in effect upon the date of the cabinet's final determination.

(5) In addition to RCRA, Section 7003 KRS 224.10-410 shall apply.

(6) In addition to RCRA, Section 3008 KRS 224.10-420 through 224.10-470, 224.46-530, and 224.99-010 shall apply.

(7) In addition to RCRA, Section 3004 KRS 224.46-520, 401 KAR 39:090, and Section 4 of this administrative regulation shall apply.

(8)(a) As referenced in 401 KAR Chapter 39, the requirements in RCRA, Section 3010 shall be replaced with the requirement that any person generating or transporting a substance, or owning or operating a facility for treatment, storage, disposal, or recycling of the substance, to register with the cabinet after promulgation of an administrative regulation identifying a substance by its characteristics or listing as hazardous waste subject to 401 KAR Chapter 39.

(b) The registration shall be filed as established in 401 KAR 39:080, Section 1(2) and within ninety (90) days after promulgation or revision of the administrative regulation unless another registration date is established in the administrative regulation.

(9) Any person who submits information to the cabinet pursuant to KAR Chapters 39 and 40, may assert a claim of business confidentiality or trade secret covering part or all of that information by following the procedures established in KRS 224.10-212 and 400 KAR 1:060.

(a) Information covered by a claim shall be disclosed by the cabinet as established in 400 KAR 1:060 and KRS Chapter 61, except that information required by 401 KAR 39:080, Section 1, which is submitted in notification of intent to export a hazardous waste, shall be provided to the U.S. Department of State, U.S. EPA, and the appropriate authorities in a receiving country regardless of any claims of confidentiality.

(b) If a claim does not accompany the information received by the cabinet, the claim may be made available to the public without further notice to the person submitting the claim.

(10) A person shall not deliver hazardous waste to a facility for treatment, storage, or disposal, unless the owner or operator has:

(a) Registered with the cabinet as an existing hazardous waste facility in operation on or before November 19, 1980;

(b) Qualified for interim status in accordance with 401 KAR 39:090, Section 2; or

(c) Been granted a hazardous waste site or facility permit by the cabinet.

(11) A person shall not engage in the storage, treatment, or disposal of hazardous waste without first obtaining construction or operation permits from the cabinet in accordance with KRS 224.46-520(1).

(12) Issuance of a federal permit to own or operate a hazardous waste site or facility shall not relieve the owner or operator of the responsibility to comply with the requirements of 401 KAR Chapter 39.

(13) All permit forms or permit submissions to the cabinet shall include:

(a) One (1) original and two (2) paper copies of the form;

(b) One (1) electronic copy, which shall be an exact match to the original;

(c) Up to seven (7) additional copies of the application, if requested by the cabinet for public review;

(d) The Agency Interest (AI) number, if known; and

(e) A signature of the authorized representative.

(14) In addition to 40 C.F.R. 270.43, the cabinet may terminate a permit during its term or deny a permit renewal application for a violation of any requirement of KRS Chapter 224 or 401 KAR Chapter 39.

(15) In addition to 40 C.F.R. 270.50, a permit for the nerve agents established in KRS 224.50-130 and Section 3 of this administrative regulation shall be reviewed by the cabinet five (5) years after the date of permit issuance or reissuance and shall be modified if necessary, as established in Section 5 of this administrative regulation.

(16) The permittee shall have paid the applicable fees due as established in KRS 224.46 and 401 KAR 39:120.

(17) Except for closure, post-closure, and corrective action permit applications, failure to submit a requested application on time, or to submit in full the information required by 401 KAR Chapter 39, shall result in denial of the application in accordance with this administrative regulation.

(18) Past performance of the owner or operator shall be considered in the review and in the determination of any requirement for specialized conditions pursuant to KRS 224.40-330.

(19) The provisions of 401 KAR Chapter 39 shall be compatible with and complementary to each other. If an administrative regulation is found to be contradictory, the more stringent provision shall apply.

(20) The citations to Sections 301, 307, and 402 of the Clean Water Act shall also include any applicable Kentucky requirements as established in 401 KAR Chapter 5.

(21) The citations to Sections 60, 61, and 63 of the Clean Air Act shall also include any applicable Kentucky requirements as established in 401 KAR Chapters 50 through 65.

(22) The citations to the Safe Drinking Water Act shall also include any applicable Kentucky requirements as established in 401 KAR Chapters 6, 8, 9 and 10, and 805 KAR Chapter 1.

(23) In addition to 40 C.F.R. 258 and Subtitle D, 401 KAR Chapters 45, 47, and 48 shall apply.

(24) In addition to RCRA, Subtitle C KRS 224.46 shall apply.

(25) In addition to RCRA, Section 3008h KRS 224.10-100(18), KRS 224.99-010(5), and KRS 224.46-530 shall apply.

Section 7. Incorporation by Reference. (1) "Part A Application Addendum", DWM 7058A, June 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at waste.ky.gov.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 10, 2018

FILED WITH LRC: October 11, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2018, at 6:00 p.m., at 300 Sower Blvd, 1st Floor, Training Room B. 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 November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather Alexander, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone: (502) 782-6303, fax: (502) 564-4245, email heather.alexander@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the general requirements for hazardous waste management systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the general requirements for hazardous waste management systems. As a part of the authorization process for delegated authority from the Environmental Protection Agency, this administrative regulation will adopt required federal regulation updates for management of hazardous waste.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the Environmental and Public Protection Cabinet to promulgate administrative regulations for the generation, treatment, storage, recycling, and disposal of hazardous wastes. KRS 224.46-510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. KRS 224.46-505 and 224.46-520 authorize the cabinet to control land disposal of hazardous waste to be protective of human health and the environment. KRS 224.46-520 requires that persons engaging in the storage, treatment, disposal, and recycling of hazardous waste obtain a permit, to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for hazardous waste management systems as required by KRS 224.10-100, 224.46-510(3), 224.46-505, and 224.46-520 for the generation, treatment, storage, recycling, and disposal, standards for permits, financial assurance requirements, and closure and post-closure standards for hazardous wastes.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by correcting typographical errors and citation omissions, and by adding additional waste codes as requested by the Blue Grass Army Depot for the treatment and disposal of the nerve agents

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the general requirements for hazardous waste management systems. In particular, these waste codes will allow the facility and emergency response personnel to correctly identify and handle the generated hazardous waste.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the Environmental and Public Protection Cabinet to promulgate administrative regulations for the generation, treatment, storage, recycling, and disposal of hazardous wastes. KRS 224.46-510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. KRS 224.46-505 and 224.46-520 authorize the cabinet to control land disposal of hazardous waste to be protective of human health and the environment. KRS 224.46-520 requires that persons engaging in the storage, treatment, disposal, and recycling of hazardous waste obtain a permit, to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes requirements for hazardous waste management systems as required by KRS 224.10-100, 224.46-510(3), 224.46-505, and 224.46-520 for the generation, treatment, storage, recycling, disposal, standards for permits, financial assurance requirements,

and closure and post-closure standards for hazardous wastes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and operators of facilities that generate, transport, treat, store, and dispose of hazardous waste. There are approximately 16 treatment, storage, and disposal facilities, 384 large quantity generators, 412 small quantity generators, 2,853 very small quantity generators, and 132 transporters in the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These amendments do not require any further actions.

(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 increase in cost for complying with this administrative regulation. There is a potential for a decrease in compliance costs if a previously considered acute hazardous waste is determined to be hazardous under the new listed waste codes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits to owners and operators include compliance with both the federal and state regulations, and in those cases where an acute hazardous waste is now determined to be hazardous under the new listed waste codes, an owner or operator would have decreased costs for transport and disposal.

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

(a) Initially: \$2.9M, for this program, as a whole.

(b) On a continuing basis: \$2.9M, for this program, as a whole.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of restricted funds, general funds and grants from the federal Environmental Protection Agency.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation applies to all entities who generate, transport, store, or dispose of hazardous waste. To apply tiering to the regulation would unduly regulate some entities while not regulating others.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate transport, store, or dispose of hazardous wastes as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 40 C.F.R. Parts 260, 261, 268, 270 and 124.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not affect the expenditures and revenues of a state or local government agency as the hazardous waste program is already in effect.

(a) How much 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 as the hazardous waste program is already in effect. Currently the division receives \$1.5M in federal grant funding to administer this program, as a whole.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue for state or local government as the hazardous waste program is already in effect. Currently the division receives \$1.5M in federal grant funding to administer this program, as a whole.

(c) How much will it cost to administer this program for the first year? \$2.9M, as a whole.

(d) How much will it cost to administer this program for subsequent years? \$2.9M, as a whole.

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

Revenues (+/-): \$1.5M in federal grant funding, as a whole.

Expenditures (+/-): \$2.9M, as a whole.

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. Parts 260, 261, 268, 270 and 124

2. State compliance standards. KRS 224.10-100, 224.46-505, 224.46-510(3), 224.46-520, 224.50-130, and 224.50-135

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Parts 260, 261, 268, 270 and 124.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation does impose stricter, additional, or different requirements than those required by the federal regulation. Section 2 replaces the federal decision making and hearing procedures with cabinet decision making and hearing procedures, and establishes variance request procedures. In addition, Section 2 requires a petition fee be submitted to the cabinet for delisting, and subjects waste excluded to be regulated under 401 KAR Chapter 47. Section 3 clarifies radioactive mixed waste, requires cabinet notification for exports, and identifies additional substances as listed hazardous wastes. Section 5 establishes additional public notice requirements, replaces federal appeal procedures with the cabinet's appeal procedures, requires revision and submission of cabinet form for Part A permits, establishes emergency permit conditions, requires compliance with regards to corrective action for interim status facilities, requires the inclusion of background information and past compliance record, requires an evaluation of subsurface geologic formations and surface topography for solution or karst terrain, and requires test data for liner. Sections 5 and 6 require cabinet notification for releases, establish prerequisites of a permit, including standards for closure, requirements for monitoring and maintenance and remedial measures, and establish financial responsibility requirements. Section 6 establishes hearing procedures and penalties to be implemented by the cabinet, allows cabinet abatement orders, establishes cabinet's specific authority over hazardous waste, requires hazardous waste registration with the cabinet, establishes information submitted as public record except for confidential business information, prohibits hazardous waste management under certain conditions, requires copies of the forms be submitted to the cabinet, establishes the right of the cabinet to terminate a permit for violations, establishes that permit for nerve agents shall be reviewed every five (5) years.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The differences in this administrative regulation are statutory requirements.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)**

401 KAR 39:080. Hazardous waste handlers.

RELATES TO: KRS 224.10, 224.46, 224.99, 40 C.F.R. Parts 260 through 267, 270, 273, 279

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 224.50-545

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-510 requires the Energy and Environment Cabinet to promulgate administrative regulations establishing standards applicable to transporters of hazardous waste regarding recordkeeping and compliance with the manifest system. KRS 224.46-510(1) requires the cabinet to promulgate administrative regulations to establish requirements relating to generators of hazardous waste and establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) requires that the cabinet establish classes or categories of hazardous waste reflecting the relative degree of hazard. KRS 224.50-545 requires that used automotive and industrial oil shall be recycled or disposed of properly. This administrative regulation establishes the standards for hazardous waste handlers.

Section 1. Generators of Hazardous Waste. (1) Except as established in subsections (2) through (11) of this section and Section 5 of this administrative regulation, the requirements for standards applicable to generators of hazardous waste shall be as established in 40 C.F.R. Part 262, except 40 C.F.R. 262.10(k).

(2) Small quantity generators and large quantity generators shall register with the cabinet by completing and submitting:

(a) EPA form 8700-12 as referenced in 40 C.F.R. Parts 260 through 267, 270, 273, and 279; and

(b) Registration of Hazardous Waste Activity Addendum, DWM 7037A.

(3) The registration established in subsection (2) of this section shall be submitted annually to the cabinet at least forty-five (45) days prior to the expiration date shown on the certificate of registration.

(4)(a) A generator that has not received an EPA identification number may obtain one by registering with the cabinet as established in subsection (2) of this section.

(b) Upon receiving the request and reviewing the information, the cabinet shall assign an EPA identification number to the generator.

(5)(a) Hazardous waste generation and on-site management of hazardous waste shall be consistent with the registration submitted pursuant to subsection (2) of this section.

(b) If any information submitted in accordance with subsection (2) of this section changes, the generator shall modify and resubmit the form that includes the changes to the cabinet no later than thirty (30) days following the change.

(6) In addition to 40 C.F.R. 262.17, any large or small quantity[A] hazardous waste generator that no longer generates hazardous waste on site, closes its facility, or goes out of business, shall complete and submit to the cabinet the Request to be Removed from the Hazardous Waste Handler List, DWM 7086, within ninety (90) days after the last date of hazardous waste generation.

(7)(a) A hazardous waste generator may only treat on-site in tanks, containers, containment buildings, and on drip pads, if:

1. A generator complies with the hazardous waste accumulation provisions of this section;

2. The generator notifies the cabinet of the intent to treat hazardous waste as required by subsection (2) of this section; and

3. The cabinet issues written approval to the generator.

(b)1. The cabinet shall not approve any treatment process that is not demonstrated to provide adequate protection to human health, safety, or the environment in a manner consistent with the purpose of 401 KAR Chapter 39 and KRS Chapter 224.

2. If the cabinet determines that the approved treatment is not

protective of human health, safety, or the environment, the cabinet shall issue a written revocation of the approval and all treatment activities shall cease.

(8)(a) Generators, except for very small quantity generators, shall prepare a Hazardous Waste Annual Report for the cabinet annually by completing and submitting:

1. EPA form 8700-13 A/B as referenced in 40 C.F.R. 262.41(a), 264.75, 265.75, and 267.75; and

2. Hazardous Waste Annual Report Addendum, DWM 7072A.

(b) Each generator, except for very small quantity generators, shall submit a copy of the Hazardous Waste Annual Report established in paragraph (a) of this subsection as established in KRS 224.46-510(1)(h).

(9) A generator, except for very small quantity generators, shall not offer hazardous waste to a transporter or to a treatment, storage, or disposal facility that has not received an EPA identification number.

(10)(a) A large quantity generator or small quantity generator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste until the generator has:

1. Registered with the cabinet as established in subsection (2) of this section; and

2. Received an EPA identification number.

(b) A very small quantity generator shall not treat hazardous waste until the generator has registered with the cabinet as established in subsection (2) of this section.

(11) The requirement for the container marking wording to state "Federal Law Prohibits" referenced in 40 C.F.R. 262.32(b), shall be replaced with "Federal and State Law Prohibit".

(12) In addition to the requirements in 40 C.F.R. 262.18, a very small quantity generator voluntarily requesting to obtain an EPA identification number, shall register with the cabinet in accordance with subsection (2) of this section.

Section 2. Transporters of Hazardous Waste. (1) Except as established in subsections (2) and (3) of this section and Section 5 of this administrative regulation, the requirements for standards applicable to transporters of hazardous waste shall be as established in 40 C.F.R. Part 263.

(2)(a) A transporter shall not transport hazardous wastes or used oil within the Commonwealth of Kentucky without having received an EPA identification number from the cabinet, any other RCRA authorized state, or from the Federal Environmental Protection Agency.

(b) To obtain an EPA identification number from the cabinet, a transporter shall:

1. For a transporter who is also a hazardous waste generator or used oil transporter, register with the cabinet as established in Section 1(2) and (3) of this administrative regulation; or

2. For a transporter that is not also a hazardous waste generator or used oil transporter, complete and submit the Registration of Hazardous Waste Transportation Activity, DWM 7053.

(3) In addition to 40 C.F.R. 263.30(c), an air, rail, highway, or water transporter that has any knowledge of a release or threatened release of a hazardous substance or pollutant or contaminant shall notify and report to the cabinet as established in Section 5(1) of this administrative regulation.

Section 3. Universal Waste. (1) Except as established in subsections (2) through (4) of this section and Section 5 of this administrative regulation, the requirements for standards for universal waste management shall be as established in 40 Part C.F.R. 273.

(2)(a) Prior to conducting on-site treatment of their own accumulated universal waste, a large or small quantity handler shall be subject to the requirements of Section 1 of this administrative regulation, including the requirement for on-site treatment by generators.

(b) Prior to conducting on-site treatment of accumulated universal waste received from off-site, a large or small quantity handler shall be subject to the requirements of 401 KAR 39:060 and 401 KAR 39:090.

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(3) Breaking, disassembling, crushing, or otherwise damaging, intentionally or unintentionally, universal waste lamps shall render them a hazardous waste.

(4) A large quantity handler of universal waste shall register and report as established in Section 1 of this administrative regulation.

Section 4. Used Oil. (1) Except as established in subsections (2) through (9) of this section and Section 5 of this administrative regulation, the requirements for standards for the management of used oil shall be as established in 40 C.F.R. Part 279, except 40 C.F.R. 279.82.

(2) In addition to 40 C.F.R. 279.22 and 40 C.F.R. 279.52, KRS 224.1-400(11) and (12) and KRS 224.1-405 shall apply.

(3) An owner or operator of each used oil collection center shall:

(a) Register initially with the cabinet as established in Section 1(2) of this administrative regulation; and

(b) Complete and submit a Hazardous Waste Annual Report annually as established in Section 1(8) of this administrative regulation.

(4) A used oil processor, recycler, re-refiner, burner, or marketer that has not received an EPA identification number shall register with the cabinet as established in Section 1(2) of this administrative regulation.

(5) In addition to 40 C.F.R. 279.54, upon detection of a release of used oil to the environment not subject to the requirements established in 401 KAR 42:060, an owner or operator shall notify and report to the cabinet pursuant to Section 5(1) of this administrative regulation.

(6) In addition to 40 C.F.R. 279.43, 601 KAR 1:025 and Section 5(1) of this administrative regulation shall apply.

(7) Used oil shall not be used as a dust suppressant within the Commonwealth of Kentucky.

(8) In addition to 40 C.F.R. Part 280, 401 KAR Chapter 42 shall apply.

(9) The citations to Sections 307(b) and 402 of the Clean Water Act referenced in 40 C.F.R. Part 279 shall also include 401 KAR Chapter 5.

Section 5. Exceptions and Additions. (1) In the event of a release or threatened release of a hazardous substance, pollutant or contaminant, or petroleum to the environment in a quantity that may present an imminent or substantial danger to human health or the environment as established in KRS 224.1-400, the facility authorized representative shall immediately notify the cabinet's twenty-four (24) hour emergency response line and provide a written report of the incident or accident within seven (7) days of the release, pursuant to KRS 224.1-400.

(2) In addition to RCRA, Section 3008 KRS 224.10-420 through 224.10-470, 224.46-530, and 224.99-010 shall apply.

(3) In addition to RCRA, Subtitle C KRS 224.46 shall apply.

(4)(a) As referenced in 401 KAR Chapter 39, the requirements in RCRA Section 3010 shall be replaced with the requirement that any person generating or transporting a substance, or owning or operating a facility for treatment, storage, disposal, or recycling of the substance to register with the cabinet after promulgation of an administrative regulation identifying a substance by its characteristics or listing as hazardous waste subject to 401 KAR Chapter 39.

(b) The registration shall be filed as established in Section 1(2) of this administrative regulation and within ninety (90) days after promulgation or revision of the administrative regulation unless another registration date is established in the administrative regulations.

(5) In addition to 40 C.F.R. Part 257 and 40 C.F.R. Part 258, 401 KAR Chapters 45, 47, and 48 shall apply.

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

(a) "Hazardous Waste Annual Report Addendum", DWM 7072A, June 2017;

(b) "Registration of Hazardous Waste Activity Addendum",

DWM 7037A, ~~July 2018~~[June 2017];

(c) "Registration of Hazardous Waste Transportation Activity", DWM 7053, June 2017; and

(d) "Request to be Removed from the Hazardous Waste Handler List", DWM 7086, June 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. until 4:30 p.m.

(3) This material may also be obtained on the division's Web site at waste.ky.gov.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 10, 2018

FILED WITH LRC: October 11, 2018 AT 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2018, at 6:00p.m., at 300 Sower Blvd, 1st Floor, Training Room B. 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 November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather Alexander, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone: (502) 782-6303, fax: (502) 564-4245, email heather.alexander@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for hazardous waste handlers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the standards for hazardous waste handlers. As a part of the authorization process for delegated authority from the Environmental Protection Agency, this administrative regulation will adopt required federal regulation updates for management of hazardous waste.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the Environmental and Public Protection Cabinet to promulgate administrative regulations for the generation, treatment, storage, transportation, recycling, and disposal of hazardous wastes. KRS 224.46-510 requires the Energy and Environment Cabinet to promulgate administrative regulations establishing standards applicable to transporters of hazardous waste regarding recordkeeping and compliance with the manifest system. KRS 224.46-510(1) requires the cabinet to promulgate administrative regulations to establish requirements relating to generators of hazardous waste and establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) requires that the cabinet establish classes or categories of hazardous waste reflecting the relative degree of hazard. KRS 224.50-545 provides that used automotive and industrial oil shall be recycled or disposed of properly.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes standards for hazardous waste handlers, as required by KRS 224.10-100, 224.46-510, and 224.50-545 for the generation, treatment, storage, recycling, transportation, and disposal of hazardous waste.

(2) If 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 this existing administrative regulation by correcting an omission to a Federal citation, clarifying generator status, and amending one of the forms incorporated by reference in Section 6.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct the standards for hazardous waste handlers.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the Environmental and Public Protection Cabinet to promulgate administrative regulations for the generation, treatment, storage, transportation, recycling, and disposal of hazardous wastes. KRS 224.46-510 requires the Energy and Environment Cabinet to promulgate administrative regulations establishing standards applicable to transporters of hazardous waste regarding recordkeeping and compliance with the manifest system. KRS 224.46-510(1) requires the cabinet to promulgate administrative regulations to establish requirements relating to generators of hazardous waste and establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) requires that the cabinet establish classes or categories of hazardous waste reflecting the relative degree of hazard. KRS 224.50-545 provides that used automotive and industrial oil shall be recycled or disposed of properly.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes standards for hazardous waste handlers, as required by KRS 224.10-100, 224.46-510, and 224.50-545 for the generation, treatment, storage, recycling, transportation, and disposal of hazardous waste.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and operators of facilities that generate, transport, treat, store, and dispose of hazardous waste. There are approximately 16 treatment, storage, and disposal facilities, 384 large quantity generators, 412 small quantity generators, 2,853 very small quantity generators, 131 large quantity universal waste handlers, 142 used oil facilities, and 132 transporters in the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any further actions to be taken.

(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 increase in cost for complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will not accrue any extra benefits to owners and operators.

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

(a) Initially: \$2.9M, for this program, as a whole.

(b) On a continuing basis: \$2.9M, for this program, as a whole.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of restricted funds, general funds and grants from the U.S. Environmental Protection Agency.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This administrative regulation does not establish or increase any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation applies to all entities who generate, transport, store, or dispose of hazardous waste. To apply tiering to the regulation would unduly regulate some entities while not regulating others.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate, transport, store, or dispose of hazardous wastes, as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 40 C.F.R. Parts 262, 263, 273, and 279.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not affect the expenditures and revenues of a state or local government agency as the hazardous waste program is already in effect.

(a) How much 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 as the hazardous waste program is already in effect. Currently the division receives \$1.5M in federal grant funding to administer this program, as a whole.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue for state or local government as the hazardous waste program is already in effect. Currently the division receives \$1.5M in federal grant funding to administer this program, as a whole.

(c) How much will it cost to administer this program for the first year? \$2.9M, as a whole.

(d) How much will it cost to administer this program for subsequent years? \$2.9M, as a whole.

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

Revenues (+/-): \$1.5M in federal grant funding, as a whole.

Expenditures (+/-): \$2.9M, as a whole.

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. Parts 262, 263, 273, and 279

2. State compliance standards. KRS 224.10-100, 224.46-510, 224.50-545

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Parts 262, 263, 273, and 279

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation does impose stricter, additional, or different requirements than those required by the federal regulation. Section 1 requires generators, including treatment on-site, to register with the cabinet annually rather than biennially or every four years for small quantity generators, and to include anticipated types, potential sources, general characteristics, and weights or volumes of hazardous wastes on an addendum. In addition, it establishes procedures for generators to obtain an EPA identification number from the cabinet, establishes procedures for hazardous waste generators to be removed from the handler list, requires an annual report on hazardous waste instead of biennial

reporting, and requires the annual report to be sent to local county governments. Section 2 establishes procedures for transporters to obtain an EPA identification number and register with the cabinet. Section 3 exempts on-site treatment of accumulated universal waste from being considered a universal waste and establishes requirements for on-site treatment as a hazardous waste. In addition, Section 3 establishes universal waste lamps as a hazardous waste if broken. Section 4 requires used oil collection centers to register with the cabinet, establishes procedures for registration and obtaining an EPA identification number, and prohibits used oil from being used as a dust suppressant. Section 5 requires cabinet notification for releases, establishes hearing procedures and penalties to be implemented by the cabinet, and replaces the federal requirement with a state requirement to register once a hazardous waste is listed.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The differences in this administrative regulation are statutory requirements, except for universal waste lamps. Breakage or damage to universal waste lamps, requires a hazardous waste determination and based on the composition of the lamps no longer allows them to be considered a universal waste.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 39:090. Hazardous waste permit program.

RELATES TO: KRS 224.10, 224.46, 224.50-130, 224.99, 304.11-030, 40 C.F.R. 264, 265, 266, 267

STATUTORY AUTHORITY: KRS 224.46-520, 224.5-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-520 requires the Energy and Environment Cabinet to promulgate administrative regulations establishing standards for hazardous waste permitting and persons engaging in the storage, treatment, disposal, and recycling of hazardous waste, and to establish standards for these permits, to require adequate financial responsibility, to establish corrective action requirements, and to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. KRS 224.50-130 requires the Energy and Environment Cabinet to list additional compounds as hazardous wastes and to consider additional criteria in making a determination to issue, deny, or condition a permit for a hazardous waste site or facility for treatment, storage, or disposal of nerve agents. This administrative regulation establishes the standards for the hazardous waste permit program.

Section 1. Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. Except as established in subsections (1) through (7) of this section and Sections 5 through 9 of this administrative regulation, standards for owners and operators of hazardous waste treatment, storage, and disposal facilities shall be as established in 40 C.F.R. Part 264, except 40 C.F.R. 264.1(f), 40 C.F.R. 264.1(g)(12), 40 C.F.R. 264.15(b)(5), 40 C.F.R. 264.149, 40 C.F.R. 264.150, 40 C.F.R. 264.301(l), 40 C.F.R. 264.1030(d), 40 C.F.R. 264.1050(g), and 40 C.F.R. 264.1080(e) through (g).

(1) The Maximum Concentration of Constituents for Groundwater Protection in 40 C.F.R. 264.94, Table 1 shall be replaced with Table 1 of this subsection.

Table 1: Maximum Concentration of Constituents for Groundwater Protection	
Maximum Contaminant Constituent	Level (mg/l)
Antimony	0.006
Arsenic	0.01
Barium	2.0
Benzene	0.005
Benzo(a)pyrene	0.0002
Beryllium	0.004

Cadmium	0.005
Carbon tetrachloride	0.005
Chlordane	0.002
Chromium	0.1
Cyanide (as free Cyanide)	0.2
Dibromochloropropane	0.0002
1,2-Dichloroethane	0.005
o-Dichlorobenzene	0.6
p-Dichlorobenzene	0.075
1,1-Dichloroethylene	0.007
cis-1,2-Dichloroethylene	0.07
trans-1,2-Dichloroethylene	0.1
Dichloromethane (Methylene chloride)	0.005
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.07
1,2-Dichloropropane	0.005
Di(2-ethylhexyl)phthalate	0.006
Dinoseb	0.007
Endothall	0.1
Endrin	0.002
Ethylene dibromide (1,2-Dibromoethane)	0.00005
Fluoride	4.0
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Lead	0.015[0.15]
Lindane	0.0002
Mercury	0.002
Methoxychlor	0.04
Monochlorobenzene	0.1
Polychlorinated biphenyls	0.0005
Pentachlorophenol	0.001
Selenium	0.05
Tetrachloroethylene	0.005
Thallium	0.002
Toluene	1
Toxaphene	0.003
1,1,1-Trichloroethane	0.2
Trichloroethylene	0.005
1,2,4-Trichlorobenzene	0.07
1,1,2-Trichloroethane	0.005
2,4,5-TP Silvex	0.01
2,3,7,8-TCDD (Dioxin)	3.0 x 10 ⁻⁸
Vinyl chloride	0.002

(2) In addition to 40 C.F.R. 264.143(e)(1), 40 C.F.R. 264.145(e)(1), 40 C.F.R. 264.147(a)(1)(ii), and 40 C.F.R. 264.147(b)(1)(ii), each insurance policy providing primary coverage shall be issued by an insurer that is authorized to transact insurance in Kentucky, except if KRS 304.11-030 establishes otherwise.

(3) The reference in 40 C.F.R. 264.570 and 265.440(a) to "December 6, 1990", shall be replaced with "August 18, 1994", for drip pads where F034 or F035 wastes are handled.

(4) The reference in 40 C.F.R. 264.570 to "December 24, 1992", shall be replaced with "August 26, 1996", for drip pads where F034 or F035 wastes are handled.

(5) A tank system that stores or treats materials that become hazardous waste subsequent to March 10, 1988, shall conduct an assessment of any existing tank system's integrity within twelve (12) months after the date the waste becomes a hazardous waste.

(6) In addition to the requirements in 40 C.F.R. 264.304, if the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall notify the cabinet pursuant to 401 KAR 39:060, Section 6(1).

(7) In addition to the requirements in 40 C.F.R. 264.226, 264.254, and 264.303, applicants shall demonstrate that the admixed liner shall be structurally sound and chemically resistant to the waste placed in it to ensure that the liner shall be capable of supporting the waste without cracking, disintegrating, or allowing waste or leachate to escape.

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Section 2. Owners and Operators of Interim Status Hazardous Waste Treatment, Storage, and Disposal Facilities. (1) Except as established in subsections (2) through (4) of this section and Sections 5 through 9 of this administrative regulation, interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities shall be as established in 40 C.F.R. Part 265, except 40 C.F.R. 265.1(c)(4), 40 C.F.R. 265.1(c)(15), 40 C.F.R. 265.149, 40 C.F.R. 265.150, 40 C.F.R. 265.1030(c), 40 C.F.R. 265.1050(f), and 40 C.F.R. 265.1080(e) through (g).

(2) In addition to the requirements in 40 C.F.R. 265.303, if the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall notify the cabinet pursuant to 401 KAR 39:060, Section 6(1).

(3) In addition to 40 C.F.R. 265.143(d)(1), 40 C.F.R. 265.145(d)(1), 40 C.F.R. 265.147(a)(1)(ii), and 40 C.F.R. 265.147(b)(1)(ii), each insurance policy providing primary coverage shall be issued by an insurer who is authorized to transact insurance in Kentucky, except if KRS 304.11-030 establishes

otherwise.

(4) As of January 12, 1991, a facility that failed to qualify for federal interim status for any waste code promulgated pursuant to HSWA or that lost interim status for failing to certify as required by HSWA for any newly promulgated waste code, shall also be denied interim status pursuant to this administrative regulation.

Section 3. Specific Hazardous Wastes and Facilities. Except as established in subsections (1) through (3) of this section and Sections 5 through 9 of this administrative regulation, standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities shall be as established in 40 C.F.R. Part 266.

(1) The Tier I and Tier II Feed Rate and Emissions Screening Limits for Carcinogenic Metals for Facilities in Noncomplex Terrain in 40 C.F.R. Part 266, Appendix I, Table I-D shall be replaced with Table I-D in this subsection.

Table I-D: Tier I and Tier II Feed Rate and Emissions Screening Limits for Carcinogenic Metals for Facilities in Noncomplex Terrain

Terrain adjusted eff. stack ht. (m)	Values for use in urban areas				Values for use in rural areas			
	Arsenic (g/hr)	Cadmium (g/hr)	Chromium (g/hr)	Beryllium (g/hr)	Arsenic (g/hr)	Cadmium (g/hr)	Chromium (g/hr)	Beryllium (g/hr)
4	4.6E-02	1.1E-01	1.7E-02	8.2E-02	2.4E-02	5.8E-02	8.6E-03	4.3E-02
6	5.4E-02	1.3E-01	1.9E-02	9.4E-02	2.8E-02	6.6E-02	1.0E-02	5.0E-02
8	6.0E-02	1.4E-01	2.2E-02	1.1E-01	3.2E-02	7.6E-02	1.1E-02	5.6E-02
10	6.8E-02	1.6E-01	2.4E-02	1.2E-01	3.6E-02	8.6E-02	1.3E-02	6.4E-02
12	7.6E-02	1.8E-01	2.7E-02	1.4E-01	4.3E-02	1.1E-01	1.6E-02	7.8E-02
14	8.6E-02	2.1E-01	3.1E-02	1.5E-01	5.4E-02	1.3E-01	2.0E-02	9.6E-02
16	9.6E-02	2.3E-01	3.5E-02	1.7E-01	6.8E-02	1.6E-01	2.4E-02	1.2E-01
18	1.1E-01	2.6E-01	4.0E-02	2.0E-01	8.2E-02	2.0E-01	3.0E-02	1.5E-01
20	1.2E-01	3.0E-01	4.4E-02	2.2E-01	1.0E-01	2.5E-01	3.7E-02	1.9E-01
22	1.4E-01	3.4E-01	5.0E-02	2.5E-01	1.3E-01	3.2E-01	4.8E-02	2.4E-01
24	1.6E-01	3.9E-01	5.8E-02	2.8E-01	1.7E-01	4.0E-01	6.0E-02	3.0E-01
26	1.8E-01	4.3E-01	6.4E-02	3.2E-01	2.1E-01	5.0E-01	7.6E-02	3.9E-01
28	2.0E-01	4.8E-01	7.2E-02	3.6E-01	2.7E-01	6.4E-01	9.8E-02	5.0E-01
30	2.3E-01	5.4E-01	8.2E-02	4.0E-01	3.5E-01	8.2E-01	1.2E-01	6.2E-01
35	3.0E-01	6.8E-01	1.0E-01	5.4E-01	5.4E-01	1.3E+00	1.9E-01	9.6E-01
40	3.6E-01	9.0E-01	1.3E-01	6.8E-01	8.2E-01	2.0E+00	3.0E-01	1.5E+00
45	4.6E-01	1.1E+00	1.7E-01	8.6E-01	1.1E+00	2.8E+00	4.2E-01	2.1E+00
50	6.0E-01	1.4E+00	2.2E-01	1.1E+00	1.5E+00	3.7E+00	5.4E-01	2.8E+00
55	7.6E-01	1.8E+00	2.7E-01	1.4E+00	2.0E+00	5.0E+00	7.2E-01	3.6E+00
60	9.4E-01	2.2E+00	3.4E-01	1.7E+00	2.7E+00	6.4E+00	9.6E-01	4.8E+00
65	1.1E+00	2.8E+00	4.2E-01	2.1E+00	3.6E+00	8.6E+00	1.3E+00	6.4E+00
70	1.3E+00	3.1E+00	4.6E-01	2.4E+00	4.3E+00	1.0E+01	1.5E+00	7.6E+00
75	1.5E+00	3.6E+00	5.4E-01	2.7E+00	5.0E+00	1.2E+01	1.8E+00	9.0E+00
80	1.7E+00	4.0E+00	6.0E-01	3.0E+00	6.0E+00	1.4E+01	2.2E+00	1.1E+01
85	1.9E+00	4.6E+00	6.8E-01	3.4E+00	7.2E+00	1.7E+01	2.6E+00	1.3E+01
90	2.2E+00	5.0E+00	7.8E-01	3.9E+00	8.6E+00	2.0E+01	3.0E+00	1.5E+01
95	2.5E+00	5.8E+00	9.0E-01	4.4E+00	1.0E+01	2.4E+01	3.6E+00	1.8E+01
100	2.8E+00	6.8E+00	1.0E+00	5.0E+00	1.2E+01	2.9E+01	4.3E+00	2.2E+01
105	3.2E+00	7.6E+00	1.1E+00	5.6E+00	1.4E+01	3.4E+01	5.0E+00	2.6E+01
110	3.6E+00	8.6E+00	1.3E+00	6.4E+00	1.7E+01	4.0E+01	6.0E+00	3.0E+01
115	4.0E+00	9.6E+00	1.5E+00	7.2E+00	2.0E+01	4.8E+01	7.2E+00	3.6E+01
120	4.6E+00	1.1E+01	1.7E+00	8.2E+00	2.4E+01	5.8E+01	8.6E+00	4.3E+01

(2) The Tier I and Tier II Feed Rate and Emissions Screening Limits for Carcinogenic Metals for Facilities in Complex Terrain, Values for use in Urban and Rural Areas in 40 C.F.R. Part 266, Appendix I, Table I-E shall be replaced with Table I-E in this subsection.

Table I-E: Tier I and Tier II Feed Rate and Emissions Screening Limits for Carcinogenic Metals for Facilities in Complex Terrain, Values for use in Urban and Rural Areas

Terrain adjusted eff. stack ht. (m)	Values for use in urban and rural areas			
	Arsenic (g/hr)	Cadmium (g/hr)	Chromium (g/hr)	Beryllium (g/hr)
4	1.1E-02	2.6E-02	4.0E-03	2.0E-02
6	1.6E-02	3.9E-02	5.8E-03	2.9E-02
8	2.4E-02	5.8E-02	8.6E-03	4.3E-02
10	3.5E-02	8.2E-02	1.3E-02	6.2E-02
12	4.3E-02	1.0E-01	1.5E-02	7.6E-02
14	5.0E-02	1.3E-01	1.9E-02	9.4E-02
16	6.0E-02	1.4E-01	2.2E-02	1.1E-01
18	6.8E-02	1.6E-01	2.4E-02	1.2E-01

20	7.6E-02	1.8E-01	2.7E-02	1.3E-01
22	8.2E-02	1.9E-01	3.0E-02	1.5E-01
24	9.0E-02	2.1E-01	3.3E-02	1.6E-01
26	1.0E-01	2.4E-01	3.6E-02	1.8E-01
28	1.1E-01	2.7E-01	4.0E-02	2.0E-01
30	1.2E-01	3.0E-01	4.4E-02	2.2E-01
35	1.5E-01	3.7E-01	5.4E-02	2.7E-01
40	1.9E-01	4.6E-01	6.8E-02	3.4E-01
45	2.4E-01	5.4E-01	8.4E-02	4.2E-01
50	2.9E-01	6.8E-01	1.0E-01	5.0E-01
55	3.5E-01	8.4E-01	1.3E-01	6.4E-01
60	4.3E-01	1.0E+00	1.5E-01	7.8E-01
65	5.4E-01	1.3E+00	1.9E-01	9.6E-01
70	6.0E-01	1.4E+00	2.2E-01	1.1E+00
75	6.8E-01	1.6E+00	2.4E-01	1.2E+00
80	7.6E-01	1.8E+00	2.7E-01	1.3E+00
85	8.2E-01	2.0E+00	3.0E-01	1.5E+00
90	9.4E-01	2.3E+00	3.4E-01	1.7E+00
95	1.0E+00	2.5E+00	4.0E-01	1.9E+00
100	1.2E+00	2.8E+00	4.3E-01	2.1E+00
105	1.3E+00	3.2E+00	4.8E-01	2.4E+00
110	1.5E+00	3.5E+00	5.4E-01	2.7E+00
115	1.7E+00	4.0E+00	6.0E-01	3.0E+00
120	1.9E+00	4.4E+00	6.4E-01	3.3E+00

(3) The Risk Specific Doses (10^{-5}) in 40 C.F.R. Part 266, Appendix V shall be replaced with Appendix V in this subsection.

Appendix V: Risk specific doses (10^{-6})			
Constituent	CAS No.	Unit risk (m3/ug)	RsD (ug/m3)
Acrylamide	79-06-1	1.3E-03	7.7E-04
Acrylonitrile	107-13-1	6.8E-05	1.5E-02
Aldrin	309-00-2	4.9E-03	2.0E-04
Aniline	62-53-3	7.4E-06	1.4E-01
Arsenic	7440-38-2	4.3E-03	2.3E-04
Benz(a)anthracene	56-55-3	8.9E-04	1.1E-03
Benzene	71-43-2	8.3E-06	1.2E-01
Benzidine	92-87-5	6.7E-02	1.5E-05
Benzo(a)pyrene	50-32-8	3.3E-03	3.0E-04
Beryllium	7440-41-7	2.4E-03	4.2E-04
Bis(2-chloroethyl)ether	111-44-4	3.3E-04	3.0E-03
Bis(chloromethyl)ether	542-88-1	6.2E-02	1.6E-05
Bis(2-ethylhexyl)-phthalate	117-81-7	2.4E-07	4.2E+00
1,3-Butadiene	106-99-0	2.8E-04	3.6E-03
Cadmium	7440-43-9	1.8E-03	5.6E-04
Carbon Tetrachloride	56-23-5	1.5E-05	6.7E-02
Chlordane	57-74-9	3.7E-04	2.7E-03
Chloroform	67-66-3	2.3E-05	4.3E-02
Chloromethane	74-87-3	3.6E-06	2.8E-01
Chromium VI	7440-47-3	1.2E-02	8.3E-05
DDT	50-29-3	9.7E-05	1.0E-02
Dibenz(a,h)anthracene	53-70-3	1.4E-02	7.1E-05
1,2-Dibromo-3-chloropropane	96-12-8	6.3E-03	1.6E-04
1,2-Dibromoethane	106-93-4	2.2E-04	4.5E-03
1,1-Dichloroethane	75-34-3	2.6E-05	3.8E-02
1,2-Dichloroethane	107-06-2	2.6E-05	3.8E-02
1,1-Dichloroethylene	75-35-4	5.0E-05	2.0E-02
1,3-Dichloropropene	542-75-6	3.5E-01	2.9E-06
Dieldrin	60-57-1	4.6E-03	2.2E-04
Diethylstilbestrol	56-53-1	1.4E-01	7.1E-06
Dimethylnitrosamine	62-75-9	1.4E-02	7.1E-05
2,4-Dinitrotoluene	121-14-2	8.8E-05	1.1E-02
1,2-Diphenylhydrazine	122-66-7	2.2E-04	4.5E-03
1,4-Dioxane	123-91-1	1.4E-06	7.1E-01
Epichlorohydrin	106-89-8	1.2E-06	8.3E-01
Ethylene Oxide	75-21-8	1.0E-04	1.0E-02

Ethylene Dibromide	106-93-4	2.2E-04	4.5E-03
Formaldehyde	50-00-0	1.3E-05	7.7E-02
Heptachlor	76-44-8	1.3E-03	7.7E-04
Heptachlor Epoxide	1024-57-3	2.6E-03	3.8E-04
Hexachlorobenzene	118-74-1	4.9E-04	2.0E-03
Hexachlorobutadiene	87-68-3	2.0E-05	5.0E-02
Alpha-hexachlorocyclohexane	319-84-6	1.8E-03	5.6E-04
Beta-hexachlorocyclohexane	319-85-7	5.3E-04	1.9E-03
Gamma-hexachlorocyclohexane	58-89-9	3.8E-04	2.6E-03
Hexachlorocyclohexane, Technical		5.1E-04	2.0E-03
Hexachlorodibenzo-p-dioxin(1,2 Mixture)		1.3E+0	7.7E-07
Hexachloroethane	67-72-1	4.0E-06	2.5E+01
Hydrazine	302-01-2	2.9E-03	3.4E-04
Hydrazine Sulfate	302-01-2	2.9E-03	3.4E-04
3-Methylcholanthrene	56-49-5	2.7E-03	3.7E-04
Methyl Hydrazine	60-34-4	3.1E-04	3.2E-03
Methylene Chloride	75-09-2	4.1E-06	2.4E-01
4,4'-Methylene-bis-2-chloroaniline	101-14-4	4.7E-05	2.1E-02
Nickel	7440-02-0	2.4E-04	4.2E-03
Nickel Refinery Dust	7440-02-0	2.4E-04	4.2E-03
Nickel Subsulfide	12035-72-2	4.8E-04	2.1E-03
2-Nitropropane	79-46-9	2.7E-02	3.7E-05
N-Nitroso-n-butylamine	924-16-3	1.6E-03	6.3E-04
N-Nitroso-n-methylurea	684-93-5	8.6E-02	1.2E-05
N-Nitrosodiethylamine	55-18-5	4.3E-02	2.3E-05
N-Nitrosopyrrolidine	930-55-2	6.1E-04	1.6E-03
Pentachloronitrobenzene	82-68-8	7.3E-05	1.4E-02
PCBs	1336-36-3	1.2E-03	8.3E-04
Pronamide	23950-58-5	4.6E-06	2.2E-01
Reserpine	50-55-5	3.0E-03	3.3E-04
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746-01-6	4.5E+01	2.2E-08
1,1,2,2-Tetrachloroethane	79-34-5	5.8E-05	1.7E-02
Tetrachloroethylene	127-18-4	4.8E-07	2.1E+00

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Thiourea	62-56-6	5.5E-04	1.8E-03
1,1,2-Trichloroethane	79-00-5	1.6E-05	6.3E-02
Trichloroethylene	79-01-6	1.3E-06	7.7E-01
2,4,6-Trichlorophenol	88-06-2	5.7E-06	1.8E-01
Toxaphene	8001-35-2	3.2E-04	3.1E-03
Vinyl Chloride	75-01-4	7.1E-06	1.4E-01

Section 4. Standardized Permits. Except as established in Sections 5 through 9 of this administrative regulation, the standards for owners and operators of hazardous waste facilities operating under a standardized permit shall be as established in 40 C.F.R. 267, except 40 C.F.R. 267.150.

Section 5. Flood Plains. (1) Except as established in subsection (3)(b) of this section, a facility located in a 100-year flood plain shall be designed, constructed, operated, maintained, and refitted if necessary, to prevent washout of any hazardous waste and to protect the facility from inundation by waters of the 100-year flood plain throughout the:

- (a) Active life of the facility;
- (b) Closure phase of the facility; and
- (c) For disposal facilities only, the post-closure phase.

(2) Prevention of washout and protection from inundation shall be accomplished by:

- (a) Using a structure or device designed to:

1. Provide adequate freeboard to prevent overtopping of the structure during a 100-year flood due to wind and wave action;

2. Provide sufficient structural integrity to prevent massive failure due to the force and erosive tendencies of the 100-year floodwaters; and

3. Accommodate other characteristics of the facility's location as necessary to accomplish the requirements of this subsection;

- (b) Providing procedures that shall cause the waste to be removed safely, before floodwaters can reach the facility, to a location where the wastes shall not be vulnerable to floodwaters; or

- (c) Demonstrating that alternate devices or measures, with the exception of covering the waste, shall provide protection that meets the requirements of this subsection.

(3) The cabinet shall not issue a permit to construct a new hazardous waste:

- (a) Site or facility in the floodway; or

- (b) Disposal site or facility in the 100-year flood plain or a seasonal high-water table.

(4) A hazardous waste site or facility shall not restrict the flow of the 100-year flood or reduce the temporary water storage capacity of the 100-year flood plain so as to pose a hazard to human life, wildlife, or land or water resources.

(5) A facility that has closed and removed all hazardous waste, waste constituents, contaminated soil, debris, or other material contaminated with hazardous constituents, shall not be required to protect the closed portion of the facility from washout of waste or inundation by waters of the 100-year flood.

Section 6. Chemical Demilitarization. (1) In addition to the requirements in 40 C.F.R. Part 264, the cabinet shall consider the criteria established in subsection (2) of this section in making a determination to issue, deny, or condition a permit for any person applying for a permit to construct or operate a hazardous waste site or facility for treatment, storage, or disposal of any of the hazardous wastes listed in 401 KAR 39:060, Section 3(4).

(2) The permit applicant shall affirmatively demonstrate and the cabinet shall determine prior to issuance, conditional issuance, or denial of the permit that:

- (a)1. The proposed treatment or destruction technology has been proven in an operational facility of scale, configuration, and throughput comparable to the proposed facility, for a period of time sufficient to provide assurance of 99.9999 percent destruction and removal efficiency of each substance proposed to be treated or destroyed as established in KRS 224.50-130(3)(a).

2. Destruction and removal efficiency (DRE) shall be determined for each waste from the following equation:

$$\text{DRE \%} = (\text{Win} - \text{Wout}) / \text{Win} \times 100\%$$

Where:

Win = Mass feed rate of waste into the process.

Wout = Mass emission rate of the same waste out of the process;

(b)1. Monitoring data from a comparable facility shall reflect the absence of emissions from stack or fugitive sources, including the products of combustion and incomplete combustion, which alone or in combination present an adverse effect on human health or the environment in accordance with KRS 224.50-130(3)(b).

2. The cabinet shall determine from the monitoring data the absence of risk to human health and the environment prior to permit issuance;

(c) A plan has been developed and funded providing for sufficient training, coordination, and equipment for state and local emergency response consistent with the requirements established in KRS 224.50-130(c); and

(d) All workers within 1000 meters of the treatment unit shall be provided with an adequate level of protection against exposure to the nerve agents.

(3) In addition to the performance standards established in Section 1 of this administrative regulation, a facility treating the nerve and blister agents with hazardous waste codes N001, N002, or N003 established in 401 KAR 39:060, Section 3(4) shall be designed, constructed, and maintained to achieve a 99.9999 percent destruction and removal efficiency of each substance treated or destroyed.

(4)(a) An owner or operator that stores munitions or explosive hazardous wastes that contain the substances established in 401 KAR 39:060, Section 3(4), shall be subject to the requirements of 40 C.F.R. 264, Subpart EE.

(b) As referenced in 40 C.F.R. 266.202(a), military munitions shall not include any material containing the substances established in 401 KAR 39:060, Section 3(4).

(c) Waste military munitions that are chemical agents or chemical munitions and that exhibit a hazardous waste characteristic or are listed as hazardous waste in 401 KAR 39:060, Section 3(4), shall be subject to the applicable regulatory requirements of 401 KAR Chapter 39, including the storage prohibitions referenced in 40 C.F.R. 268.50 as established in 401 KAR 39:060, Section 4.

Section 7. Financial Assurance. (1)(a) An owner or operator may satisfy the financial assurance requirements of this administrative regulation by submitting to the cabinet by certified mail, a bond guaranteeing compliance with KRS Chapter 224 and administrative regulations promulgated pursuant thereto.

(b) The bond shall be supported by a cash account or certificate of deposit.

(c) The cash account or the certificate of deposit shall be held in escrow pursuant to an escrow agreement.

(d) An owner or operator of a new facility shall submit the bond to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal.

(e) A cash account or certificate of deposit shall only be held by a bank or financial institution that is subject to and complies with all applicable state and federal financial regulations.

(2) In addition to the financial assurance wording of instruments referenced in 40 C.F.R. 264.143, 40 C.F.R. 264.145, 40 C.F.R. 264.147, 40 C.F.R. 264.151, 40 C.F.R. 265.143, 40 C.F.R. 265.145, 40 C.F.R. 265.147, 40 C.F.R. 267.143, 40 C.F.R. 267.147, and 40 C.F.R. 267.151, the owner or operator shall include the following information if using cash or certificate of deposit:

- (a) Date that the signatory signed the document in front of the notary public;

- (b) Signature, seal, and the date that the notary public's commission expires;

- (c) Dollar amount being posted in escrow in words and in United States dollars;

- (d) Certificate number, date of issuance, and principal dollar amount in United States dollars, of each certificate of deposit;

- (e) Cash account number, date of opening, and principal dollar

amount in United States dollars of each cash account maintained;

(f) Signature of the authorized representative of the escrow agent; and

(g) Signature of the Director of the Kentucky Division of Waste Management.

(3) The cabinet shall be the beneficiary of the Escrow Agreement to demonstrate closure, post-closure, or corrective action for the cash account or certificate of deposit.

(4) The cabinet shall be empowered to draw upon the funds if the owner or operator fails to perform closure, post-closure, or corrective action in accordance with the respective plan.

(5) The sum of the cash account or certificate of deposit shall be in an amount at least equal to the amount of the current closure, post-closure, or corrective action cost estimate, except as established in this subsection.

(6) After each interest period is completed, if the current closure, post-closure, or corrective action cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the cash accounts or the certificate of deposit.

(a) If the value of the cash accounts or certificate of deposit is less than the amount of the new estimate, the owner or operator, within sixty (60) days of the change in the cost estimate, shall:

1. Deposit an amount into the cash accounts or the certificate of deposit so that the value after this deposit at least equals the amount of the current closure, post-closure, or corrective action cost estimate; or

2. Obtain other financial assurance as established in 40 C.F.R. Parts 264 or 265 to cover the difference.

(b) If the value of the cash account or the certificate of deposit is greater than the total amount of the current closure, post-closure, or corrective action cost estimate, the owner or operator may submit a written request to the cabinet for release of the amount in excess of the current closure, post-closure, or corrective action cost estimate.

(7)(a) The terms of the escrow agreement for a cash account or certificate of deposit shall provide a provision for a notice of cancellation by certified mail to the owner or operator and to the cabinet prior to cancellation.

(b) The cancellation provision shall state that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the cabinet, as evidenced by return receipt.

(8) The owner or operator may cancel the cash account or certificate of deposit if the cabinet has given prior written consent. The cabinet shall provide a written consent if:

(a) An owner or operator substitutes alternate financial assurance as established in this administrative regulation; or

(b) The cabinet releases the owner or operator from the requirements of this administrative regulation in accordance with this administrative regulation.

(9)(a) An owner or operator or any other person authorized to perform closure, post-closure, or corrective action may request reimbursement for closure, post-closure, or corrective action expenditures by submitting itemized bills to the cabinet.

(b) Within sixty (60) days after receiving bills for closure, post-closure, or corrective action activities, the cabinet shall determine if the closure, post-closure, or corrective action expenditures are in accordance with the plan or approved, and if so, the cabinet may instruct the bank or financial institution to make reimbursements in those amounts as stated in writing if the cabinet determines that the expenditures are in accordance with the plan or approved.

(10) If a financial mechanism is used for multiple facilities, all matters arising in accordance with the financial mechanism related to the validity, interpretation, performance, and enforcement of the financial mechanism shall be determined in accordance with the law and practice of the Commonwealth of Kentucky.

(11) Except as established in 401 KAR Chapter 39 and KRS 224.46, a variance or other waiver of any financial requirements shall not be granted by the cabinet.

(12) Upon request by the cabinet, the insurer shall provide to the cabinet a duplicate original of the policy including all endorsements thereon.

(13)(a) Based on evidence that the owner or operator may no longer meet the financial test for any financial assurance posted, the cabinet shall require reports of financial condition from the owner or operator.

(b) If the cabinet determines, based on the reports of financial condition or other information, that the owner or operator no longer meets the financial test for any financial assurance posted, the owner or operator shall provide financial assurance using the appropriate instrument as established in this administrative regulation within thirty (30) days after notification of the cabinet's determination.

(14) In addition to 40 C.F.R. 264.151 requiring an owner or operator to notify several Regional Administrators of their financial obligations, the owner or operator shall notify both the cabinet and all Regional Administrators of Regions that are affected by the owner or operator's financial assurance mechanisms.

Section 8. Releases from Solid Waste Management Units. The owner or operator of a facility, any person seeking a permit, or any person closing a facility for the treatment, storage, or disposal of hazardous waste, shall institute corrective action as established in this section, necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in the unit.

(1) A facility assessment shall be conducted consistent with the substantive requirements established in 401 KAR 100:030, Sections 6(1) and (2).

(2) A fee for the facility assessment shall be required as established in KRS 224.46-016(3).

(3)(a) Corrective action shall be established in the permit or other enforceable document in accordance with this administrative regulation.

(b) The permit or other enforceable document shall contain:

1. A schedule of compliance for the corrective action, if corrective action will not be completed prior to issuance of the permit or closure of the facility; and

2. An assurance of financial responsibility for completing the corrective action.

(4)(a) A required facility investigation shall be conducted consistent with the requirements established in 401 KAR 100:030, Section 6(3) through (8), Section 7(2)(a)1 and 2, and Section 7(2)(b) and (c).

(b) A fee for the facility investigation shall be required as established in KRS 224.46-016(4) and 224.46-018(5)(a).

(5)(a) A required plan or report for corrective action shall be conducted consistent with the substantive requirements established in 401 KAR 100:030, Section 8(1) and (3) and Section 9(1) and (2).

(b) A fee for corrective action shall be required as established in KRS 224.46-016(4) and 224.46-018(5)(b).

(6) The owner or operator shall implement corrective actions beyond the facility property boundary, if necessary to protect human health and the environment, unless the owner or operator demonstrates to the cabinet that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain permission to implement corrective actions beyond the facility property boundary.

(a) The owner or operator shall not be relieved of all responsibility to clean up a release that has migrated beyond the facility property boundary if off-site access is denied.

(b) On-site measures to address releases beyond the facility property boundary shall be determined in accordance with 401 KAR Chapter 39.

(c) An assurance of financial responsibility for corrective action for releases beyond the facility property boundary shall be provided.

(7) This section shall not apply to a remediation waste management site unless the site is part of a facility subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

(8) The schedule for closure of each hazardous waste management unit and for final closure of the facility required to be

included in the closure plan established in subsection (5) of this section, shall also comply with the requirements in KRS 224.46-520(8).

Section 9. Exceptions and Additions. (1)(a) In the event of a release or threatened release of a pollutant or contaminant to the environment the facility shall comply with the requirements of 401 KAR 39:060, Section 6(1).

(b) If the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition shall be repaired in accordance with KRS 224.1-400.

(c) The reference to "EPA notification procedures" referenced in 40 C.F.R. Parts 264 to 267 shall be replaced with the notification procedures established in paragraph (a) of this subsection or 401 KAR 39:080, Section 1(2).

(2) Any reports, notifications, information, or documents required to be submitted to EPA, shall also be submitted to the cabinet at the same time.

(3) In addition to RCRA, Section 3008, KRS 224.10-420 through 224.10-470, 224.46-530, and 224.99-010 shall apply.

(4) In addition to RCRA, Section 3004(o)(1) KRS 224.46-530(1)(h) and (i), Sections 1 and 2 of this administrative regulation shall apply.

(5) The citation to RCRA, Section 3004(k) shall be replaced with KRS 224.1-010(43).

(6) In addition to the requirements in RCRA, Section 3005, KRS 224.46-520, KRS 224.46-530, 401 KAR 39:060, and this administrative regulation shall apply.

(7) In addition to RCRA, Section 7003, KRS 224.10-410 shall apply.

(8) In addition to RCRA, Section 3005(j)(1), Sections 1 and 2 of this administrative regulation shall apply.

(9) In addition to RCRA, Sections 3004(o)(2) and (3), Section 1 of this administrative regulation shall apply.

(10) In addition to RCRA, Sections 3005(j)(2), (3), (4), and (13), Section 2 of this administrative regulation shall apply.

(11) The requirements in RCRA, Section 3010(a) shall be replaced with the requirements established in 401 KAR 39:080, Section 1(2).

(12) In addition to RCRA, Section 3019, KAR 39:060, and KRS 224.46-520(1) shall apply.

(13) In addition to RCRA, Section 3004(d), KRS 224.46-520(2) shall apply.

(14) Any decision to shorten the post-closure period or the post-closure monitoring and maintenance of a permitted facility shall be made in accordance with KRS 224.46-520(4).

(15) Waste, used oil, or material contaminated with dioxins or hazardous wastes shall not be used as a dust suppressant.

(16) In addition to the import notifications referenced in 40 C.F.R. 264.12(a) and 40 C.F.R. 265.12(a) being submitted to the U.S. EPA, a copy shall be submitted to the cabinet at the same time.

(17) In addition to the requirements in 40 C.F.R. Parts 264, 265, and 267~~[Part 264 and 40 C.F.R. Part 265]~~, owners and operators of hazardous waste treatment, storage, and disposal facilities and owners and operators of interim status hazardous waste treatment, storage, and disposal facilities shall prepare a Hazardous Waste Annual Report for the cabinet annually as established in 401 KAR 39:080, Section 1(8)(a).

(18) The citations to the Clean Water Act, Sections 301, 307, and 402 in 40 C.F.R. Part 264 and 40 C.F.R. Part 265, shall also include any applicable Kentucky requirements as established in 401 KAR Chapter 5.

(19) The citations to 40 C.F.R. Part 60 and 40 C.F.R. Part 61, shall also include 401 KAR 60:005 and 401 KAR 57:002, respectively.

(20) The citation to 40 C.F.R. 63, Subpart EEE shall also include 401 KAR 63:002, Section 2(4)(rr).

(21) The citation to 40 C.F.R. 124.15 in 40 C.F.R. 264.1030(c), 40 C.F.R. 264.1050(c), 40 C.F.R. 264.1080(c), 40 C.F.R. 265.1080(c) shall be replaced with 40 C.F.R. 124.5.

(22) In addition to the citations to 40 C.F.R. Part 144 in 40 C.F.R. Parts 264, 265, and 267, ~~[shall be replaced with]~~ 805 KAR

1:110 shall also apply.

(23) If multiple facilities are covered by the same financial assurance mechanism as referenced in 40 C.F.R. 264.143(h), 40 C.F.R. 264.145(h), 40 C.F.R. 264.147(a)(1)(i), 40 C.F.R. 264.147(b)(1)(i), 40 C.F.R. 265.143(g), 40 C.F.R. 265.147(a)(1)(i), 40 C.F.R. 265.147(b)(1)(i), and 40 C.F.R. 265.145(g), evidence of financial assurance shall be submitted to the cabinet and, as appropriate, to the Regional Administrator and other state directors.

(24) The citations to the Safe Drinking Water Act shall also include any applicable Kentucky requirements as established in 401 KAR Chapters 6, 8, 9, and 10, and 805 KAR Chapter 1.

(25) The citations to Sections 60, 61, and 63 of the Clean Air Act shall also include any applicable Kentucky requirements as established in 401 KAR Chapters 50 through 65.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 10, 2018

FILED WITH LRC: October 11, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2018, at 6:00p.m., at 300 Sower Blvd., 1st Floor, Training Room B. 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 November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather Alexander, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone: (502) 782-6303, fax: (502) 564-4245, email heather.alexander@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for the hazardous waste permit program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for hazardous waste permitting, establishing financial assurance, establishing standards for storage, treatment, disposal, and recycling of hazardous waste, and minimum closure and post-closure monitoring and maintenance as required by KRS 224.46-520. In addition, this administrative regulation is necessary to establish criteria for the cabinet to consider in making a determination to issue, deny or condition a permit for a hazardous waste site or facility for treatment, storage, or disposal of nerve agents as required by KRS 224.50-130.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.46-520 requires the Energy and Environment Cabinet to promulgate administrative regulations establishing standards for hazardous waste permitting and persons engaging in the storage, treatment, disposal, and recycling of hazardous waste, and to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. KRS 224.50-130 establishes criteria the cabinet shall consider in making a determination to issue, deny or condition a permit for a hazardous waste site or facility for treatment, storage, or disposal of nerve agents.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the standards for a hazardous waste permit as required by KRS 224.46-520 and establishes

criteria the cabinet shall consider in making a determination to issue, deny or condition a permit for a hazardous waste site or facility for treatment, storage, or disposal of nerve agents pursuant to KRS 224.50-130.

(2) If 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 this existing administrative regulation to correct minor citation errors and omissions and typographical errors. In particular, section 9(1)(c) and Section 9(12) were corrected, and Section 9(25) was added. Also, the limit established for Lead was revised from 0.15 to 0.015.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct standards for hazardous waste permitting, establishing financial assurance, establishing standards for storage, treatment, disposal, and recycling of hazardous waste, and minimum closure and post-closure monitoring and maintenance as required by KRS 224.46-520.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.46-520 requires the Energy and Environment to promulgate administrative regulations establishing standards for hazardous waste permitting and persons engaging in the storage, treatment, disposal, and recycling of hazardous waste, and to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. KRS 224.50-130 establishes criteria the cabinet shall consider in making a determination to issue, deny or condition a permit for a hazardous waste site or facility for treatment, storage, or disposal of nerve agents.

(d) How the amendment will assist in the effective administration of the statutes: This amendment corrects the standards for a hazardous waste permit as required by KRS 224.46-520 and establishes criteria the cabinet shall consider in making a determination to issue, deny or condition a permit for a hazardous waste site or facility for treatment, storage, or disposal of nerve agents pursuant to KRS 224.50-130.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and operators of facilities that generate, transport, treat, store and dispose of hazardous waste. There are approximately 16 treatment, storage, and disposal facilities, 384 large quantity generators, 412 small quantity generators, 2,853 very small quantity generators, 131 large quantity universal waste handlers, 142 used oil facilities, and 132 transporters in the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not be required to take any additional actions as a result of this administrative regulation. The standards for the hazardous waste permit program established in this consolidated administrative regulation are consistent with the current hazardous waste permit program established in an already effective administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no increase in cost for complying with this administrative regulation as the hazardous waste permit program is consistent with the current effective administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no benefit to compliance as there is no substantive change being made in this amendment.

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

(a) Initially: \$2.9M, for this program, as a whole.

(b) On a continuing basis: \$2.9M, for this program, as a whole.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of restricted funds, general funds and grants from the U.S. Environmental Protection Agency.

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

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

(9) TIERING: Is tiering applied? This administrative regulation applies to all entities regulated under the hazardous waste permit program. To apply tiering to the regulation would decrease costs for some entities while not for others.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate transport, store, or dispose of hazardous wastes as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 40 C.F.R. Parts 264, 265, 266, and 267.

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

(a) How much 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, along with 401 KAR 39:120, will generate permitting review fees totaling approximately \$450,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for subsequent years. Currently the division receives \$1.5M in federal grant funding to administer this program, as a whole.

(c) How much will it cost to administer this program for the first year? \$2.9M, as a whole.

(d) How much will it cost to administer this program for subsequent years? \$2.9M, as a whole.

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

Revenues (+/-): \$450,000 in permitting review fees + \$1.5M in federal grant funding for this program, as a whole.

Expenditures (+/-): \$2.9M for this program, as a whole.

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. Parts 264, 265, 266, and 267

2. State compliance standards. KRS 224.46-520 and KRS 224.50-130

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Parts 264, 265, 266, and 267

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

federal counterpart in that concentration limits established in 40 C.F.R. 264.94 are replaced with the concentration limits consistent with the current Kentucky environmental performance standards. Section 5, facility location with regard to flood plains is in addition to the federal requirements. Section 6, chemical demilitarization, places additional requirements on nerve and blister agents. Section 7, financial assurance, allows an owner or operator to provide financial assurance by way of cash and certificates of deposit where the federal regulations do not. Section 8 imposes requirements in the event of a release for solid waste management units consistent with other hazardous waste permitted facilities, including the review fees. Section 9 requires release reporting and notification to the cabinet, gives enforcement authority and establishes penalization by the cabinet.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The differences in this administrative regulation are statutory requirements and are consistent with current Kentucky administrative regulations. The more stringent concentration requirements established in this regulation are consistent with the current Kentucky environmental performance standards. Allowing cash and certificates of deposit as a mechanism for financial assurance gives a facility additional means to provide financial assurance.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:005. Definitions ~~for[related to]~~ 401 KAR Chapter 42.

RELATES TO: KRS 224.1[224.04], 224.10, 224.60, 40 C.F.R. 280 Subpart A, 42 U.S.C. 6991 – 6991m[6994e], 9601-9675

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.60-105, 42 U.S.C. 6991-6991m[6994k, 6994e]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tanks by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect human health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for underground storage tank (UST) systems. This administrative regulation establishes definitions for[defines terms used throughout] 401 KAR Chapter 42.

Section 1. Definitions. Except as established in this section, definitions for 401 KAR Chapter 42 shall be as established in 40 C.F.R. 280.12 and 280.250. (1) "Analytical Testing":

(a) Means:

1. The techniques established in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, U.S. EPA Publication SW-846 as referenced in 40 C.F.R. 260.11(c)(3); or

2. Cabinet-approved techniques, including the required quality assurances and quality controls used to identify the quantitative, chemical makeup of a sample; and

(b) Does not mean field instruments, qualitative, or semi-quantitative techniques utilized to inform decision making, but not utilized to determine regulatory compliance["Aboveground release" means a UST system release to the surface of the land or to surface water. This includes UST system releases from the aboveground portion of a UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system].

(2) "Actual cost" means the cost incurred by the person performing the services or supplying the products.

(3) "Ancillary equipment" means any devices used to distribute,

meter, or control the flow of regulated substances to and from a UST system, including piping, fittings, flanges, valves, and pumps.

(4) "API" means the American Petroleum Institute.

(5) "Assets" is defined by KRS 224.60-120(3).

(6) "Automatic line leak detector" means:

(a) Electronic line leak detector; or

(b) Mechanical line leak detector.

(7) "ASTM" means the American Society for Testing and Materials.

(8) "Background" means the concentration of substances consistently present in the environment at, or regionally proximate to, a UST system release, but outside of the influence of the UST system release. ~~The[There are]~~ two (2) types of background are natural background and ambient background.

(3) as follows:

(a) Natural background is the amount of naturally-occurring substances in the environment, exclusive of that from anthropogenic sources; and

(b) Ambient background is the amount of both naturally occurring substances and ubiquitous anthropogenic substances in the environment at levels that are representative of the region surrounding the UST facility and at levels not attributable to activities on the property.

(9) "Belowground release" means a UST system release to the subsurface of the land or to groundwater. This includes UST system releases from the belowground portions of a UST system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

(10) "Beneath the surface of the ground" means, for purposes of identifying an underground storage tank system as set forth in KRS 224.60-100, beneath the ground surface or otherwise covered with earthen materials.

(14) "Bodily injury and property damage" is defined by KRS 224.60-115(1).

(4) [(12)] "Cabinet" is defined by KRS 224.1-010(8)[224.04-010(9)].

(5) [(13)] "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a UST system can be cathodically protected through the application of either galvanic anodes or impressed current.

(14) "Cathodic protection tester" means a person accredited or certified[as being a cathodic protection tester] in accordance with 401 KAR 42:020, Section 11(9)[42:030.

(15) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 – 9675].

(6) [(16)] "Change in service" means continued use of a UST system that previously stored a regulated substance to store a non-regulated substance.

(7) [(17)] "Claim" is defined by KRS 224.60-115(3).

(8) [(18)] "Compatible" means the ability of two (2) or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the UST system under conditions likely to be encountered in the UST system.

(19) "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a UST system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two (2) UST systems shall be allocated equally between them.

(20) "Consumptive use" means, with respect to heating oil, consumed on the premises where stored.

(24) "Contamination" means degradation in the quality of surface water, sediment, groundwater, air, soil, or bedrock as a result of human activities.

(9) [(22)] "Contract" means the legally-binding written agreement for performance of corrective action entered into by an owner or operator and an[a contracting] eligible company or partnership[eligible pursuant to 401-KAR 42:316].

(10) [(23)] "Corrective action":

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(a) For purposes of 401 KAR 42:250 ~~and~~ 42:290, 42:300, 42:316, 42:330, 42:335 and 42:340, is defined by KRS 224.60-115(4); or

(b) For purposes of 401 KAR 42:011, 42:020 ~~and~~ 42:030, 42:040, 42:045, 42:050, 42:060, 42:070, 42:080, 42:090, 42:095, and 42:200, means those actions necessary to protect human health and the environment if there is a UST system release. Corrective action includes initial response remedial actions to clean up contaminated groundwater, surface waters or soil, actions to address residual effects after initial corrective action is taken, and actions taken to restore or replace potable water supplies. Corrective action also includes actions necessary to monitor, assess, and evaluate a UST system release, as well as actions necessary to monitor, assess, and evaluate the effectiveness of remedial action after a UST system release has occurred.

(11)(24) "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be accredited or certified as being qualified by the National Association of Corrosion Engineers (NACE International), or a professional engineer licensed by the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors with certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(25) "Delivery prohibition" means prohibiting the delivery, deposit, or acceptance of a regulated substance to an underground storage tank that has been determined to be ineligible by the cabinet in accordance with 401 KAR 42:020[42:045] for[such] delivery, deposit, or acceptance.

(12)(26) "Dielectric material" means a material that does not conduct direct electrical current.

(27) "Dispenser" means a device that is used to transfer regulated substances from a UST system to a point outside of the UST system.

(28) "Division" is defined by KRS 224.60-115(6).

(13)(29) "Domestic-use cistern" means a cistern constructed in a manner to allow the infiltration of groundwater and is currently used or potentially used by humans for consumption or other uses resulting in dermal or inhalation exposure.

(14)(30) "Domestic-use spring" means a perennial spring continuously utilized by humans for consumption or other potable uses resulting in dermal or inhalation exposure.

(15)(31) "Domestic-use well" means a well currently used or potentially used by humans for consumption or other uses resulting in dermal or inhalation exposure.

(16) "Double walled" means factory certified construction utilizing an inner wall and an outer wall with an interstitial space between the inner wall and outer wall suitable for interstitial monitoring.

(17)(32) "Double-walled piping" means piping consisting of an inner wall and an outer wall with an interstitial space between the inner and outer wall.

(33) "Double-walled tank" means a tank consisting of an inner wall and an outer wall with an interstitial space between the inner and outer wall.

(34) "Electrical equipment" means underground equipment containing dielectric fluid used for the operation of equipment such as transformers and buried electrical cable.

(35) "Eligible company or partnership" means a person issued a letter of eligibility in accordance with 401 KAR 42:250[42:316].

(18)(36) "Empty" means all regulated substances have been removed from the UST system using commonly employed practices so that not more than two and five-tenths (2.5) centimeters (one (1) inch) of residue, or zero and three-tenths (0.3) percent by weight of the total capacity of the UST system, remain in the system.

(19)(37) "Entry level" means a deductible[an] amount equal to the financial responsibility the owners or operators[owner or operator] shall establish and maintain in accordance with KRS 224.60-120, except for actions established in 401 KAR 42:250,

Section 5(3).

(20)(38) "Environmental emergency" is defined by KRS 224.1-400(1)(d)[224.01-400(1)(d)].

(21)(39) "Environmentally sensitive feature" means surface waters and jurisdictional wetland areas. The term does not include road-side ditches or manmade drainage ways that do not discharge to surface waters or wetland areas within a fifty (50) meter radius of the excavation zone.

(40) "EPA identification number" means the number assigned by the U.S. EPA or the cabinet to each hazardous waste generator, transporter, and treatment, storage, or disposal facility.

(41) "Excavation zone" means the volume containing the UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation. An excavation zone contains one (1) or more than one (1) UST system.

(42) "Existing UST system" means a UST system used to contain an accumulation of regulated substances or for which installation commenced on or before December 22, 1988. Installation is considered to have commenced if:

(a) The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the UST facility or installation of the UST system; and

(b)1. A continuous, physical construction or installation program has begun at the UST facility; or

2. The owner or operator has entered into contractual obligations, that cannot be canceled or modified without substantial loss, for physical construction at the UST facility or installation of the UST system to be completed within a reasonable time.

(43) "Facility" is defined by KRS 224.60-115(7).

(22) "Field blank" means an aliquot of reagent water exposed to the environment during field sample collection and processed in the laboratory as an environmental sample. A field blank is used to document that contamination is not introduced during sample collection.

(23)(44) "Farm tank" means a tank located on a tract of land devoted to the production of crops (including nurseries) or raising animals (including fish hatcheries) and associated residences and improvements.

(45) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government, including any government corporation, or the U.S. Government Printing Office.

(46) "Federal regulations" is defined by KRS 224.60-115(8).

(47) "Financial ability" means the capacity of a petroleum storage tank owner or operator to finance the performance of corrective action.

(24)(48) "Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

(49) "Free product" is defined by KRS 224.60-115(9).

(25)(50) "Guarantor" is defined by KRS 224.60-120(4).

(51) "Gathering lines" means pipelines, equipment, facilities, and buildings used in the transportation of oil or gas during oil or gas production or gathering operations.

(52) "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.

(26)(53) "Hazardous substance UST system" means a UST system that contains a hazardous substance identified in Section 101(14) of CERCLA (but not including any substance regulated as a hazardous waste under 401 KAR Chapters 31 through 39), or contains a mixture of this type of hazardous substance and petroleum and is not a petroleum UST system.

(54) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, or No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels if used as substitutes for

one (1) of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(55) "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(56) "Hydrogeologically downgradient" means in the direction from a point of higher hydrostatic pressure to a point of lower hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a higher water table elevation exists to a point where a lower water table elevation exists, as defined by wells or piezometers.

(57) "Hydrogeologically upgradient" means in the direction from a point of lower hydrostatic pressure to a point of higher hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a lower water table elevation exists to a point where a higher water table elevation exists, as defined by wells or piezometers.

(27)(58) "Independent third-party evaluator" means a consulting firm, test laboratory, not-for-profit research organization, or educational institution with no organizational or financial conflict of interest.

(28)(59) "Interior lining" means corrosion and chemical resistance materials that are applied to the inside of the tank to protect the internal surface of the tank from corrosion.

(29)(60) "Interstitial space" means the area between the inner and outer wall of any component of a UST system.

(30)(double-walled tanks or double-walled piping;

(61) "Liquid-tight" means impervious to the passage of water or a liquid regulated substance.

(31)(62) "Liquid trap" means a sump, well cellar, or other trap used in association with oil and gas production, gathering, and extraction operations (including gas production plants) for the purpose of collecting oil, water, and other liquids.

(63) "Maintenance" means the normal operational upkeep to prevent a UST system from releasing a regulated substance.

(64) "Monitoring" means the act of systematically collecting and accessing data on operational parameters or on the quality of the air, soil, bedrock, groundwater, sediment, or surface water.

(32)(65) "Motor fuel" is defined by KRS 224.60-115(12).

(33)(66) "NACE" means the National Association of Corrosion Engineers.

(67) "Net worth" is defined by KRS 224.60-120(3).

(68) "Newly discovered UST system" means a UST system at a UST facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence.

(34)(69) "New UST system" means a UST system that will be used to contain an accumulation of regulated substances and for which installation commenced after December 22, 1988.

(70) "NFPA" means the National Fire Prevention Association.

(71) "Noncommercial purposes" means, with respect to motor fuel, not for resale.

(72) "Occurrence" is defined by KRS 224.60-115(13).

(35)(73) "Off-site" means any area beyond the point of compliance.

(36)(74) "On-site" means the area within the point of compliance.

(37)(75) "On the premises where stored" means, with respect to heating oil, a UST system located on the same property where the stored heating oil is used.

(76) "Operation" means the storage and dispensing of a regulated substance from a UST system.

(77) "Operational life" means the period beginning when installation of the UST system has commenced and ending when the UST system is closed in accordance with [under] 401 KAR 42:060[42:070].

(38)(78) "Operator" means a person in final control of, or having final responsibility for, the daily operation of the UST system. The operator shall be a person who has full authority to comply with the requirements of 401 KAR Chapter 42.

(79) "Original invoice" means an original or duplicate copy of an itemized list of all products or services obtained, including the

itemized cost thereof provided to the contractor or owner or operator by the person supplying the products or providing the services.

(80) "Overfill release" means a UST system release that occurs if a UST system is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

(39)(81) "Owner" means:

(a) For a UST system in use on November 8, 1984, or brought into use after that date, a person who owns a UST system used for storage, use, or dispensing of a regulated substance; and

(b) For a UST system in use before November 8, 1984, but no longer in use on that date, a person who owned the UST system immediately before the discontinuation of its use.

(82) "Permanent closure" means [either]:

(a) Closure, occurring prior to December 22, 1988, in accordance with the requirements of the Kentucky Fire Marshal, and applicable industry standards when closure occurred, and [in a manner] that prevents future use of the UST system; or

(b) After December 22, 1988, removing the UST system from the ground or filling the UST system with an inert solid material, or a combination of both methods in accordance with 401 KAR 42:060, Section 6.

(40)(83) "Person" is defined by KRS 224.60-115(14).

(41)(84) "Petroleum" is defined by KRS 224.60-115(15).

(42)(85) "Petroleum storage tank" is defined by KRS 224.60-115(16).

(43)(86) "Petroleum storage tank operator" is defined by KRS 224.60-115(17).

(44)(87) "Petroleum storage tank owner" is defined by KRS 224.60-115(18).

(45)(88) "Petroleum UST system" means a UST system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. The term includes those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(89) "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials (for example, concrete, steel, plastic, or a combination of these types of materials).

(90) "Pipeline facilities" means new or existing pipe rights-of-way and any associated equipment, facilities, or buildings, including gathering lines.

(94) "Point of compliance" means the property boundaries of the property on which the UST facility is located.

(46)(92) "Product deliverer" means a person that [who] delivers or deposits regulated substances into a UST system.

(47) "Professional engineer" is defined by KRS 322.010(3).

(48) "Professional geologist" means a geologist registered in the state of Kentucky in accordance with KRS Chapter 322A(93) "Ranking system" means the system for determining the sequence by which written directives shall be issued in order to address the completion of corrective action, and the subsequent reimbursement of those eligible costs, as established by 401 KAR 42:290.

(49)(94) "Registration" means [or "register" shall have the same meaning as] "notification" [or "notice,"] as used in 40 C.F.R. 280.22[Part 280 Subpart B].

(50)(95) "Regulated substance" is defined by KRS 224.60-100(2).

(51)(96) "Release" is defined by:

(a) KRS 224.60-115(20); or

(b) C.F.R. 280.12 for the purposes of 401 KAR 42:020 and 42:060, except for a release that is permitted or authorized by the state or federal law.

(52)(97) "Release detection" or "leak detection" means a method of determining if:

(a) A release of a regulated substance has occurred from the UST system into the environment; or

(b) A regulated substance has infiltrated the interstitial space of a UST system.

(98) "Repair" is defined by 40 C.F.R. 280.12, except that the term shall also include restoration of [means to restore] a UST system component that has exhibited [caused a UST system

release of a regulated substance or that exhibits] an unusual operating condition.

(53) "Replaced" or "replacement" means:

(a) For a tank, to remove a tank and install another tank;

(b) For piping, to remove fifty (50) percent or more of piping and install other piping, excluding connectors, connected to a single tank or single compartment. For multiple piping runs connected to a single tank or compartment, this definition applies independently to each piping run; and

(c) For ancillary equipment, to remove a piece of equipment and install new equipment.

(54)(99) "Residential tank" means a tank located on property used primarily for dwelling purposes.

(400) "Residual tank materials" means accumulated tank water, bottom sediments, mixture of product and water, or other material remaining in a tank after removal of tank contents.

(55)(101) "SARA" means the Superfund Amendments and Authorization Act of 1986.

(102) "Secretary" is defined by KRS 224.01-010(24).

(103) "Septic tank" means a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from the receptacle is distributed for disposal through the soil, and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

(104) "SFMQ" means the State Fire Marshal's Office.

(105) "Statistical Inventory Reconciliation" or "SIR" means a leak-detection system that uses computer software to conduct a statistical analysis of inventory, delivery, and dispensing data collected over a period of time to determine if a UST system is leaking.

(106) "STI" means the Steel Tank Institute.

(107) "Storm-water" or "wastewater collection system" means piping, pumps, conduits, and other equipment used to collect or transport the flow of surface water run-off resulting from precipitation or domestic, commercial, or industrial wastewater to or from retention areas or any areas where treatment is designated to occur.

(108) "Sump" means a subsurface area designed to provide access to [underground] UST system equipment.

(56)(109) "Surface impoundment" means a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials) that is not an injection well.

(110) "Surface water" means:

(a) 1. Those waters having well-defined banks and beds, either constantly or intermittently flowing;

2. Lakes and impounded waters;

3. Marshes and wetlands; and

4. Subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection to the surface; and

(b) Does not mean: effluent ditches and lagoons used for waste treatment 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].

(57)(111) "Suspected UST system release" means the observation of an unusual operating condition or an unconfirmed UST system release.

(58)(112) "Tank" means a stationary component of a UST system, excluding the connected underground piping, underground ancillary equipment, and containment system, if any, designed to contain an accumulation of regulated substances and constructed of nonearthen materials (for example, concrete, steel, plastic, or a combination of these materials) that provide structural support.

(113) "Tank contents" means accumulated tank water, bottom sediments, or mixture of product and water, that is removed from a tank at one (1) time by the same method and that is accepted by a recycling facility.

(59)(114) "Temporary closure" means taking a UST system out of operation pursuant to the requirements of 401 KAR 42:070.

(115) "Third party" is defined by KRS 224.60-115(22).

(60)(116) "Trip blank" means a sample of analyte-free media taken from the laboratory to the sampling site and returned to the

laboratory unopened. A trip blank is used to document contamination attributable to shipping and field handling procedures per cooler per sampling event.

(61)(117) "Under-dispenser containment" or "UDC" means a liquid-tight containment system underneath a dispenser.

(118) "Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the UST system situated on or above the surface of the floor.

(119) "Underground utility conduit" means a manmade underground conduit installed for utility purposes either on or off site.

(120) "Underground storage tank" is defined by KRS 224.60-100(1).

(62) "Unusual operating condition" means an abnormal condition observed during the normal use of a UST system, including erratic behavior of product dispensing equipment, the sudden loss of product from a portion of the UST system, the unexplained presence of water in the tank exceeding one (1) inch, a failing result from a tank or line tightness test, a failing result of a corrosion protection evaluation, a failing result of a spill containment device test, a failing result of an under-dispenser containment test, a failing result of a containment sump test, an unexplained failing result from a release detection method or device, an unexplained inventory discrepancy, two (2) consecutive months of inconclusive statistical inventory reconciliation (SIR) results, an unexplained equipment failure or malfunction, an unexplained presence of vapors, an unexplained presence of product in sumps, under-dispenser containment or a spill containment device, infiltration of liquid into the interstitial space of a UST system, an unexplained overfill or release detection alarm, or evidence of a release of a regulated substance.

(63)(121) "Upgrade" means the addition of or retrofitting of UST system components to improve the ability of a UST system to prevent a UST system release. Examples of upgrades include the addition of cathodic protection, improvements to the interior lining, and improvements of spill and overfill controls.

(122) "UST facility" [or "site"] means: with respect to an owner or operator, all UST systems [which are] owned or operated by an owner or operator, and [are] located on a single parcel of property or on a contiguous or adjacent property.

(64) "UST site" or "site" means UST facility.

(65)(123) "UST system", "tank system", or "underground storage tank system" means an underground storage tank, connected underground piping, and underground ancillary equipment, if any.

(124) "UST system release" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance from a UST system into groundwater, surface water, surface or subsurface soils. The term does not include spilling, leaking, emitting, discharging, escaping, leaching, or disposing that is permitted or authorized by Kentucky or federal law.

(125) "UST system release detection" means a method, that complies with the requirements of 401 KAR 42:040, for determining whether a UST system release has occurred.

(126) "Unusual Operating Condition" means a condition observed during the normal operation of an underground storage tank system that is reported to the cabinet pursuant to 401 KAR 42:050. Unusual operating conditions include the erratic behavior of product dispensing equipment, the sudden loss of product from a portion of the UST system, the unexplained presence of water in the tank exceeding one (1) inch; failing results from a tank or line tightness test, failing results of a corrosion protection evaluation, unexplained failing results from a release detection method or device, unexplained inventory discrepancies, two (2) consecutive months of inconclusive statistical inventory reconciliation (SIR) results, unexplained equipment failure or malfunction, unexplained presence of vapors, infiltration of liquid into the interstitial space of a UST system, unexplained overfill or release detection alarms, or evidence of a release of a regulated substance.

(127) "Vapor intrusion" means the presence of volatile and semi-volatile organic compounds in residential or commercial buildings, assessed in accordance with Section 7.3 of the UST

Corrective Action Manual[Release Response and Initial Abatement Requirements Outline], incorporated by reference in 401 KAR 42:060, resulting from contaminated subsurface media originating from a UST system release. [(128) "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 10, 2018

FILED WITH LRC: October 11, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2018, at 6:00 p.m., at 300 Sower Blvd., 1st Floor, Training Room B. 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 November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather Alexander, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone: (502) 782-6303, fax: (502) 564-4245, email heather.alexander@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used in 401 KAR Chapter 42 for the management of the underground storage tank (UST) program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the terms to administer and implement the UST program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.60-100 by defining terms for 401 KAR Chapter 42 for the management of the UST program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in administration of the statutes and the UST program, implemented under the provisions of KRS 224.60-105, by defining the terms necessary to administer the program.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by eliminating redundant definitions already defined by the federal regulations referenced in 401 KAR Chapter 42. This is also part of consolidating and streamlining the number of regulations for the UST program as part of the Governor's Red Tape Initiative.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is to define essential terms used by the UST program and eliminate duplicative terms already defined in the federal regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 224.60-100 by defining terms for 401 KAR Chapter 42 for the management of the UST program.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in administration of the statutes and the UST program, implemented under the provisions of KRS 224.60-105, by defining the terms necessary to administer the program.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the owner and operator of a UST facility, eligible companies that contract with those owners or operators, certified laboratories that process samples collected at a UST facility, and certified tank installers/removers. There are 3,216 UST facilities, 58 eligible companies that contract with those owners or operators, 37 certified laboratories that process samples collected at UST facilities, and 228 certified tank installers/removers.

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

(a) List 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 identified in question (3) will not be required to take any actions as a result of this amendment as it only defines terms used in 401 KAR Chapter 42.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not cost entities identified in question (3) any funds as it only defines terms used in 401 KAR Chapter 42.

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3): Entities identified in question (3) will not accrue benefits as this amendment only defines terms used in 401 KAR Chapter 42.

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

(a) Initially: There is no cost associated with implementing this amendment.

(b) On a continuing basis: There is no cost associated with implementing this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of tank fees, the PSTeAF, and grants from the U.S. Environmental Protection Agency.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation only defines terms used in 401 KAR Chapter 42.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact state or local governments that own or operate an underground storage tank facility, as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 40 C.F.R. Part 280 and KRS 224.60-105.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not affect the expenditures and revenues of a state or local government agency as it only defines terms.

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

for state or local government as it only defines terms. However, currently the division receives \$287,700 in tank fees and \$24.2 Million PSTeAF annually, and \$1,925,333 Leaking Underground Storage Tank (LUST) Prevention and LUST Cleanup biennially in federal grants to administer the underground storage tank program.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue for state or local government as it only defines terms. However, currently the division expects to receive \$287,700 in tank fees and \$24.2 Million PSTeAF annually, and \$1,925,333 LUST Prevention and LUST Cleanup biennially in federal grants to administer the UST program for subsequent years.

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

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

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

Revenues (+/-): \$1,925,333 (biennially) in federal grant funding (LUST Prevention and LUST Cleanup), \$287,700 tank fees, \$24.2 Million PSTeAF.

Expenditures (+/-): \$24.4 Million, as a whole.

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 280 Subpart A, 42 U.S.C. 6991 – 6991m
2. State compliance standards. KRS 224.10-100(5), 224.60-105
3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 280 Subpart A
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation does impose additional or different requirements than those required by the federal regulation. Kentucky has incorporated various definitions that are not included in the federal rule.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Several of the definitions are defined in statute. Kentucky has also included various definitions that are necessary for clarification and consistency in the implementation of this administrative regulation.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 42:020. UST system requirements, notification, registration, and annual fees~~[Systems: design, construction, installation, and registration].~~

RELATES TO: KRS 224.1[224.04], 224.10, 224.60, 10 C.F.R. Part 50[Chapter 322, Chapter 322A], 40 C.F.R. Part 280, Subparts A, B, C, D, G, H, I, J, K, Part 281, Subpart D.[Subpart-B] 42 U.S.C. 2011 - 2021, 2022 - 2286i, 2296a - 2297h-13, 6991 - 6991m[6991e, 6991e, 6991k]

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-150, 42 U.S.C. 6991 - 6991m[6991e, 6991k]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks (USTs) by requiring

registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. KRS 224.60-150 states that the cabinet shall levy and collect an annual fee of thirty (30) dollars per tank from owners or operators of USTs for the purpose of funding the administration of the UST Program. KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. This administrative regulation establishes the scope of the UST program, including provisions for exclusions, requirements concerning[performance standards,] registration, annual fees, performance standards, operation and maintenance of UST systems, delivery prohibition, operator training, and requirements for demonstrating financial responsibility for corrective action, compensation of third parties for bodily injury and property damage, and lender liability~~[designated compliance managers and UST facility employees, and alternatives for upgrading existing UST systems].~~

Section 1. Applicability and Exclusions.

(1) The requirements of 401 KAR Chapter 42 shall apply to all owners and operators of UST systems, except as established in subsection (3) of this section.

(2) Requirements for previously federally-deferred field-constructed tanks and airport hydrant fuel distribution systems shall be as established in 40 C.F.R. 280.250 through 280.252, and this administrative regulation.

(3) The following shall be excluded from the requirements of 401 KAR Chapter 42:

(a) A UST system containing wastes established as hazardous in 401 KAR Chapter 31 and UST systems containing mixtures of hazardous waste and other regulated substances;

(b) A UST system excluded by 40 C.F.R. 280.10(b)(2) through (6);

(c) Exclusions listed in KRS 224.60-100(1)(a) through (i);

(d) A UST system containing radioactive material that are regulated as referenced in the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2011 – 2021, 2022 – 2286i, 2296a – 2297h-13;

(e) A UST system that is part of an emergency generator system at a nuclear power generation facility licensed by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including 10 C.F.R. Part 50; and

(f) A UST system used in the operation of heating equipment, boilers, and furnaces, but with a secondary usage as part of an emergency generator system, if:

1. UST system contents are consumed on the premises where stored; and

2. The UST system stores fuel oil number 1, 2, 4, 5, 6, or residual fuel oil.

Section 2. Notification, Registration, and Annual Fees.

(1) Notification requirements for UST systems shall be as established in KRS 224.60-105, 40 C.F.R. 280.22, and this section.

(a) Owners shall submit the UST Notice of Intent to Install Underground Storage Tank or Piping, DWM 4231, to the appropriate Division of Waste Management Regional Office, at a minimum, fourteen (14) days prior to installation of a UST or an entire piping run, in accordance with Section 6(4) of this administrative regulation, to afford a division representative the opportunity to be present during installation.

(b) If a division representative fails to be present on the date scheduled for installation, the installation may proceed.

(2) Registration of UST systems shall comply with the requirements in subsection (1) of this section and this subsection. [Registrations:

—(1)] (a) The owner shall submit, to the cabinet, a UST Facility Registration, DWM 4225, [Form, DEP 7412] for a[each] UST facility within thirty (30) days of bringing a UST system into use at the

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UST facility[operation].

(b) The form shall be signed by the owner and operator of the UST system.

(3) A corporation or limited liability company, registering as an owner or operator of a UST system, shall be authorized to conduct business in the Commonwealth of Kentucky, hold an active status, and be in good standing, with the Kentucky Secretary of State.

~~(4)(a)(c) The form shall be notarized.~~

~~(2)(a)] Except as established in subsection (5) of this section[Section 2 of this administrative regulation], an[the] owner shall submit to the cabinet an amended UST Facility Registration, DWM 4225[Form, DEP 7112] within thirty (30) days of any change to information contained within the most recently submitted UST Facility Registration[Form].~~

(b) The form shall be signed by the owner and operator of the UST system.

~~(5)(c) The form shall be notarized.~~

~~(3) An amended UST Facility Registration Form, DEP 7112 shall be submitted for a UST system being placed into temporary closure for more than six (6) months.~~

(4) An unregistered UST system discovered during permanent closure activities conducted in accordance with 401 KAR 42:060, [42:070] shall be listed on the UST Closure Assessment Report Checklist, DWM 4262, incorporated by reference in 401 KAR 42:060, in lieu of an amended UST Facility Registration, DWM 4225[42:070].

~~(6)(5) With the exception of unregistered UST systems discovered during permanent closure activities in accordance with subsection (1) of this section:~~

Section 2. Change of Address for UST Owner.] An owner shall notify the cabinet within thirty (30) days of an address change by submittal of ~~one (1) of the following~~:

~~(a) [(4) Submittal of] An amended UST Facility Registration, DWM 4225[Form, DEP 7112]; or~~

~~(b) A UST Facility Owner Address Correction, DWM 4224[(2) Submittal of an Address Change Form for Owners of UST Systems, DEP 0060].~~

~~(7)[Section 3. Changes of Ownership. (1)] If ownership of a UST system changes, the new owner shall comply with this subsection.~~

(a) The new owner shall complete and submit an amended ~~and[,] signed[,] and notarized]~~ UST Facility Registration, DWM 4225[Form, DEP 7112], to indicate the new ownership. The form shall include the previously-assigned agency interest number and shall be submitted to the cabinet within thirty (30) days after the transaction.

(b) The new owner shall maintain a copy of the properly executed deed or other properly executed legal document proving the transfer of the UST system and submit to the cabinet if requested.

(c) Upon the sale of a UST system, the previous owner~~[(2) If an owner sells a UST system, the seller] shall~~:

~~(a)] advise the new owner of the obligation to submit an amended[,] and signed[,] and notarized]~~ UST Facility Registration, DWM 4225[Form, DEP 7112], to the cabinet that indicates the change in ownership~~]; and~~

~~(b) Submit to the cabinet, within thirty (30) days after the transaction, a copy of the properly executed deed or other mutually executed legal document supporting the sale of the UST system, along with a letter indicating the UST facility name as registered with the cabinet, the UST facility location, and the agency interest number].~~

~~(8)[Section 4. Issuance of a Certificate of Registration and Reimbursement Eligibility.] Upon a determination by the UST Branch[cabinet] that the UST Facility Registration, DWM 4225[Form, DEP 7112], is complete and accurate, and the requirements of subsection (9) of this section are met, a written approval letter shall be issued by the UST Branch[the cabinet shall issue a Certificate of Registration and Reimbursement Eligibility, DEP 7113].~~

(9) Annual fees for each tank that is in the ground, and not permanently closed in accordance with 401 KAR 42:060, on July 1

of a year (July 1 through June 30), shall be as established in KRS 224.60-150, and:

~~(a) Owners or operators of USTs shall pay a thirty (30) dollar annual fee for each tank in the ground on July 1 of that year (July 1 through June 30);~~

~~(b) Payment shall be made according to instructions on the invoice from the cabinet stating the required payment;~~

~~(c) Payment shall be made thirty (30) days from the date on the invoice from the cabinet specifying the required payment;~~

~~(d) Payment submitted by check shall be made payable to the Kentucky State Treasurer with a note stating payment applies to UST tank fees;~~

~~(e) Annual fees shall not be due for years prior to the one beginning July 1, 1990; and~~

~~(f) Annual fees shall not be required for an unregistered tank newly discovered during permanent closure activities conducted in accordance with 401 KAR 42:060.~~

Section 3. Temporary Closure.

(1) An amended UST Facility Registration, DWM 4225, shall be submitted in accordance with Section 2(4) of this administrative regulation.

(2) If a UST system is in temporary closure, the owner and operator shall continue operation and maintenance of corrosion protection and UST system release detection, in accordance with this section.

(a) If a UST system is empty, these operation and maintenance requirements shall not be required:

1. UST system release detection in accordance with Section 15 of this administrative regulation; and

2. Walkthrough inspections in accordance with Section 17 of this administrative regulation.

(b) Spill and overfill operation and maintenance testing and inspections shall not be required in accordance with Sections 8 and 9 of this administrative regulation.

(3) In addition to the requirements of subsection (2) of this section, if a UST system is in temporary closure for more than three (3) months, the owner and operator shall:

(a) Leave vent lines open and functioning; and

(b) Cap and secure all other lines, pumps, man ways, and ancillary equipment.

(4) If a UST system is in temporary closure for more than twelve (12) months, and does not comply with the requirements of subsections (2) and (3) of this section, the owner and operator of the UST system shall:

(a) Perform permanent closure in accordance with 401 KAR 42:060; or

(b) Request an extension of temporary closure in accordance with Section 22 of this administrative regulation and perform an assessment in accordance with Section 4.0 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060.

(5) If a UST system is in temporary closure for more than twelve (12) months, and complies with the performance standards for corrosion protection, spill containment and overfill prevention, and release detection in accordance with this administrative regulation, the owner and operator shall conduct tank and piping tightness tests, and any outstanding periodic test, prior to returning the UST system into use.

Section 4.~~[5. Notification Requirements. Requirements for notification shall be as established in 40 C.F.R. 280.22.~~

Section 6. Notice and Verification of Installation of Underground Storage Tank and Piping. (1)(a) Owners shall submit the Notice of Intent to Install Underground Storage Tank or Piping, DEP 8044, to the appropriate Division of Waste Management Regional Office at least fourteen (14) days prior to installation of an underground storage tank or an entire piping run to afford the division representative the opportunity to be present during installation.

(b) If a division representative fails to be present on the date scheduled for installation, the installation may proceed.

(2) After April 1, 2012, owners and operators shall submit a

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Verification and Compatibility Form, DEP 7115, to the cabinet within thirty (30) days after bringing a UST system, tank, or entire piping run into operation.

Section 7. Operational Training Requirements.

(1) An owner of a UST system registered, but not permanently closed, with the USTB prior to June 8, 2012 shall designate at least one (1) individual, who shall be trained in accordance with subsections (5) and (6) of this section by August 8, 2012, as the primary designated compliance manager (DCM) for the registered UST system.

(2) An owner of a UST system registered, but not permanently closed, on or after June 8, 2012 shall designate at least one (1) individual who shall be trained in accordance with subsections (5) and (6) of this section within sixty (60) days of registration, as the primary designated compliance manager (DCM) for the registered UST system.

(3) If the primary DCM no longer holds DCM status, the owner shall, within thirty (30) days, designate another individual as primary DCM who shall obtain training in accordance with subsections (5) and (6) of this section within thirty (30) days of designation. An owner:

(4)(a) Shall designate a primary DCM who may receive compliance related correspondence from the Underground Storage Tank Branch. An owner:

1. May designate themselves as the primary DCM; or
2. May designate another individual as the primary DCM; and
- (b) May designate multiple individuals as an associate DCM for a UST system.

(5) Except as provided in this subsection, operational training, in accordance with this administrative regulation, shall be accomplished through use of the cabinet training system. Individuals unable to use or access the cabinet training system shall contact the Underground Storage Tank Branch for alternate designation and operational training procedures.

(6) Through completion of operational training in accordance with subsection (5) of this section, a DCM shall demonstrate an in-depth understanding of:

(a) UST system operation, maintenance, inspection, and testing requirements including, at a minimum: UST system spill prevention, overfill prevention, release detection, secondary containment, corrosion protection, product compatibility, and notification requirements as applicable to the current configuration of the UST system in accordance with this administrative regulation and 401 KAR 42:030, and 42:040;

(b) UST system recordkeeping requirements in accordance with 401 KAR 42:030 and 42:040;

(c) UST system release reporting, release response, temporary closure, permanent closure, initial abatement, and financial responsibility requirements in accordance with 401 KAR 42:050, 42:060, 42:070, and 42:090;

(d) All relevant equipment and its compliance with performance standards in accordance with 401 KAR 42:030 and 42:040;

(e) Requirements for delivery prohibition in accordance with 401 KAR 42:045; and

(f) UST facility employee training requirements in accordance with Section 8 of this administrative regulation.

(7) The owner shall ensure that the primary DCM successfully repeat the training annually, within twelve (12) months of the most recent training date.

Section 8. UST Facility Employee Training Requirements.

(1) The owner or operator shall ensure that all employees associated with the operation of the UST system receive training, by August 8, 2012 and every twelve (12) months thereafter, in the following areas:

- (a) Response to an equipment alarms;
- (b) Fire extinguisher operation;
- (c) Spill and overfill response;
- (d) Threat to the public or to the environment caused by spills or releases;
- (e) Emergency shut-off procedures; and
- (f) Contact telephone numbers in response to emergencies

caused by a release or a threatened release from a UST system.

(2) The owner or operator shall maintain a list of all employees trained in accordance with this administrative regulation. The owner or operator shall maintain written records of all training documentation supplied to UST facility employees and shall make those records available to the cabinet upon request.

Section 9.] Performance Standards for New UST Systems.

(1) Performance standards for new UST systems shall be as established in 40 C.F.R. 280.20, Section 4.0 of the UST System Compliance Manual, and this section.[; and]

(2) Noncorrodible piping requirements shall be as established in Section 14 of this administrative regulation.

(3) Owners and operators shall submit a UST System Compatibility Verification, DWM 4234, in accordance with Section 12 of this administrative regulation.[In addition to the performance standards in subsection (1) of this section, UST systems installed after April 1, 2012 shall meet the performance standards of Section 11 of this administrative regulation].

Section 5[40]. Upgrading of Existing UST Systems. Upgrading requirements for existing UST systems shall be as established in 40 C.F.R. 280.21 and this section, except that:

(1) Interior lining shall not be an acceptable method of corrosion protection; and

(2) All interior lined steel tanks that had not, as of December 22, 2013, been upgraded with impressed current corrosion protection shall be permanently closed immediately in accordance with 401 KAR 42:060.

Section 6[14]. Double[-] Walled Tanks and Piping Requirements.

(1) Requirements for double walled tanks and piping shall be as established in 40 C.F.R. 280.20 and the performance standards of this section.

(2) All tanks and piping[UST systems] installed, or UST systems changing from storage of a non-regulated substance to storage of a regulated substance, on or after April 1, 2012, shall comply with[be designed and manufactured with double-walled construction and shall meet] the requirements in Section 4 of this administrative regulation, and the UST System Compliance Manual[Installation and Maintenance Outline], except that the use of flow restrictors shall be in accordance with Section 9(3) of this administrative regulation[including continuous electronic interstitial monitoring].

(3)[(2)] All existing single[-] walled piping shall be permanently closed in accordance with 401 KAR 42:060[42:070] if an associated tank[UST] is permanently closed.

(4)[(3)] Owners and operators shall replace an entire piping run with[install] double[-] walled piping, in accordance with the UST System Compliance Manual.[Installation and Maintenance Outline] if fifty (50)[400] percent or more of the[of a] piping run, extending from the tank to the farthest dispenser or other end-use equipment, excluding connectors, is replaced.

(5)[(4)] Newly installed piping that is associated with a newly installed UST system dispenser, located in an area where a UST system dispenser did not previously exist, shall be designed and manufactured with double[-] walled construction and shall comply with[meet] the requirements in the Section 4.0 of the UST System Compliance[Installation and Maintenance Outline].

(6)[(5)] An existing tank that is[may be] removed shall comply with[and reinstalled if:

(a)] the[tank meets the] requirements of Section 4.0 of the UST System Compliance Manual if reinstalled[Installation and Maintenance Outline];

(b) The tank is inspected and tested by the equipment's manufacturer prior to being reinstalled; and

(c) The owner or operator provides a written certification from the manufacturer that the tank is suitable for reinstallation].

Section 7. Emergency Shutoff Valves (Shear Valves).

(1) Shear valve requirements shall be as established in 40 C.F.R. 280.20(d) and this section.

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(2) All pressurized piping systems that connect tanks to dispensers shall be installed with shear valves for each supply line at the base of each dispenser.

(3) The shear valves shall be rigidly anchored to the dispenser island or another appropriate anchoring point in a manner that allows the shear valve to close automatically in the event of significant impact to a dispenser.

(4) A shear valve found to be defective, inoperable, leaking, not functioning as designed by the manufacturer, or not rigidly anchored shall be immediately replaced or repaired in accordance with Sections 4 and 13 of this administrative regulation.

Section 8. Spill Containment Devices (Spill Buckets and Catch Basins).

(1) Requirements for spill buckets and catch basins shall be as established in 40 C.F.R. 280.20(c), 280.30, 280.35, and this section.

(2) Owners and operators shall not allow regulated substances, liquids, or debris to accumulate in a spill containment device. Owners and operators shall immediately, upon discovery, remove all liquid accumulations and debris from a spill containment device.

(3) All spill containment devices installed on or after April 1, 2012 shall be double walled, liquid-tight, compatible with the substance being stored in the UST system, and installed in accordance with the manufacturer's instructions.

(4) All double walled spill containment devices installed on or after April 1, 2012 shall be tested at installation, and, at a minimum, every thirty-six (36) months thereafter, for liquid-tightness using a test method approved by the double walled spill containment device's manufacturer, a code of practice developed by a nationally recognized association or independent testing laboratory, or a method approved by the cabinet based upon site-specific conditions.

(5) All single walled spill containment devices, and all double walled spill containment devices, installed prior to April 1, 2012 shall be initially tested no later than October 5, 2019, and, at a minimum, every thirty-six (36) months thereafter, for liquid-tightness using a test method approved by the spill containment device's manufacturer, a code of practice developed by a nationally recognized association or independent testing laboratory, or a method approved by the cabinet based upon site-specific conditions.

(6) The thirty-six (36) month testing requirements for double walled spill containment devices established in subsections (4) and (5) of this section shall not be required if the spill containment device interstice is monitored, at a minimum, every thirty (30) days and is documented as follows:

(a) For electronic devices capable of printing sensor readings, owners and operators shall obtain a record, at a minimum, every thirty (30) days; or

(b) For devices not capable of printing sensor readings, a monthly log shall be maintained and documented on the UST Visual Interstitial Log, DWM 4236.

(7) The thirty-six (36) month testing established in subsections (4) and (5) of this section shall be conducted within thirty (30) days of the requirements of subsection (6) of this section no longer being met.

(8) The test for liquid-tightness shall be documented on the UST Containment Device Test, DWM 4222 and shall be submitted to the UST Branch within:

(a) Seven (7) days of the test date for failing test results; or

(b) Thirty (30) days of the test date for passing test results.

(9) Owners and operators shall ensure immediate replacement or repair of a damaged, defective, or leaking spill containment device in accordance with Sections 4 and 13 of this administrative regulation.

Section 9. Overfill Prevention Requirements.

(1) Except as established in this section, overfill prevention device requirements shall be as established in 40 C.F.R. 280.20(c), 280.30, and 280.35.

(2) All overfill prevention devices installed on or after April 1,

2012 shall be installed in an extractable fitting to allow for inspection, maintenance, and testing of the device.

(3) Flow restrictors, also known as ball floats, shall not be an approved method for overfill prevention for UST systems installed after April 5, 2019.

(4) All overfill prevention devices shall be accessible for testing, shall be tested to ensure that overfill prevention equipment is set to activate at the levels established in 40 C.F.R. 280.20(c), and will activate if a regulated substance reaches that level. Overfill prevention devices shall be tested using a method approved by the device's manufacturer, a code of practice developed by a nationally recognized association or independent testing laboratory, or a method approved by the cabinet based upon site-specific conditions.

(5) All overfill prevention devices installed prior to April 5, 2019, shall be initially tested prior to October 5, 2019, and at a minimum, every thirty-six (36) months thereafter.

(6)(a) All flow restrictors, also known as ball floats, shall be removed and physically inspected to verify the ball and cage are intact and functioning properly by October 5, 2019. If this equipment is not functioning properly, the ball float shall be replaced with another form of overfill prevention in accordance with subsection (4) of this section.

(b) If the flow restrictor, also known as a ball float, cannot be evaluated in accordance with paragraph (a) of this subsection, an automatic shutoff device or a high level alarm, set to activate at ninety (90) percent capacity, shall be installed as a replacement of the existing ball float.

(7) All newly installed overfill prevention devices shall be tested at installation and, at a minimum, every thirty-six (36) months thereafter.

(8) The overfill prevention device test shall be documented on the UST Overfill Prevention Device Test, DWM 4232 and shall be submitted to the UST Branch within:

(a) Seven (7) days of the test date for failing test results; or

(b) Thirty (30) days of the test date for passing test results.

Section 10[42]. Under-Dispenser Containment (UDC) and Sump Requirements[Sumps].

(1) Requirements for UDC and sumps shall be as established in 40 C.F.R. 280.20, 280.35, and this section.

(2) A UST system dispenser installed on or after[Beginning] April 1, 2012,[all newly installed UST system dispensers,] located in an area where a UST system dispenser did not previously exist, shall have liquid-tight UDC installed in accordance with this section[administrative regulation] and Section 7.0 of the UST System Compliance Manual[Installation and Maintenance Outline].

(3)[(2)] If equipment below the shear valve, used to connect an existing UST system dispenser to the piping, is replaced in conjunction with a dispenser replacement[on or after April 1, 2012], liquid-tight UDC shall be installed or existing equipment shall comply with the requirements of this section [in accordance with this administrative regulation] and Section 7.0 of the UST System Compliance Manual[Installation and Maintenance Outline].

(4)[(3)] A UDC or sump[All sumps] containing product piping, installed or replaced[in conjunction with a UST system installed] on or after April 1, 2012, shall comply with[meet] the liquid-tight containment requirements in Section 7.0 of the UST System Compliance[Outline].

(4) If replaced, a sump installed in accordance with subsection (3) of this section shall meet the liquid-tight containment requirements in the UST System Installation and Maintenance Outline].

(5) Owners and[or] operators shall maintain written records of all installations of UDC and sumps[and UDC], installed after April 1, 2012, for the operating life of the UDC or sump[or UDC]. These records shall be made available to the cabinet upon request.

(6) If a UDC or sump sensor monitoring device detects the presence of a liquid, the owner and[or] operator shall ensure that the UDC or sump shall be[is] immediately inspected.

(7) If one-eighth of an inch or greater of free product is discovered within a UDC or sump, the requirements of 401 KAR 42:060, Section 1, shall apply.

(8) Free product shall be recovered and disposed of in accordance with KRS Chapter 224.

(9) If liquid, other than free product, is discovered within a UDC or sump, the UDC or sump shall be further inspected to determine the source of liquid infiltration, the liquid shall be removed, and the UDC or sump shall be repaired, as necessary.

(10) Except as established in subsection (11) of this section, UDC and sumps installed on or after April 1, 2012 shall be tested for liquid-tightness at installation and, at a minimum, every thirty-six (36) months thereafter. To verify liquid-tightness, UDC and sumps shall be tested using a method approved by the device's manufacturer, a code of practice developed by a nationally recognized association or independent testing laboratory or a method approved by the cabinet based upon site-specific conditions.

(11) Testing of double walled UDC and sumps, required every thirty-six (36) months in accordance with subsection (10) of this section, shall not be required if the UDC or sump interstice is monitored, at a minimum, every thirty (30) days, and:

(a) For electronic devices capable of printing sensor readings, a record is obtained, at a minimum, every thirty (30) days; or

(b) For a device not capable of printing sensor readings, a monthly log is maintained and documented on the UST Visual Interstitial Log, DWM 4236.

(12) The thirty-six (36) month testing required in subsection (10) of this section shall be conducted within thirty (30) days of the requirements of subsection (11) of this section no longer being met.

(13) The liquid-tightness test shall be documented on the UST Containment Device Test, DWM 4222 and shall be submitted to the UST Branch within:

(a) Seven (7) days of the test date for failing test results; or

(b) Thirty (30) days of the test date for passing test results. (a) 1. If free product is discovered within a sump, a suspected release shall be reported in accordance with 401 KAR 42:060; and

2. Free product shall be recovered and disposed of properly in accordance with KRS Chapter 224;

(b) If liquid, other than free product, is discovered within a sump, the sump shall be further inspected to determine the source of liquid infiltration and repaired as necessary.]

Section 11[13]. Corrosion Protection Operation and Maintenance[Emergency Shutoff Valves].

(1) Requirements for operation and maintenance of corrosion protection shall be as established in 40 C.F.R. 280.31 and this section[All pressurized piping systems that connect tanks to UST system dispensers shall be installed with emergency shutoff valves for each supply line at the base of each UST system dispenser].

(2) UST system components that routinely contain product and are regularly, or intermittently, in contact with soil, water, or backfill, shall be protected from corrosion[The emergency shutoff valves shall be rigidly anchored to the UST system dispenser island or another appropriate anchoring point in a manner that allows the emergency shutoff valve to close automatically in the event of severe impact to a UST system dispenser].

(3) Owners and operators with steel tanks or piping that have never had corrosion protection installed in accordance with subsection (2) of this section shall immediately remove all regulated substances and initiate permanent closure in accordance with 401 KAR 42:060[An emergency shutoff valve found to be defective, inoperable, leaking, not functioning as designed by the manufacturer, or not rigidly anchored shall be immediately repaired or replaced by the owner or operator].

(4) A tank or piping that has been left unprotected from corrosion, or that has been inadequately protected from corrosion, for over 365 days shall undergo an integrity assessment on the unprotected tank or piping, conducted by a contractor certified by the State Fire Marshal's Office in accordance with 815 KAR 30:060, utilizing a method certified by an independent third-party evaluator.

(a) Documentation of the integrity assessment and results, including the average tank metal thickness, shall be submitted to

the cabinet on the UST Integrity Assessment, DWM 4228, within thirty (30) days of the assessment date.

(b) If the integrity assessment determines that the average thickness of the steel tank is less than seventy-five (75) percent of the tank's original metal thickness, the steel tank shall be permanently closed in accordance with 401 KAR 42:060.

(5) Owners and operators shall ensure that cathodic protection systems and evaluations shall be as established in this subsection of this section.

(a) A cathodic protection system evaluation shall be required within 180 days from the date of installation, repair, or modification of a cathodic protection system and, at a minimum, every thirty-six (36) months thereafter.

(b) If a cathodic protection system fails an evaluation, but the cathodic protection system evaluator determines that the failure may be attributable to adverse physical conditions related to the evaluation, and further determines that the system is otherwise in good working condition, then a re-evaluation shall be performed.

1. If a re-evaluation is performed, it shall be performed within thirty (30) days of the failing evaluation.

2. A re-evaluation shall only be performed once for a failed system evaluation.

3. If the cathodic protection system fails the re-evaluation, then repairs or modifications shall be completed as soon as practicable, but not more than ninety (90) days after the performance of the evaluation.

(c) If a cathodic protection system fails the evaluation, and it does not qualify for the thirty (30)[-] day re-evaluation period in paragraph (b) of this subsection, then repairs or modifications shall be completed as soon as practicable, but not more than ninety (90) days after the performance of the evaluation.

(d) If a cathodic protection system evaluation result is inconclusive, as a result of inconsistent remote and local potential readings, a corrosion expert shall evaluate the cathodic protection system and make a determination regarding cathodic protection system adequacy for the UST facility as soon as practicable, but not more than ninety (90) days after the performance of the evaluation.

(6) Impressed current cathodic protection system requirements shall also comply with the requirements established in this subsection of this section.

(a) Impressed current cathodic protection system design, or modifications to an impressed current corrosion protection system, shall only be conducted by a person qualified as a corrosion expert.

(b) Owners and operators shall complete the UST Rectifier Operational Record for Impressed Current Cathodic Protection Systems (60-day Log), DWM 4233, every sixty (60) days.

(c) The form shall be retained by the owner and operator for a minimum of three (3) years and made available to the cabinet upon request.

(7) Owners and operators shall maintain written records for the last two (2) cathodic protection evaluations.

(8) The owners and operators shall ensure that a cathodic protection tester completes, signs, and submits to the cabinet the cathodic protection system evaluation within thirty (30) days of the system evaluation. Results of the cathodic protection evaluation shall be documented on:

(a) A UST Galvanic Cathodic Protection Evaluation, DWM 4226, for a galvanic cathodic protection system; or

(b) A UST Impressed Current Cathodic Protection Evaluation, DWM 4227, for an impressed current cathodic protection system.

(9) A cathodic protection tester shall have completed a third-party corrosion protection tester training, which shall include, at a minimum:

(a) Basics of corrosion, underground corrosion, and corrosion prevention;

(b) Assessing physical conditions for corrosion potential;

(c) Hands on field experience in the testing of both impressed current and sacrificial anode systems, including using reference cells, taking remote readings for appropriate systems, how to read and understand a rectifier, taking measurements using -850 criterion, and typical and non-typical problems;

(d) Review of EPA's regulatory requirements for corrosion protection; and

(e) Review of standards and recommended practices from corrosion protection publications, as referenced in the note to 40 C.F.R. 280.31(b).

(10) Owners and operators shall ensure that individuals, qualified to perform cathodic protection system evaluations in accordance with subsection (9) of this section, submit to the cabinet upon request, documentation verifying that the training requirements have been met.

(11) All interior lined steel tanks that had not, as of December 22, 2013, been upgraded with external corrosion protection shall be permanently closed immediately in accordance with 401 KAR 42:060.

Section 12. Compatibility.

(1) Requirements for compatibility shall be as established in 40 C.F.R. 280.32, Section 4.0 of the UST System Compliance Manual, and this section.

(2) The owners and operators of UST systems installed on or after April 1, 2012 shall submit the UST System Compatibility Verification, DWM 4234, within thirty (30) days of bringing the UST system into use, in order to verify that the UST systems are compatible with the regulated substances stored.

(3) A UST System Compatibility Verification, DWM 4234, shall be submitted within thirty (30) days of the replacement of a UST system component, associated with a UST system installed on or after April 1, 2012, if the UST system component is no longer covered by a previously submitted UST System Compatibility Verification, DWM 4234.

(4) A UST System Compatibility Verification, DWM 4234, shall be submitted to the cabinet if the regulated substance stored is no longer covered by a previously submitted UST System Compatibility Verification, DWM 4234.

Section 13. Repairs.

(1) UST system repairs shall be as established in 40 C.F.R. 280.33 and this section.

(2) UST system repairs shall be performed by a contractor certified by the State Fire Marshal's Office, in accordance with 815 KAR 30:060.

(3) Owners and operators of UST systems shall ensure that repairs shall prevent releases due to structural failure or corrosion.

(4) Within thirty (30) days following the date of the completion of a repair to a tank, piping, or UST system component, owners and operators shall:

(a) Submit a UST System Compatibility Verification, DWM 4234, in accordance with Section 12 of this administrative regulation; and

(b) Conduct a test, adequate to detect a release from the repaired component of the UST system, in accordance with this administrative regulation.

Section 14. Noncorrodible[Nonmetallic] Piping.

(1) All new or replaced underground ~~noncorrodible[nonmetallic]~~ piping installed on or after April 1, 2012, shall comply with ~~[meet]~~ or exceed the Standard for Safety established by Underwriters Laboratories Inc. in Standard for Nonmetallic Underground Piping for Flammable Liquids - UL 971, as referenced in the note to 40 C.F.R. 280.20(b)(1).

(2) Owners and operators ~~[The owner or operator]~~ shall ensure repairs to ~~noncorrodible[repair non-metallic]~~ piping are performed in accordance with Section 13 of this administrative regulation, ~~[401 KAR 42:030]~~ or shall permanently close ~~noncorrodible[non-metallic]~~ piping in accordance with Section 6.0 of 401 KAR 42:060, ~~[42:070]~~ if the piping exhibits any of the conditions identified in UST Systems: Inspecting and Maintaining Sumps and Spill Buckets, EPA 510-R-05-001.

Section 15. Release Detection.

(1) General release detection requirements for petroleum UST systems shall be as established in 40 C.F.R. 280.40, 280.41, 280.42, 280.45, and this section.

(2) System integrity tests shall be performed in accordance with a method approved by the device's manufacturer, a code of practice developed by a nationally recognized association or independent testing laboratory, or an equally protective method approved by the cabinet based on site-specific conditions. Results shall be submitted for:

(a) A line tightness test on a UST Line Tightness Test, DWM 4229;

(b) An automatic line leak detector test on a UST Automatic Line Leak Detector Operational Test, DWM 4221;

(c) An electronic release detection equipment test on a UST Electronic Release Detection Equipment Test, DWM 4223; and

(d) A tank tightness test on a UST Tank Tightness Test, DWM 4235.

(3) Owners and operators shall immediately report failing results of a test performed in accordance with subsection (2) of this section to the cabinet as a suspected release in accordance with 401 KAR 42:060, Section 1.

(4) All test results shall be documented in accordance with subsection (2) of this section.

(a) Failing test results shall be submitted to the UST Branch within seven (7) days of the test date.

(b) Passing test results shall be submitted to the UST Branch within thirty (30) days of the test date.

(5) Owners and operators shall ensure that tests of tanks and piping for tightness, and operational tests of automatic line leak detectors, shall be conducted by a UST system equipment tester.

(6) A UST system equipment tester shall:

(a) Use testing equipment and methods that are certified, as of the time of testing, by an independent third-party evaluator;

(b) Have completed a training course conducted or endorsed by the manufacturer of the testing equipment;

(c) Maintain training credentials as established by the manufacturer of the testing equipment; and

(d) Provide a copy of their training credentials to the cabinet upon request.

(7) Failure to provide training credentials as established in subsection (6) of this section, upon written request from the cabinet, shall render the test results invalid.

(8) Methods of release detection for tanks and piping installed prior to April 1, 2012 shall be as established in 40 C.F.R. 280.43(b), (c), (d), (g), (h), and 280.44 and this section of this administrative regulation.

(a) A release detection method shall be certified, at the time of testing, by an independent third-party evaluator.

(b)1. Electronic interstitial monitoring shall be the primary method of release detection for all UST systems installed on or after April 1, 2012, in accordance with Section 9.0 of the UST System Compliance Manual.

2. Owners and operators shall only install electronic devices capable of printing sensor readings. Owners and operators shall obtain a record, at a minimum, every thirty (30) days, to verify that release detection is being performed and that releases have not occurred.

(c) Owners and operators of tanks and piping installed prior to April 1, 2012, for which interstitial monitoring is the primary method of release detection, shall:

1. If using electronic devices capable of printing sensor readings, obtain, at a minimum, every thirty (30) days a sensor reading to verify that release detection is being performed and that releases have not occurred; or

2. If using devices not capable of printing sensor readings, maintain a monthly log documented on the UST Visual Interstitial Log, DWM 4236, to verify that release detection is being performed and that releases have not occurred.

(d) Owners and operators of piping installed prior to April 1, 2012, for which interstitial monitoring is the primary method of release detection, shall comply with the requirements in paragraph (c) of this subsection and comply with the requirements for UDCs and sumps in Section 10 of this administrative regulation.

(e) All release detection records shall be retained for the most recent twelve (12) months, except:

1. Annual operational test results, which shall be retained for

three (3) years; and

2. Tank tightness testing and line tightness testing results, which shall be retained until the next test is conducted.

(f) All electronic release detection monitoring equipment for UST systems shall be operationally tested at installation, and at a minimum, every twelve (12) months thereafter, using a test method approved by the manufacturer or a code of practice developed by a nationally recognized association or independent testing laboratory.

(g) Owners and operators shall not remove, alter, or disable release detection monitoring equipment, required to be maintained in accordance with this administrative regulation, in a manner that would render the equipment inaccurate or inoperable.

(9) Except as established in subsection (12) of this section, automatic line leak detectors (ALLD) for all pressurized piping systems shall be:

(a) Performance tested at installation, and at a minimum, every twelve (12) months thereafter, by a qualified individual that complies with the requirements of subsection (6) of this section;

(b) Performance tested through simulation of a release at the dispenser located furthest away from the ALLD or at the highest elevation above the ALLD; and

(c) Installed within a UST system during the test as it would be during normal use.

(10) Electronic line leak detectors, in addition to the requirements established in subsection (9), shall be:

(a) Tested to verify that the ALLD functions and shuts down the submersible turbine pump (STP);

(b) Capable of detecting a leak rate equivalent to three (3) gallons-per-hour at ten (10) pounds per square inch of line pressure; and

(c) Tested to verify that the STP relay switch is not malfunctioning in the permanent on position, which would prevent the electronic line leak detector from operating properly.

(11) Mechanical line leak detectors, in addition to the requirements established in subsection (9), shall be:

(a) Tested to verify that the ALLD is capable of detecting a leak rate equivalent to three (3) gallons-per-hour at ten (10) pounds per square inch of line pressure while reducing the flow; and

(b) Tested to verify that the STP relay switch is not malfunctioning in the permanent on position, which would prevent the mechanical line leak detector from operating properly.

(12) ALLD requirements for all pressurized piping systems installed for emergency generators shall be as established in 40 C.F.R. 280.44(a).

Section 16. Operator Training Requirements.

(1) Operator training requirements for UST systems shall be as established in 40 C.F.R. 280 Subpart J and this section.

(2) A combined Class A and Class B operator shall comply with the requirements of both the Class A operator and the Class B operator as established in 40 C.F.R. 280.242.

(3) An owner of a UST system registered, but not permanently closed, prior to April 5, 2019, shall immediately designate at least one (1) individual to be trained (if not previously designated and trained) within thirty (30) days of designation, as a combined Class A and Class B operator.

(4) An owner of a UST system registered, but not permanently closed, on or after April 5, 2019, shall within thirty (30) days of registration, designate at least one (1) individual to be trained, within thirty (30) days of designation, as a combined Class A and Class B operator.

(5) If an owner of a UST system no longer has a trained combined Class A and Class B operator, the owner shall immediately designate another individual as a combined Class A and Class B operator, and that designated individual shall complete operator training within thirty (30) days.

(6) The owner of a UST system shall ensure that:

(a) A trained combined Class A and Class B operator successfully retrains annually, within twelve (12) months of the most recent training date, unless otherwise approved by the cabinet on an individual basis;

(b) An operator training certificate, in accordance with this

section, is submitted to the cabinet within thirty (30) days of completion; and

(c) An operator trained in accordance with this section, shall submit to the cabinet upon request, documentation verifying that the training requirements have been met.

Section 17. Walkthrough Inspections.

(1) Except as established in this section, requirements for periodic operation and maintenance walkthrough inspections shall be as established in 40 C.F.R. 280.36.

(2) Owners and operators of UST systems shall comply with the requirements and procedures for walkthrough inspections in Section 11.0 of the UST System Compliance Manual.

(3) Owners and operators shall ensure that the walkthrough inspections are completed by the owner, operator, or a combined Class A and Class B operator as established in Section 16 of this administrative regulation.

(4) Monthly walkthrough inspections shall be completed and documented on the UST Monthly Walkthrough Inspection, DWM 4230, for:

(a) Existing UST facilities, initially on or before April 5, 2019, and every thirty (30) days thereafter;

(b) Newly installed UST facilities, initially within thirty (30) days of registration, and every thirty (30) days thereafter; and

(c) UST facilities that have a change in ownership on or after April 5, 2019, within thirty (30) days of registration, and every thirty (30) days thereafter.

(5) Annual walkthrough inspections shall be completed and documented on the UST Annual Walkthrough Inspection, DWM 4220, for:

(a) Existing UST facilities, initially on or before April 5, 2019, and every twelve (12) months thereafter;

(b) Newly installed UST facilities, initially within thirty (30) days of registration, and every twelve (12) months thereafter; and

(c) UST facilities that have a change in ownership on or after April 5, 2019, within thirty (30) days of registration, or within twelve (12) months of the last annual walkthrough inspection, and every twelve (12) months thereafter.

(6) The annual walkthrough shall include replacing hand held release detection equipment, including tank gauge sticks, if the equipment is damaged or unable to function as originally designed.

(7) Walkthrough inspection forms required by subsections (4) and (5) of this section shall be retained for twelve (12) months after the last annual walkthrough inspection completion date.

Section 18. Delivery Prohibition.

(1) The cabinet shall determine that a UST system is ineligible for delivery, deposit, or acceptance of regulated substances upon confirmation of any of these conditions:

(a) Spill prevention equipment is not installed, operational, or maintained;

(b) Overfill prevention equipment is not installed, operational, or maintained;

(c) Corrosion protection equipment is not installed, operational, or maintained;

(d) Release detection is not performed;

(e) Release detection equipment is not installed, operational, or maintained;

(f) Registration is not submitted or is not amended as necessary;

(g) Annual fee is past due by more than one (1) year; or

(h) A defective UST system component, confirmed by UST system testing, or visual observation by the cabinet, and for which the owner and operator have not documented a repair or replacement, has:

1. Caused a release of a regulated substance into the environment; or

2. Allowed a regulated substance to infiltrate into the interstitial space or secondary containment of the UST system.

(2) If a condition established in subsection (1) of this section exists, the cabinet shall issue a Notice of Violation to the UST system's owner or operator.

(3) The Notice of Violation shall serve as notice to owners and

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operators of the cabinet's intent to invoke delivery prohibition for the UST system if the violation is not corrected within the time frame established in writing by the cabinet.

(4) A second Notice of Violation shall be issued upon failure by an owner or operator to correct a condition cited in the initial Notice of Violation issued in accordance with subsection (3) of this section, or to request an extension in accordance with Section 22 of this administrative regulation.

(5) Upon issuance by the cabinet of the second Notice of Violation, delivery prohibition shall be invoked and an authorized representative of the cabinet shall attach a delivery prohibition tag to the non-compliant UST system.

(6) Owners and operators shall ensure that a delivery prohibition tag shall not be removed, defaced, altered, or destroyed.

(7) Owners and operators shall not allow the delivery, deposit, or acceptance of regulated substances into a UST system if the cabinet has invoked delivery prohibition, unless directed in writing by the cabinet for the purpose of UST system testing.

(8) Owners and operators shall notify the appropriate product deliverer if delivery prohibition has been invoked.

(9) Except as established in subsection (12) of this section, delivery prohibition shall remain in effect until the non-compliant UST system is returned to compliance for the violation that caused delivery prohibition to be invoked.

(10) The cabinet shall determine if a UST system is authorized to accept deliveries within two (2) business days (Monday through Friday) of receipt of written notice from the owner or operator that the remedial measures established in the Notice of Violation have been completed.

(11) If the violation has been corrected, the cabinet shall terminate delivery prohibition and remove an affixed delivery prohibition tag within two (2) business days (Monday through Friday).

(12) If the division director or designee determines, in writing, that delivery prohibition at a UST facility would jeopardize the availability of, or access to, motor fuel in a rural and remote area, the cabinet shall defer the application of delivery prohibition for a UST system for a period not to exceed forty-five (45) days, unless an extension is approved in accordance with Section 22 of this administrative regulation by the division director or designee.

(13) This administrative regulation shall not apply to a regulated UST used to fuel an emergency backup generator.

Section 19. Recordkeeping. Requirements for recordkeeping shall be as established in 40 C.F.R. 280.34, 280.45, Section 12.0 of the UST System Compliance Manual, and this administrative regulation.

Section 20. Financial Responsibility.

(1) Requirements for financial responsibility shall be as established in 40 C.F.R. 280 Subpart H and this section of this administrative regulation.

(2) The Petroleum Storage Tank Environmental Assurance Fund (PSTEAF) may be utilized as a mechanism to demonstrate financial responsibility in accordance with subsection (1) of this section, and the requirements as established in 401 KAR 42:250.

(3) Owners and operators shall certify, through signature on the UST Facility Registration, DWM 4225, that financial responsibility has been established and shall be maintained in accordance with this administrative regulation.

Section 21. Lender Liability. Requirements for lender liability shall be as established in 40 C.F.R. 280 Subpart I.

Section 22. Extensions.

(1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in a written directive[writing pursuant to this administrative regulation].

(2) The extension request shall be submitted in writing and received by the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if an extension would not have a detrimental impact on human health or the environment.

Section 23[46]. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "UST Annual Walkthrough Inspection", DWM 4220, August 2018["UST Facility Registration Form", DEP 7112, November 2016];

(b) "UST Automatic Line Leak Detector Operational Test", DWM 4221, August 2018 [Address Change Form for Owners of UST Systems", DEP 0060, November 2016];

(c) "UST Containment Device Test", DWM 4222, August 2018;["Certificate of Registration and Reimbursement Eligibility", DEP 7113, April 2014; and]

(d) "UST Electronic Release Detection Equipment Test", DWM 4223, August 2018["UST System Installation and Maintenance Outline", November 2016];

(e) "UST Facility Owner Address Correction", DWM 4224, August 2018["Notice of Intent to Install Underground Storage Tank or Piping", DEP 8044, September 2014];

(f) "UST Facility Registration", DWM 4225, August 2018 ["Installation Verification and Compatibility Form", DEP 7115, November 2016];

(g) "UST Galvanic Cathodic Protection Evaluation", DWM 4226, August 2018;["Standards for Nonmetallic Underground Piping for Flammable Liquids", July 1, 2005, Underwriters Laboratories Inc. UL-971; and]

(h) "UST Impressed Current Cathodic Protection Evaluation", DWM 4227, August 2018;

(i) "UST Integrity Assessment", DWM 4228, August 2018;

(j) "UST Line Tightness Test", DWM 4229, August 2018;

(k) "UST Monthly Walkthrough Inspection", DWM 4230, August 2018;

(l) "UST Notice of Intent to Install Underground Storage Tank or Piping", DWM 4231, August 2018;

(m) "UST Overfill Prevention Device Test", DWM 4232, August 2018;

(n) "UST Rectifier Operational Record for Impressed Current Cathodic Protection Systems (60-day Log)", DWM 4233, August 2018;

(o) "UST System Compatibility Verification", DWM 4234, August 2018;

(p) "UST Tank Tightness Test", DWM 4235, August 2018;

(q) "UST Visual Interstitial Log", DWM 4236, August 2018;

(r) "UST System Compliance Manual", August 2018; and

(s) "UST Systems: Inspecting and Maintaining Sumps and Spill Buckets", EPA 510-R-05-001, May 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at the Division of Waste Management's Web site at <http://waste.ky.gov/ust> or from www.epa.gov.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 10, 2018

FILED WITH LRC: October 11, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2018, at 6:00 p.m., at 300 Sower Blvd., 1st Floor, Training Room B. 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 November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather Alexander, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502) 782-6303, fax (502) 564-4245, email heather.alexander@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the scope of the underground storage tank (UST) program, including provisions for exclusions, registration requirements, annual fees, delivery prohibition, performance standards, operation and maintenance of UST systems, operator training, walkthrough inspection, requirements for demonstrating financial responsibility for corrective action, compensation of third parties for bodily injury and property damage, and lender liability.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the scope of the UST program, including provisions for exclusions, registration requirements, annual fees, delivery prohibition, performance standards, operation, and maintenance of UST systems, operator training, walkthrough inspections, requirements for demonstrating financial responsibility for corrective action, compensation of third parties for bodily injury and property damage, and lender liability.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate UST by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105 requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. KRS 224.60-150 states that the cabinet shall levy and collect an annual fee of thirty (30) dollars per tank from the owners or operators of USTs for the purpose of funding the administration of the UST Program. KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for UST systems as required by KRS 224.60-105, and collect annual fees in accordance with KRS 224.60-150.

(2) If 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 this existing administrative regulation by establishing the UST system, operation, release detection, delivery prohibition, and annual fee requirements in addition to establishing the design, construction, installation, and registration as it was previously established to do. This is a part of consolidating and streamlining the number of regulations for the UST program. In addition, this amendment will adopt the new federal mandate for overfill equipment and spill containment testing, walkthrough inspections, and registration requirements for previously deferred field-constructed tanks and airport hydrant fuel distribution systems. The previously deferred generator tanks used solely for the generation of power are required to comply with all the requirements in this administrative regulation. Registration forms are no longer required to be notarized, and the Certificate of Registration and Reimbursement Eligibility (CORRE) has been removed from the regulation. Flow restrictors (ball floats) no longer comply with overfill prevention requirements and are not allowed to be installed for overfill prevention. Existing flow restrictors are required to be evaluated for proper working order or replaced with alternate overfill prevention equipment. The amendment includes an exclusion for tanks used in the operation of heating equipment with a secondary usage as part of an emergency generator system. UST systems in temporary closure that are empty of

product are excluded from walkthrough inspections and release detection requirements. Double walled piping is required to be installed when fifty (50) percent or more of piping is removed or replaced. All compliance testing shall be by a method approved by the device's manufacturer, code of practice developed by a nationally recognized association or an independent testing laboratory (e.g., spill containment devices, overfill prevention equipment, UDCs, and release detection equipment). The amendment allows monthly monitoring for double walled spill containment devices, UDCs, and sumps in lieu of the thirty-six (36) testing requirement. Testing of spill containment devices, UDC, sumps, and overfill prevention devices is required within six (6) months of the effective date of this regulation. Testing is required within thirty (30) days following a UST system repair of any UST component. An allowance has been added for an integrity assessment, if a tank has been unprotected for corrosion for more than 365 days. Monthly and annual walkthrough inspections of UST systems are required. The federal language for operator training has been adopted, and training required for a Class A operator and Class B operator has been combined as one (1) Class A and Class B operator in lieu of the current reference to a designated compliance manager (DCM).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the scope of the UST program, including provisions for exclusions, registration requirements, annual fees, delivery prohibition, performance standards, operation and maintenance of UST systems, operator training, walkthrough inspections, requirements for demonstrating financial responsibility for corrective action, compensation of third parties for bodily injury and property damage, and lender liability. In addition, KRS 224.60-105 requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. This administrative regulation adopts the required federal regulation updates for UST systems.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate USTs by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105 requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. KRS 224.60-150 states that the cabinet shall levy and collect an annual fee of thirty (30) dollars per tank from the owners or operators of USTs for the purpose of funding the administration of the UST Program. KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes requirements for UST systems, implements the federal requirements for UST systems, and establishes registration procedures as required by KRS 224.60-105. In addition, this administrative regulation establishes annual fees as required by KRS 224.60-150.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the owner and operator of a UST facility, eligible company that contract with that owner or operator, a certified laboratory that processes samples collected at a UST facility, and a certified tank installer/remover. There are 3,216 UST facilities, 58 eligible companies that contract with those owners or operators, 37 certified laboratories that process samples collected at UST facilities, and 228 certified tank installers/removers.

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

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: Owners and operators of UST facilities will have to comply with requirements for registration, annual fees, performance standards, compliance testing, operator training, walkthrough inspections, and financial responsibility. Certified installers/removers are responsible for installing UST systems in accordance with this administrative regulation. Other entities identified in question (3) will not have to take any actions as a result of this amendment as it pertains to the owner and operator.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Owners and operators of UST facilities will have an increase in operational testing costs for the new federally mandated compliance testing for spill containment and overfill prevention. The increase in cost for owners and operators to comply with additional testing is estimated to be \$3,000 every three years. This cost is based on the average UST facility having three (3) tanks. There will also be cost increase estimates ranging from \$1,000 to \$2,500 for the initial overfill prevention testing/replacement, per tank for owners and operators that utilize flow restrictors (ball floats) as their method of overfill protection. Other entities identified in question (3) will not have costs associated as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3): The benefits to owners and operators include compliance with both the federal and state regulations, and a reduced risk for releases into the environment.

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

(a) Initially: There is no cost associated with implementing this amendment.

(b) On a continuing basis: There is no cost associated with implementing this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of tank fees, the PSTeAF, and grants from the U.S. Environmental Protection Agency.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation describes the procedures to submit annual tank fees thirty (30) dollar annual fee on a per tank basis mandated by KRS 224.60-105. This fee, formerly established within 401 KAR 42:200, remains unchanged and has been incorporated in 401 KAR 42:020 as part of the Governor's Red Tape Initiative to reduce and streamline regulations.

(9) TIERING: Is tiering applied? Tiering is not applied. KRS 224.60-150 bases the thirty (30) dollar annual fee on a per tank basis.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that own or operate a UST facility as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.60-105, 224.60-150, 40 C.F.R. Part 280, Subparts A, B, C, D, G, H, I, J, K, Part 281, Subpart D, 42 U.S.C. 2011 – 2021, 2022 – 2286i, 2296a – 2297h-13, 6991 – 6991m

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for

the first full year the administrative regulation is to be in effect. This administrative regulation will not affect the expenditures and revenues of a state or local government agency as the UST program is already in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional revenue for state or local government as the UST program is already in effect. Currently the division receives \$287,700 in tank fees and \$24.2 Million PSTeAF annually, and \$1,925,333 Leaking Underground Storage Tank (LUST) Prevention and LUST Cleanup biennially in federal grants to administer the UST program.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue for state or local government as the underground storage tank program is already in effect. However, the division expects to receive \$287,700 in tank fees and \$24.2 Million PSTeAF annually, and \$1,925,333 LUST Prevention and LUST Cleanup biennially in federal grants to administer the UST program for subsequent years.

(c) How much will it cost to administer this program for the first year? The UST program is already in effect and costs \$25.5 Million to administer as a whole, including reimbursement to owners and operators for eligible corrective action costs.

(d) How much will it cost to administer this program for subsequent years? \$25.5 Million, as a whole, including reimbursement to owners and operators for eligible corrective action costs.

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

Revenues (+/-): \$1,925,333(biennially) in federal grant funding (LUST Prevention and LUST Cleanup), \$287,700 tank fees, \$24.2 Million PSTeAF.

Expenditures (+/-): \$24.4 Million, as a whole.

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 10 C.F.R. Part 50, 40 C.F.R. Part 280, Subparts A, B, C, D, G, H, I, J, K, Part 281, Subpart D, 42 U.S.C. 2011 – 2021, 2022 – 2286i, 2296a – 2297h-13, 6991 – 6991m

2. State compliance standards. KRS 224.10-100, 224.60-105, 224.60-150

3. Minimum or uniform standards contained in the federal mandate. 10 C.F.R. Part 50, 40 C.F.R. Part 280, Subparts A, B, C, D, G, H, I, J, K, Part 281, Subpart D, 42 U.S.C. 2011 – 2021, 2022 – 2286i, 2296a – 2297h-13, 6991 – 6991m

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation does impose stricter, additional, or different requirements than those required by the federal regulation. There are several requirements that are currently in effect that are stricter than the federal regulations. Kentucky requires owners to notify the cabinet prior to an installation of an underground storage tank (UST) or entire piping run and requires documentation supporting the transfer of a UST system if requested. The allowance of upgrading steel tanks that have interior lining as the sole method of corrosion protection was removed. Interior-lined steel tanks that have not been upgraded with external corrosion protection must be permanently closed. Inventory control, vapor monitoring, and groundwater monitoring are not allowed as methods of release detection. Add an allowance for an integrity assessment if not protected from corrosion for more than 365 days. Include an allowance for an alternate approach for UST systems that use flow restrictors (ball floats) as overfill prevention by allowing owners and operators the option to install alternate methods of overfill protection.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The differences in this administrative regulation are statutory requirements and are consistent with current administrative regulations. Kentucky will require items that are more stringent than the federal mandate. The cabinet notification of a UST or entire piping run installation allows for the formal photographic documentation of the components of the UST system as they are being installed. The cabinet may require supporting documentation for UST system ownership to protect the previous UST owner. In the current regulations, Kentucky removed the allowance for interior-lined tanks as the sole method of corrosion protection with a deadline to upgrade with another form of corrosion protection by December 22, 2013. In conjunction with this addition, all interior-lined steel tanks that have not been upgraded with external corrosion protection were required to be permanently closed. Historically, interior-lined tanks have been associated with catastrophic releases into the environment. Kentucky's current regulation has not allowed inventory control, vapor monitoring, or groundwater monitoring as methods of release detection since April 1, 2012. Historically, these three (3) methods of release detection have not adequately detected releases, and do not have the same level of protectiveness. Kentucky has included an option for the completion of an integrity assessment if not protected from corrosion for more than 365 days. This allows owners and operators to demonstrate compliance with performance standards without having to perform permanent closure. If an owner or operator that utilizes flow restrictors (ball floats) as a method of overfill prevention, the owner or operator may install additional overfill prevention devices which will activate prior to the level of the existing flow restrictor, if they are able to do so. This allows the owners and operators the opportunity not to be required to evaluate the existing flow restrictor which may not be easily accessible for evaluation.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)**

401 KAR 42:060. UST system release[response] and corrective action requirements[for UST systems containing petroleum or hazardous substances].

RELATES TO: KRS 224.1, 224.1-400(11)[224.04], 224.10, 224.40, 224.43, 224.46, 224.60, 40 C.F.R.[Part] 280, Subparts E, F, G, 40 C.F.R. 281, Subpart D[F], 42 U.S.C. 6991-6991m[6994-6994c]

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks (USTs) by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. This administrative regulation establishes the requirements for UST system release reporting, release response, permanent closure of UST systems, change in service of UST systems, site characterization, corrective action, and UST facility classification, including screening levels of a UST system containing petroleum[public participation].

Section 1. Reporting for Releases, Spills, and Overfills[General Requirements]. (1) Reporting of confirmed or suspected releases shall be as established in 40 C.F.R. 280.50 and this section.

(2) Except as established in subsection (3) of this section, reporting and cleanup requirements for spills and overfills shall be

as established in 40 C.F.R. 280.53.

(3) Confirmed releases, spills, and overfills shall be reported immediately, in accordance with KRS 224.1-400(11), to the cabinet's 24-hour Environmental Emergency Response Team number at (800) 928-2380 or (502) 564-2380.

(4) An unusual operating condition, or an unconfirmed UST system release, shall be reported immediately as a suspected release to the cabinet's 24-hour Environmental Emergency Response Team number at (800) 928-2380 or (502) 564-2380, unless:

(a) The UST system equipment or component is found not to be releasing regulated substances to the environment;

(b) Any defective UST system equipment or component is immediately repaired or replaced; and

(c) For secondarily contained UST systems, any liquid in the interstitial space not used as part of the interstitial monitoring method is immediately removed.

Section 2. Environmental Emergencies. During the course of an environmental emergency response, the Environmental Response Team shall have the authority to prevent delivery, deposit, storage, or dispensing of regulated substances and to require all actions necessary to protect human health and the environment.

Section 3. Off-Site Impacts. Requirements for Investigations due to off-site impacts shall be as established in 40 C.F.R. 280.51.

Section 4. Release Investigation and Confirmation. (1) Procedures for suspected release investigation and confirmation shall be as established in 40 C.F.R. 280.52 and this administrative regulation.

(2) Owners and operators shall immediately investigate and test, within seven (7) days, any UST component that may contribute to a confirmed or suspected release, or an unusual operating condition required to be reported in accordance with Section 1 of this administrative regulation. Any defective UST component shall be repaired or replaced as soon as practical, but shall not exceed the time requirements established in 401 KAR 42:020.

(3) Owners and operators shall perform a site check, if directed by the cabinet, in accordance with Section 3.0 of the UST Corrective Action Manual.

Section 5. Release Response and Corrective Action. (1) General requirements shall be as established in 40 C.F.R. 280.60 through 280.67.

(2) The procedures in the UST Corrective Action Manual shall be followed.

(3) In addition to the requirements established in 40 C.F.R. 280.62 and 280.63, the owner or operator shall complete and submit to the cabinet the UST Site Check Checklist, DWM 4268.

(4) In addition to the requirements established in 40 C.F.R. 280.63 and 280.65, the owner or operator shall complete and submit to the cabinet, when directed in writing, the[Section 2. Initial Response. Initial response requirements shall be as established in 40 C.F.R. 280.61.

Section 3. Initial Abatement Measures and Site Check. (1) Requirements for initial abatement and site check shall be as established in 40 C.F.R. 280.62 and 280.63.

(2) The following documents shall be used to meet the requirements of subsection (1) of this section:

(a) UST Over-Excavation Checklist, DWM 4267[Release Response and Initial Abatement Requirements Outline];

(b) UST Site Investigation Checklist, DWM 4269[Check Outline];

(c) UST[Site Check Report Form, DEP 6082;

(d) Vapor Intrusion Building Assessment Checklist, DWM 4271[-DEP 0058]; and

(d)[(e)] UST Vapor Intrusion Assessment Checklist, DWM 4270[-DEP 0057].

(5) In addition to the requirements established in 40 C.F.R.

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280.66 and 280.67, the owner or operator shall complete and submit to the cabinet, when directed in writing, the [Section 4. Free Product Removal. Removal of free product shall be as established in 40 C.F.R. 280.64.

Section 5. Investigations for Soil and Groundwater Cleanup.
(1) Investigations for soil and groundwater cleanup shall be as established in 40 C.F.R. 280.63 and 280.65.

(2) The following documents shall be used in meeting the requirements of subsection (1) of this section:

- (a) Site Investigation Outline;
- (b) Over-Excavation Report Form, DEP 4067; and
- (c) Site Investigation Report Form, DEP 8049.

(3) Owners and operators shall undertake, as directed in writing by the cabinet, corrective actions necessary to ensure all domestic-use wells, domestic-use springs, and domestic-use cisterns impacted by a release from a regulated UST system meet the maximum contaminant levels specified in 401 KAR Chapter 8, applicable to the regulated substance stored.

Section 6. Corrective Action Plan. (1) Requirements for a corrective action plan shall be as established in 40 C.F.R. 280.66.

(2) The following documents shall be used to meet the requirements of subsection (1) of this section:

- (a) UST Corrective Action Certification, DWM 4263[Outline];
- (b) UST Over-Excavation Checklist, DWM 4267[Report Form, DEP 4067];
- (c) UST Groundwater Monitoring Checklist, DWM 4264[Corrective Action Report Certification, DEP 5040]; and
- (d) UST Interim Corrective Action Checklist, DWM 4265[Monitoring Report Form, DEP 8045].

(6) The forms referenced in subsections (3) through (5) of this section shall be certified by a professional engineer or a professional geologist.

(7) Owners and operators shall undertake, as directed in writing by the cabinet, corrective actions necessary to ensure that contamination of all domestic-use wells, domestic-use springs, and domestic-use cisterns impacted by a release from a regulated UST system does not exceed the maximum contaminant levels, established in 401 KAR Chapter 8, applicable to the regulated substance stored.

Section 6. Permanent Closure or Change in Service. (1) Owners or operators performing permanent closure, or change in service, of a UST system shall comply with the requirements of Section 4.0 of the UST Corrective Action Manual.

(2)(a) This administrative regulation shall apply to an owner or operator of a UST system that has a UST system release confirmed after October 6, 2011, or has submitted a UST Notice of Intent to Permanently Close Underground Storage Tank or Piping, DWM 4266, that has been received by the appropriate Division of Waste Management regional office after October 6, 2011.

(b) With the exception of those UST systems whose requirements are established in paragraph (c) of this subsection, the owners and operators of a UST system that have, prior to October 6, 2011, either submitted a notice of intent to permanently close UST systems or reported a confirmed release to the cabinet, shall comply with the closure requirements in effect on the date the notice of intent to permanently close UST systems was received by the appropriate Division of Waste Management regional office or the confirmed release was reported to the cabinet. This paragraph shall not apply to the screening levels, which shall be determined in accordance with Section 7 of this administrative regulation.

(c) An owner or operator shall comply with the permanent closure requirements that were in place prior to April 18, 1994, for a UST system:

1. From which dispensing had ceased prior to April 18, 1994, regardless of the submittal date of the UST Notice of Intent to Permanently Close Underground Storage Tank System;

2. For which a UST Notice of Intent to Permanently Close Underground Storage Tank System was submitted after December 22, 1988, but prior to April 18, 1994; or

3. For which a confirmed release was reported prior to April 18,

1994, regardless of the submittal date of the UST Notice of Intent to Permanently Close Underground Storage Tank System.

(3)(a) Owners and operators shall notify the cabinet of intent to permanently close or make a change in service for a UST system a minimum of fourteen (14) days prior to beginning either the permanent closure or change in service in accordance with subsections (1) and (4) of this section.

1. The notice shall be completed and submitted on the UST Notice of Intent to Permanently Close Underground Storage Tank or Piping, DWM 4266.

2. Initial abatement action shall not alleviate owners and operators of the responsibility to notify the cabinet of the intent to permanently close a UST system.

3. The cabinet may specify a shorter notification time prior to permanent closure if permanent closure activities are completed in response to actions conducted in accordance with Sections 2.0 and 3.0 in the UST Corrective Action Manual or actions directed by the Environmental Response Team.

(b) The UST Notice of Intent to Permanently Close Underground Storage Tank or Piping, DWM 4266, shall only be valid for twelve (12) months following submittal to the cabinet.

(4) An assessment at permanent closure or change in service shall be as established in the requirements of this subsection.

(a)1. In order to complete permanent closure, or a change in service of a UST system, owners and operators shall measure for the presence of a UST system release in accordance with Section 2.0 of the UST Corrective Action Manual.

2. Permanent closure activities shall be reported to the cabinet within ninety (90) days after UST system removal, closure in place, or change in service, in accordance with Section 4.7 of the UST Corrective Action Manual.

(b) If analytical results from permanent closure sampling indicate that further actions are necessary, those actions shall be performed at the written direction of the cabinet, and in accordance with Section 5.0 of the UST Corrective Action Manual.

(c) The handling, transportation, and disposal of a regulated substance from a UST system and contaminated soils, backfill materials, groundwater, cleaning liquids, and other similar materials generated during activities performed in accordance with this administrative regulation shall be performed in accordance with applicable requirements of 401 KAR Chapters 30 through 49.

(5) Applicability to previously closed UST systems shall be as established in 40 C.F.R. 280.73.

(6) Requirements for reporting and maintaining closure records shall be as established in this subsection.

(a)1. Owners or operators shall complete and submit to the cabinet a UST Closure Assessment Report Checklist, DWM 4262, within ninety (90) days of the date of permanent closure or a change in service, in accordance with Section 4.7 of the UST Corrective Action Manual.

2. The UST Closure Assessment Report Checklist, DWM 4262, shall be certified by a professional engineer or a professional geologist.

(b) Owners or operators shall complete and submit a UST Certification of Properly Cleaned USTs, DWM 4260, to the cabinet if a UST system is permanently closed by removal.

(c) Recordkeeping shall be as established in 40 C.F.R. 280.74.

Section 7. UST Facility Classification[Public Participation. Public participation shall be as established in 40 C.F.R. 280.67].

(1)(a) An owner or operator of a UST system for which a UST Notice of Intent to Permanently Close Underground Storage Tank System containing petroleum was submitted, or a confirmed UST system release of petroleum was reported to the cabinet, on or after April 18, 1994, shall be required to classify the UST facility in accordance with this section.

(b) The owner or operator shall, if the UST system is permanently closed after April 5, 2019, or if directed by the cabinet, in order to appropriately classify the UST facility, submit a UST Classification Guide, DWM 4261, which shall be certified by a professional engineer or a professional geologist.

(c) Section 7.0 of the UST Corrective Action Manual shall be used in completing the UST Classification Guide, DWM 4261, for

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determining the classification of a UST facility.

(d) Section 7.0 of the UST Corrective Action Manual lists the applicable screening levels for petroleum constituents for each classification.

(2) An owner or operator of a UST system that either submitted a UST Notice of Intent to Permanently Close Underground Storage Tank System, or reported a confirmed UST system release of petroleum to the cabinet, or for which dispensing ceased, prior to April 18, 1994, shall not be required to classify the UST facility in accordance with this administrative regulation, unless:

(a) After April 5, 2019, the owner or operator reports an additional confirmed UST system release of petroleum to the cabinet; and

(b) The additional confirmed UST system release of petroleum is commingled with a UST system release of petroleum associated with the UST Notice of Intent to Permanently Close Underground Storage Tank System submitted prior to April 18, 1994, or the UST system release of petroleum reported to the cabinet prior to April 18, 1994.

(3) An owner or operator of a UST system that chooses, after April 5, 2019, to remove from the ground a UST system for which dispensing ceased prior to April 18, 1994, shall not be required to classify the UST facility in accordance with this administrative regulation.

(4) An owner or operator may submit, in accordance with 401 KAR 30:020, Section 2, a written request for a variance to the applicable screening levels established in accordance with this administrative regulation if:

(a) Prior to April 5, 2019:

1. A UST Notice of Intent to Permanently Close Underground Storage Tank System containing petroleum was submitted to the cabinet; or

2. A confirmed UST system release of petroleum was reported to the cabinet; and

(b) The allowable levels previously applicable to the UST facility are less stringent than the screening levels established by this administrative regulation.

(5) An owner or operator, required to classify a UST facility in accordance with this administrative regulation, shall utilize the screening levels established in Section 7.0 of the UST Corrective Action Manual, regardless of the date of permanent closure of the UST system.

Section 8. No Further Action Letter. (1) A no further action letter shall be issued if the cabinet has determined that all applicable requirements in 401 KAR Chapter 42 have been met.

(2) Any unpaid annual fees due in accordance with 401 KAR 42:020, shall be paid in full prior to the cabinet issuing a no further action letter.

(3) If a threat to human health or the environment exists, related to a release or permanent closure for which a No Further Action letter was previously issued, the cabinet shall revoke the No Further Action letter and require necessary action in accordance with 401 KAR Chapter 42.

Section 9. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in a written directive[writing pursuant to this administrative regulation].

(2) The extension request shall be submitted in writing and received by the UST[Underground Storage Tank] Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet may[shall] grant an extension, if an extension would not have a detrimental impact on human health or the environment.

(4) The cabinet shall not grant an extension for requirements established in Sections 1, 2, 4(1), or 4(2) of this administrative regulation[Section 9. No Further Action Letter. (1) If a UST facility has met all applicable requirements in 401 KAR Chapter 42, the cabinet shall issue a no further action letter.

(2) Any unpaid registration fees due in accordance with 401 KAR 42:200, shall be paid in full prior to the cabinet issuing a no further action letter.

~~(3) If a threat to human health or the environment exists, related to a release or permanent closure for which a No Further Action letter was previously issued, the cabinet shall revoke the No Further Action letter and require necessary action in accordance with 401 KAR Chapter 42].~~

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "UST Certification of Properly Cleaned USTs", DWM 4260, August 2018[Release Response and Initial Abatement Requirements Outline", November 2016];

(b) "UST Classification Guide", DWM 4261, August 2018[Site Check Outline", November 2016];

(c) "UST Closure Assessment Report Checklist", DWM 4262, August 2018[Site Check Report Form", DEP 6082, November 2016];

(d) "UST Corrective Action Certification", DWM 4263, August 2018[Vapor Intrusion Building Assessment", DEP 0058, November 2016];

(e) "UST Groundwater Monitoring Checklist", DWM 4264, August 2018[Vapor Intrusion Assessment", DEP 0057, November 2016];

(f) "UST Interim Corrective Action Checklist", DWM 4265, August 2018[Site Investigation Outline", November 2016];

(g) "UST Notice of Intent to Permanently Close Underground Storage Tank or Piping", DWM 4266, August 2018[Over-Excavation Report Form", DEP 4067, November 2016];

(h) "UST Over-Excavation Checklist", DWM 4267, August 2018[Site Investigation Report Form", DEP 8049, November 2016];

(i) "UST Site Check Checklist", DWM 4268, August 2018[Corrective Action Outline", November 2016];

(j) "UST Site Investigation Checklist", DWM 4269, August 2018[Corrective Action Report Certification", DEP 5040, November 2016; and]

(k) "UST Vapor Intrusion Assessment Checklist", DWM 4270, August 2018;

(l) "UST Vapor Intrusion Building Assessment Checklist", DWM 4271, August 2018; and

(m) "UST Corrective Action Manual", August 2018[Corrective Action Monitoring Report Form", DEP 8045, November 2016].

(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may[is] also be obtained at[available on] the Division of Waste Management's Web site at <http://waste.ky.gov/ust>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 10, 2018

FILED WITH LRC: October 11, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2018, at 6:00 p.m., at 300 Sower Blvd., 1st Floor, Training Room B. 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 November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather Alexander, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502) 782-6303, fax (502) 564-4245, email heather.alexander@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for underground storage tank (UST) system release reporting, release response, permanent closure of a UST system, change in service of a UST system, site characterization, corrective action, and UST facility classification, including screening levels of a UST system containing petroleum.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for UST system release reporting, release response, permanent closure of a UST system, change in service of a UST system, site characterization, corrective action, and UST facility classification, including screening levels of a UST system containing petroleum.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 224.10-100 requires the cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate USTs by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for a UST system. This administrative regulation establishes the requirements for UST system release reporting, release response, permanent closure of a UST system, change in service of a UST system, site characterization, corrective action, and UST facility classification, including screening levels of a UST system containing petroleum.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for a UST system as required by KRS 224.60-105.

(2) If 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 establishing the requirements for a UST system release reporting, release response, permanent closure of a UST system, change in service of a UST system, site characterization, corrective action, and UST facility classification, including screening levels of a UST system containing petroleum, rather than only establishing the requirements for a UST system release response, site characterization, corrective action, and public participation as it was previously established to do. This is a part of consolidating and streamlining the number of regulations for the UST program. In addition, this amendment will adopt new federal language on the reporting requirements of a release or a suspected release. Allows the Emergency Response Team (ERT) to also prevent the dispensing of a regulated substance during an emergency. Amended wording to clarify that a UST system that ceased dispensing prior to April 18, 1994, is eligible for the pre-April 18, 1994, Regulations. Requires releases from a UST system containing biodiesel to contact the UST Branch to determine the type and extent of the investigation after a release.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation establishes the requirements for UST system release reporting, release response, permanent closure of a UST system, change in service of a UST system, site characterization, corrective action, and UST facility classification, including screening levels of a UST system containing petroleum.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate

USTs by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. This administrative regulation establishes the requirements for UST system release reporting, release response, permanent closure of UST systems, change in service of UST systems, site characterization, corrective action, and UST facility classification, including screening levels of UST systems containing petroleum.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for UST system release reporting, release response, permanent closure of UST systems, change in service of UST systems, site characterization, corrective action, and UST facility classification, including screening levels of UST systems containing petroleum as required by KRS 224.60-105.

(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 an owner and operator of a UST facility, eligible companies that contract with those owners or operators, certified laboratories that process samples collected at underground storage tank facilities, and certified tank installers/removers. There are 3,216 UST facilities, 58 eligible companies that contract with those owners or operators, 37 certified laboratories that process samples collected at UST facilities, and 228 certified tank installers/removers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An owner and operator of a UST facility will have to comply with requirements for release reporting and corrective action. Eligible companies, under contract with an owner or operator, will be performing corrective actions as directed by the cabinet. Certified laboratories will be processing samples collected during corrective action activities at underground storage tank facilities. Certified tank installers/removers are responsible for performing the permanent closure of a UST system.

(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 increase nor decrease in cost for complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3): The benefits to an owner and operator include compliance with both the federal and state regulations. The owner or operator will receive a no further action letter in relation to the release once the cabinet has determined that all applicable requirements in 401 KAR Chapter 42 have been met.

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

(a) Initially: There is no cost associated with implementing this amendment.

(b) On a continuing basis: There is no cost associated with implementing this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of tank fees, the PSTAEF, and grants from the U.S. Environmental Protection Agency.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All UST systems are required to comply with the requirements established 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? This administrative regulation will impact state or local governments that own or operate an underground storage tank (UST) facility as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.1, 224.1-400(11), 224.10, 224.40, 224.43, 224.46, 224.60, 40 C.F.R. 280, Subparts E, F, G, 40 C.F.R. 281, Subpart D, 42 U.S.C. 6991 – 6991m

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not affect the expenditures and revenues of a state or local government agency as the UST program is already in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional revenue for state or local government as the underground storage tank program is already in effect. Currently the division receives \$287,700 in tank fees and \$24.2 Million PSTeAF annually, and \$1,925,333 Leaking Underground Storage Tank (LUST) Prevention and LUST Cleanup biennially in federal grants to administer the underground storage tank program.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue for state or local government as the underground storage tank program is already in effect. However, the division expects to receive \$287,700 in tank fees and \$24.2 Million PSTeAF annually, and \$1,925,333 LUST Prevention and LUST Cleanup biennially in federal grants to administer the underground storage tank program for subsequent years.

(c) How much will it cost to administer this program for the first year? The underground storage tank program is already in effect and costs \$25.5 Million to administer as a whole, including reimbursement to an owner and operator for eligible corrective action costs.

(d) How much will it cost to administer this program for subsequent years? \$25.5 Million, as a whole, including reimbursement to an owner and operator for eligible corrective action costs.

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

Revenues (+/-): \$1,925,333(biennially) in federal grant funding (LUST Prevention and LUST Cleanup), \$287,700 tank fees, \$24.2 Million PSTeAF.

Expenditures (+/-): \$24.4 Million, as a whole.

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 280, Subparts E, F, G, 40 C.F.R. 281, Subpart D, 42 U.S.C. 6991 – 6991m

2. State compliance standards. KRS 224.10-100, 224.60-105, 224.60-137

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 280, Subparts E, F, G, 40 C.F.R. 281, Subpart D, 42 U.S.C. 6991 – 6991m

4. Will this administrative regulation impose stricter

requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation does impose additional or different requirements than those required by the federal regulation. Kentucky requires a Professional Engineer (P.E.) or Professional Geologist (P.G.) registered/licensed in the state of Kentucky to certify the assessment reports. Groundwater or vapor monitoring in lieu of an assessment at permanent closure is not an option for an owner and operator.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The current regulation requires a P.E. or P.G. to certify the assessment reports based on the nature of the corrective action work performed, including recommendations and conclusions. Kentucky's current regulation has not allowed inventory control, vapor monitoring, or groundwater monitoring as methods of release detection since April 1, 2012. Historically, these three (3) methods of release detection have not adequately detected releases and do not have the same level of protectiveness as allowed methods of release detection.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 42:250. Petroleum Storage Tank Environmental Assurance Fund reimbursement[procedures].

RELATES TO: KRS 61.878(1)(c), 224.1-400, 224.1-405, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.10-470, 224.60-110[224.01-400, 224.01-405], 224.60-120, 224.60-130, 224.60-135, 224.60-140, 224.60-150, 40 C.F.R. 280, Subpart H

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.60-120(6), 224.60-130(1)(a) through (e)[224.60-130-(1)(a)-(e)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(a) through (e) requires the establishment of the procedures to administer the Petroleum Storage Tank Environmental Assurance Fund (PSTeAF). KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.60-120(6) requires the cabinet to establish administrative regulations to implement the requirements for financial responsibility of petroleum storage tank owners or operators. This administrative regulation establishes procedures to administer the PSTeAF, payment for third-party claims, financial audits, eligible company and partnership certification, laboratory certification, and facility ranking.

Section 1. Applicability. (1) This administrative regulation establishes the eligibility requirements and procedures for a petroleum storage tank owner or operator to make application, become an eligible applicant, and receive reimbursement from the cabinet for the cost of corrective action due to a release from a petroleum storage tank[. Federal and state-owned facilities shall not be eligible for reimbursement from the PSTeAF].

(2) Federally-owned facilities shall not be eligible for reimbursement from the PSTeAF in accordance with KRS 224.60-115(16).

(3) Eligible reimbursement for actions directed by the Underground Storage Tank (UST) Branch prior to October 6, 2011 shall be made in accordance with the reimbursement administrative regulations in effect at the time work was performed[401 KAR Chapter 42 in effect prior to October 6, 2011].

Section 2. Application for Assistance for Reimbursement. (1) A petroleum storage tank owner or operator seeking reimbursement from[either] the Financial Responsibility Account (FRA) or the Petroleum Storage Tank Account (PSTA), shall:

(a) [Have a Certificate of Registration and Reimbursement Eligibility.]In accordance with 401 KAR 42:020, submit to the UST Branch a complete and accurate UST Facility Registration, DWM

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~~4225, incorporated by reference in 401 KAR 42:020[or a Certificate of Eligibility, issued prior to September 13, 2006, which indicates that the petroleum storage tank owner or operator is eligible to participate in the Petroleum Storage Tank Environmental Assurance Fund for the associated UST Facility];~~

~~(b) Complete and submit a UST Application for Assistance for PSTEAF, DWM 4282, including all required attachments;~~

~~(c) Enter into and submit, [Apply for assistance.~~

~~1. A petroleum storage tank owner or operator seeking reimbursement, who has not submitted an Application for Assistance, shall submit a completed Application for Assistance, DEP 6063, including all required attachments.~~

~~2. A petroleum storage tank owner or operator shall certify in the Application for Assistance that:~~

~~a. (i) a contract [has been entered into and submitted] in accordance with Section 3 of this administrative regulation;~~

~~(d) 1. Document that [and~~

~~(ii) a release requiring corrective action from a petroleum storage tank [an eligible facility] has occurred [and has been reported to the cabinet]; or~~

~~2[b]. Receive a written directive from the UST[Underground Storage Tank] Branch [has been issued for the performance of a site check], in accordance with 401 KAR 42:060[42:050]; and~~

~~(e) Subrogate, to the cabinet, the rights to recover costs of corrective action, for which the cabinet has compensated the person seeking reimbursement, from the person responsible or liable for the release in accordance with KRS 224.60-140(14)(c)[(e) Provide a written notice, in accordance with 401 KAR 42:070, to the applicable regional office at least fourteen (14) calendar days prior to commencement of the permanent closure of the petroleum storage tank to maintain eligibility for reimbursement].~~

~~(2) If an application for assistance is found deficient by the UST[Underground Storage Tank] Branch, a written correspondence [deficiency letter], outlining the deficiencies, shall be issued to the applicant.~~

~~(a) Failure by the applicant to provide the requested information and documentation within thirty (30) days of receipt of the request shall cause the application for assistance to be denied.~~

~~(b) [If an extension beyond the thirty (30) days is necessary, the extension request shall be submitted in writing to the Underground Storage Tank Branch prior to the deadline.~~

~~(c) Denial of the application for assistance shall not prevent the petroleum storage tank owner or operator from reapplying if the requested documentation becomes available.~~

~~(3) If the applicant complies with [meets] the requirements of subsection (1) of this section, the UST[Underground Storage Tank] Branch shall:~~

~~(a) determine the eligibility of the applicant to receive reimbursement from either the FRA or PSTA, in accordance with Section 4 of this administrative regulation, and shall issue a written approval of [Financial Responsibility Account or the Petroleum Storage Tank Account according to Section 4 of this administrative regulation; and~~

~~(b) Approve] the application for assistance.~~

~~(4) Reimbursement in accordance with [pursuant to] an approved application for assistance shall be restricted to:~~

~~(a) Actions directed in writing by the UST[Underground Storage Tank] Branch; and~~

~~(b) Initial and immediate response [abatement] actions taken at a facility [in accordance with Section 2 of the Release Response and Initial Abatement Requirements Outline, incorporated by reference in 401 KAR 42:060, subject to the reimbursement provisions of Section 2.14 of the Contractor Cost Outline], prior to a written directive from the UST[Underground Storage Tank] Branch, and not declared an environmental emergency by the cabinet, and subject to the reimbursement provisions established in Section 3.13 of the UST PSTEAF Reimbursement Rates;~~

~~(5) If the petroleum storage tank owner or operator seeking reimbursement from the PSTEAF changes and the new petroleum storage tank owner or operator assumes responsibility for the compliance with 401 KAR Chapter 42, the new petroleum storage tank owner or operator shall submit an amended:~~

~~(a) [Submit an amended] UST Facility Registration, DWM 4225,~~

~~incorporated by reference in 401 KAR 42:020 [Form, DEP 7412], in accordance with 401 KAR 42:020, Section 2(4)[4] indicating a change in petroleum storage tank owner or operator; and~~

~~(b) [Submit an amended] UST Application for Assistance for PSTEAF, DWM 4282, DEP 6063], including all required attachments, within thirty (30) days of the transfer of the [facility] petroleum storage tank.~~

~~(6) To maintain eligibility for participation in and reimbursement from the PSTEAF, the petroleum storage tank owner or operator shall maintain compliance with the requirements of this administrative regulation.~~

Section 3. Contracts. (1) A petroleum storage tank owner or operator shall obtain a contract from an [the] eligible company or partnership to be eligible for reimbursement from the cabinet for the performance of corrective action or site check activities at [for] a facility.

(2) In accordance with KRS 224.60-130(1)(a), an eligible company or partnership shall not require payment from an applicant in an amount greater than the reimbursable amount.

(3) The contract shall be executed prior to commencing corrective action or site check activities.

(4) [(3)] If a contract is revised, a copy of the revised contract shall be submitted to the UST [Underground Storage Tank] Branch within thirty (30) days of the revised contract execution.

(5) [(4)] If a contract is terminated and a new contract is executed:

(a) [A notarized Affidavit of Termination of Contract, DEP 0061 by] The petroleum storage tank owner or operator approved for PSTEAF reimbursement shall submit a notarized UST Affidavit of Termination of PSTEAF Contract, DWM 4280, [be submitted] to the UST [Underground Storage Tank] Branch; and

(b) A copy of the newly executed contract shall be submitted to the UST [Underground Storage Tank] Branch within thirty (30) days of contract execution, and prior to the commencing of corrective action or site check activities by the new eligible company or partnership.

Section 4. Account Placement. (1) When participating in the FRA, a petroleum storage tank owner or operator shall be eligible to receive reimbursement for corrective action costs, site check [checks] activities directed in writing by the UST [Underground Storage Tank] Branch after September 13, 2006, that do not confirm contamination above applicable screening levels, and third-party claims in accordance with Section 12 of this administrative regulation [401 KAR 42:300], incurred on or after April 9, 1990, [from the Financial Responsibility Account] if the petroleum storage tank owner or operator has [satisfied the following requirements]:

(a) Registered the petroleum storage tanks with the UST [Underground Storage Tank] Branch, in accordance with 401 KAR 42:020, prior to the release requiring corrective action or site check activities;

(b) [Received a Certificate of Registration and Reimbursement Eligibility for the petroleum storage tanks, pursuant to 401 KAR 42:020, or a Certificate of Eligibility issued prior to September 13, 2006 prior to the release requiring corrective action or site check activities;

(c) [Maintained UST system release detection as required by 401 KAR 42:020 [42:040]. A petroleum storage tank permanently or temporarily closed in accordance with 401 KAR 42:060 [42:070], shall have been in [maintained] compliance with UST system release detection requirements prior to the permanent or temporary closure of the system;

(d) [(d)] Maintained corrosion protection for the petroleum storage tank system in accordance with 401 KAR 42:020 [42:030 and 42:070];

(e) [(e)] Maintained overfill and spill prevention for the petroleum storage tank system in accordance with 401 KAR 42:020 [42:030] for those tanks in use [operation] after December 22, 1998;

(f) [(f)] Reported the release to the cabinet in accordance with KRS 224.1-400(11) [224.01-400] and 401 KAR 42:060 [42:050];

~~(f)(g)) Performed initial abatement procedures as required by the UST Corrective Action Manual[Release Response and Initial Abatement Requirements Outline], incorporated by reference in 401 KAR 42:060; and~~

~~(g)(h)) Submitted to the cabinet[Filed] a UST Notice of Intent to Permanently Close Underground Storage Tank System, DWM 4266[DEP-7114], incorporated by reference in 401 KAR 42:060[42:070], if applicable[, with the cabinet to permanently close the petroleum storage tank at the facility or to make a change in service in accordance with 401 KAR 42:070].~~

(2) A petroleum storage tank owner or operator ~~that[who]~~ is not eligible for participation in the ~~FRA[Financial Responsibility Account]~~, shall be eligible for reimbursement from the ~~(PSTA)[Petroleum Storage Tank Account]~~ for corrective action costs, incurred on or after April 9, 1990, or site check activities directed in writing by the ~~UST[Underground Storage Tank] Branch~~ after September 13, 2006, that do not confirm contamination above applicable screening levels, if the petroleum storage tank owner or operator has registered the petroleum storage tanks with the UST Branch in accordance with 401 KAR 42:020 ~~[satisfied the following requirements:~~

~~(a) Registered the petroleum storage tanks with the Underground Storage Tank Branch in accordance with 401 KAR 42:020;~~

~~(b) Filed a Notice of Intent to Permanently Close Underground Storage Tank System, DEP 7114, incorporated by reference in 401 KAR 42:070, with the cabinet to permanently close the petroleum storage tanks a the facility, if applicable, or to make a change in service, if applicable, in accordance with 401 KAR 42:070; and~~

~~(c) Reported a release to the cabinet in accordance with KRS 224.01-400 and 401 KAR 42:050.~~

(3) ~~Facilities placed in the Petroleum Storage Tank Account shall not be eligible for third-party coverage].~~

Section 5. Entry Level~~to the Financial Responsibility Account and Petroleum Storage Tank Account~~. (1) For facilities with releases confirmed after September 13, 2006, a petroleum storage tank owner's or operator's entry level shall be equal to the financial responsibility requirement, as established in KRS 224.60-120(1), and shall be deducted from the eligible reimbursement except as established[provided] in subsection (3) of this section.

(2) An entry level shall be assessed upon confirmation of a release, constituting an occurrence, that requires corrective action for which the applicant is seeking reimbursement through the ~~FRA and PSTA[Financial Responsibility Account or Petroleum Storage Tank Account]~~ in accordance with subsection (1) of this section, regardless of a petroleum storage tank owner's participation in the Small Owner Tank Removal Account (SOTRA) in accordance with 401 KAR 42:330.

(3) The entry level shall not be deducted from the eligible reimbursement if the petroleum storage tank owner or operator performs:

(a) A site check[is] directed by the UST[Underground Storage Tank] Branch[to perform a site check,] in accordance with 401 KAR 42:060, that does not confirm contamination requiring further action in accordance with 401 KAR Chapter 42;

(b) An initial and immediate response action in accordance with Section 2.2 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060;

(c) Optional soil removal outside the excavation zone during permanent closure in accordance with Section 4.16 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060;

(d) Transportation and disposal of excavated material contaminated above applicable screening levels within the excavation zone during permanent closure in accordance with 401 KAR 42:060; or

(e) Transportation and disposal of pit water contaminated above applicable screening levels within the excavation zone during permanent closure in accordance with the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060.

(4) Upon request by the petroleum storage tank owner or operator, the ~~UST[Underground Storage Tank] Branch~~ shall

reimburse, upon final payment, twenty-five (25) percent of the entry level if the petroleum storage tank owner or operator has:

(a) Completed corrective action at the facility within:

1. 180 days from the discovery of the release, for soil contamination only; or

2. Twenty-four (24) months from the discovery of the release, for groundwater contamination only or both soil and groundwater contamination; and

(b) ~~Been issued[Received]~~ a no further action letter without additional measures being required for an occurrence associated with the submittal of an application for assistance.

(5) The applicable entry level shall be equal to the financial responsibility requirement as established[determined,] in[accordance with] KRS 224.60-120(1), based on the number of tanks owned or operated by the petroleum storage tank owner or operator at the time of the occurrence associated with the submittal of an application for assistance.

Section 6. Newly Discovered ~~UST[Underground Storage Tank] Systems~~. (1) A newly discovered ~~UST[underground storage tank]system~~ encountered at a facility during the performance of corrective action due to a release from a registered petroleum storage tank shall not affect a petroleum storage tank owner's or operator's account placement eligibility.

(2) The number of newly discovered tanks shall not increase the entry level of the petroleum storage tank owner or operator.

Section 7.~~[Procedures for] Establishing the Reimbursable Amount for a Written Directive[issued by the Underground Storage Tank Branch]~~. (1) The reimbursable amount established for the completion of a written directive issued by the ~~UST[Underground Storage Tank] Branch~~ shall be based on~~[the following]~~:

(a) The formulated task rates established in Section 3.0~~[2.0]~~ of the ~~UST PSTEAF Reimbursement Rates[Contractor Cost Outline]; and~~

(b) For a specific task that does not have a formulated task rate in the UST PSTEAF Reimbursement Rates, a cost estimate shall be submitted by the owner or operator[, in accordance with subsection (2) of this section, for a specific task, including applicable materials, that does not have a formulated task rate in the Contractor Cost Outline; or

(c) A combination of (a) and (b) of this subsection.

~~(2) If directed in writing by the Underground Storage Tank Branch, a cost estimate shall be submitted by the owner or operator, for a specific task that does not have a formulated task rate]. The cost estimate shall include:~~

~~(a)[Include] A cost itemization to complete the individual task[for which a formulated task rate has not been established if the task is being completed by the eligible company or partnership or by a subcontractor which shall be calculated] using those personnel and equipment rates established in Section 5.0 of the UST PSTEAF Reimbursement Rates[3 of the Contractor Cost Outline] applicable to individual components of the task;~~

~~(b)[Include] Three (3) bids from suppliers or manufacturers[manufactures] of corrective action equipment for individual equipment purchase or rental, exceeding \$3,000, if applicable, containing a description of the equipment [to be purchased or rented] provided by the supplier or manufacturer [for new equipment purchased]; and~~

~~(c)[Include] An estimate for materials to be purchased, if applicable;~~

~~(d) Be submitted on the Cost Estimate form, DEP 6090; and~~

~~(e) Include the required supporting documentation identified within the Cost Estimate form, DEP 6090].~~

(3) The ~~UST[Underground Storage Tank] Branch~~ shall establish the reimbursable amount in a written directive[, based on the formulated task[applicable] rates established in the UST PSTEAF Reimbursement Rates[Contractor Cost Outline] and applicable, approved, cost estimates[the completed Cost Estimate form, DEP 6090, submitted, if applicable, establish the reimbursable amount in a written directive].

(4) The cabinet shall attach to the written directive~~[the following]~~:

(a) An itemization of the reimbursable amount; and
(b) A UST Claim Request for Directed Actions, DWM 4286, [The USTB Written Directive Claim Request form, DEP 6094;]

(5) The issuance of a written directive by the UST[Underground Storage Tank] Branch shall, subject to the provisions of Section 8 of this administrative regulation, constitute an obligation and guarantee of payment of the reimbursable amount identified within a written directive, in accordance with KRS 224.60-140(5).

(6) Upon compliance with Section 8 of this administrative regulation, the reimbursable amount established by the UST[Underground Storage Tank] Branch in a written directive shall, as applicable and in accordance with the UST PSTEAF Reimbursement Rates[Contractor Cost Outline], be adjusted as established in this subsection, [follows upon compliance by the eligible applicant with Section 8 of this administrative regulation:]

(a) The reimbursable amount for over-excavation identified in the written directive issued by the UST[Underground Storage Tank] Branch is an estimate of the tonnage to be removed and shall be based on the volume and density of material in the proposed excavation area. The UST[Underground Storage Tank] Branch shall convert cubic yardage to tons using a density of one and one-half (1.5) tons per cubic yard. The reimbursable amount shall be adjusted based on:

1.a. The soil tonnage verified through the submittal of weigh tickets; or

b. If soil is disposed of at a permitted disposal facility incapable of providing weigh tickets, a calculation of the tonnage associated with the actual area and depth of over-excavation, not to exceed the tonnage estimate identified in the written directive from the UST[Underground Storage Tank] Branch; and

2. The actual quantity of water encountered during an over-excavation that is removed, transported and disposed of, contingent upon analytical confirmation that contaminant levels of the water exceed the applicable groundwater screening levels, and reimbursement for the removal, transportation, and disposal of water encountered within the over-excavation shall be contingent upon analytical confirmation that contaminant levels within the water exceed the applicable groundwater screening levels, and the reimbursable amount for water removed, transported, and disposed shall be based on the quantity of water disposed, as documented by disposal manifests and limited to one (1) pit volume;

(b) The reimbursable amount for a Mobile Dual-Phase[Dual Phase] Extraction Event, identified in a written directive issued by the UST[Underground Storage Tank] Branch, shall be adjusted to include the amount of water disposed as documented by disposal manifests, or the amount of water verified by the eligible company or partnership as being treated on site;

(c) The reimbursable amount for Operation and Maintenance of an approved remediation system shall be adjusted to include the actual cost of utilities as documented by invoices submitted;

(d) If the UST[Underground Storage Tank] Branch has not received and approved the UST Application for Assistance for PSTEAF, DWM 4282[DEP-6063], prior to the issuance of the written directive, the reimbursable amount identified in the written directive issued shall not include the applicable formulated task rates for mobilization, per diem, and field equipment cost. The UST[Underground Storage Tank] Branch shall add the applicable formulated task rates for mobilization, per diem, and field equipment to the reimbursable amount of the submitted claim, in accordance with the UST PSTEAF Reimbursement Rates, [Contractor Cost Outline] once an approved UST Application for Assistance for PSTEAF, DWM 4282, is submitted;

(e) If the UST[Underground Storage Tank] Branch has not received a signed contract between the eligible applicant and the eligible company or partnership prior to the issuance of the written directive, the reimbursable amount identified in the written directive issued shall not include the applicable formulated task rates for mobilization, per diem, and field equipment cost. The UST[Underground Storage Tank] Branch shall add the applicable formulated task rates for mobilization, per diem, and field

equipment to the reimbursable amount of the submitted claim, in accordance with the UST PSTEAF Reimbursement Rates[Contractor Cost Outline], once the requirements of Section 3 of this administrative regulation are met;

(f) If a written directive issued by the UST[Underground Storage Tank] Branch cannot be complied with to the extent necessary to achieve a technically complete determination by the UST[Underground Storage Tank] Branch, in accordance with 401 KAR 42:060[the Corrective Action Outline], for reasons beyond the control of the applicant, or [and] eligible company or partnership, the previously approved reimbursable[reimbursement] amount established in the written directive shall, unless [otherwise] addressed in the written directive, be adjusted by the UST[Underground Storage Tank] Branch, with reference to the UST PSTEAF Reimbursement Rates[Contractor Cost Outline] and the applicable, approved cost estimate [submitted on the Cost Estimate form, DEP-6090, as applicable], to deduct the cost of actions not completed; or

(g) [If a written directive issued by the Underground Storage Tank Branch cannot be completed, based upon omissions, misrepresentations, or otherwise inaccurate information submitted by the eligible company or partnership in a previous report, the reimbursable amount identified in the written directive shall be adjusted to deduct those actions directed based upon omissions, misrepresentations, or otherwise inaccurate information submitted; or

(h) If the UST[Underground Storage Tank] Branch rescinds an issued [a] written directive [issued,] prior to the completion of the entire scope of work identified in the written directive, the previously approved reimbursement amount shall be adjusted to reflect the cost of actions completed, with reference to the UST PSTEAF Reimbursement Rates[Contractor Cost Outline] and the approved cost estimate [submitted], if applicable.

(7) Reimbursement for an individual corrective action equipment purchase or rental shall not include markup and shall be limited to:

(a) The original purchase price provided by the supplier or manufacturer, including applicable sales tax, if purchased; or

(b) Rental costs not exceeding the purchase price provided by the supplier or manufacturer, if rented.

(8) The UST Branch shall have final authority to determine all reimbursable actions including site characterization and corrective action technologies in accordance with 401 KAR 42:060 [Costs incurred prior to issuance of a written directive by the Underground Storage Tank Branch in accordance with this section shall be ineligible for reimbursement].

Section 8. Reimbursement [Procedures] for a Written Directive [issued by the Underground Storage Tank Branch]. (1) Reimbursement for a written directive shall be made after the following actions are completed:

(a) The submittal and approval of a UST [an] Application for Assistance for PSTEAF, DWM 4282 [DEP-6063], in accordance with Section 2 of this administrative regulation;

(b) The UST [USTB] Claim Request for Directed Actions, DWM 4286, which includes payment verification affidavit as required by KRS 224.60-140(18), [Written Directive Claim Request Form, DEP 6091, which was] provided with the written directive has been completed, signed, and submitted to the UST [Underground Storage Tank] Branch;

(c) [The Payment Verification Affidavit Form, DEP-6075, as required by KRS 224.60-140(18);

(d) The submittal of a UST Payment Waiver [form], DWM 4289 [DEP-6077], executed by each affected vendor or subcontractor, as applicable, in accordance with KRS 224.60-140(18);

(d) [(e)] The submittal of weigh tickets and invoices documenting the actual cost of items that do not have a formulated task rate established in the UST PSTEAF Reimbursement Rates [utilities] or other required backup documentation as indicated in the written directive;

(e) [(f)] The technical report submitted in response to the written directive is determined by the UST [Underground Storage Tank]

Branch to be technically complete in accordance with [relation to] the written directive and 401 KAR 42:060[Chapter 42]; and

(f)[(g)] Payment has been received for all applicable annual[registration] fees in accordance with KRS 224.60-150 and 401 KAR 42:020, Section 2[42:200].

(2) Reimbursement shall be contingent upon the contracted eligible company or partnership complying with[meeting and maintaining] the requirements established in accordance with Section 19 of this administrative regulation[401-KAR-42:316].

(3) Reimbursement shall be contingent upon a certified laboratory performing the required analysis in accordance with Section 20 of this administrative regulation[401-KAR-42:340].

(4) If the contract with the eligible company or partnership designated on a written directive is terminated prior to the commencement of reimbursable activities in response to the written directive, the obligation and guarantee of payment of the reimbursable amount[, made in accordance with KRS 224.60-140(5)-] shall be void.

(5) The information completed by the UST[Underground Storage Tank] Branch on the UST Claim Request for Directed Actions, DWM 4286[USTB Written Directive Claim Request form, DEP 6094], attached to the written directive, shall not be modified by the applicant or the eligible company or partnership designated on the written directive.

(6) If the applicant fails to correct a claim-related deficiency or to supply additional claim information, within thirty (30) days of written notice from the UST Branch, that portion of the claim shall be denied.

(7) The UST[Underground Storage Tank] Branch shall issue a determination in accordance with[pursuant to] KRS 224.60-140(7) as to whether the costs submitted in the claim are eligible for reimbursement.

(8)[(7)] All claims shall be submitted within two (2) years after issuance of a no further action letter by the UST[Underground Storage Tank] Branch, in accordance with KRS 224.60-130(1)(n).

(9)[(8)] If a request to re-evaluate the reimbursable amount, established in accordance with Section 7 of this administrative regulation, is submitted in accordance with Section 14 of this administrative regulation, and a not-to-exceed amount is warranted, final reimbursement shall be made on a time and material basis, which shall require the following supporting documentation:

(a) An itemization of the eligible company or partnership invoice with supporting documentation;

(b) Itemized subcontractor and vendor invoices with supporting documentation; and

(c) Time sheets to support all personnel time billed for the completion of the scope of work identified in the written directive.

Section 9. Reimbursement for[Procedures for Reimbursable] Actions[that are] Not Directed in Writing[by the Underground Storage Tank Branch]. (1) Reimbursement shall be made for the following actions[, which shall not require written directives from the Underground Storage Tank Branch or cost estimates from the applicant and eligible company or partnership,] in accordance with the applicable formulated task rates established in the UST PSTEAF Reimbursement Rates[Contractor Cost Outline];

(a) Optional Soil Removal Outside the Excavation Zone at permanent closure, in accordance with Section 4.16[6] of the UST Corrective Action Manual[Closure Outline] incorporated by reference in 401 KAR 42:060.[42:070];

(b) Transportation and disposal, treatment, or recycling[of contaminated material or water], at a permitted facility, of material or water contaminated above applicable screening levels, removed from within the excavation zone,[contaminated above applicable screening levels,] at permanent closure, in accordance with the UST Corrective Action Manual[Closure Outline] incorporated by reference in 401 KAR 42:060.[42:070];

(c) Initial and immediate response actions, identified in Section 3.13[2-14] of the UST PSTEAF Reimbursement Rates[Contractor Cost Outline], taken at a facility[, in accordance with Section 2.0[2] of the UST Corrective Action Manual[Release Response and Initial Abatement Requirements Outline], incorporated by reference in

401 KAR 42:060, prior to a written directive from the UST[Underground Storage Tank] Branch or prior to the date of a declared environmental emergency by the cabinet.[:]

(d) Transportation and disposal of drums containing purged water or soil cuttings associated with actions directed in accordance with 401 KAR 42:060.[:]

(e) Encroachment permit renewals necessary to complete directed actions.[: and]

(f) Unscheduled maintenance of a remediation system installed in accordance with [an] approved corrective action activities[Plan, in accordance with Section 2.13 of the Contractor Cost Outline, and invoices supporting the cost of necessary materials or equipment not exceeding a total cost of \$3,000, but shall not include unscheduled maintenance equipment costs covered by equipment warranty]. Pre-approval is required for one (1) unscheduled maintenance event that will exceed \$3,000 for material and/or equipment [costs associated with unscheduled maintenance of a remediation system exceeding \$3,000 shall require pre-approval before work is performed].

(2) Reimbursement shall be made after the following actions are completed:

(a) The[submittal and] approval of a UST[an] Application for Assistance for PSTEAF, DWM 4282[DEP 6063], in accordance with Section 2 of this administrative regulation;

(b) The UST Claim Request[Form] for Actions Not Directed, DWM 4285, which includes payment verification affidavit as required by KRS 224.60-140(18)[By The USTB, DEP 6064], has been completed, signed, and submitted to the UST[Underground Storage Tank] Branch;

(c)[The Payment Verification Affidavit form, DEP 6075, as required by KRS 224.60-140(18);

(d) The submittal of a UST Payment Waiver [form], DWM 4289[DEP 6077], executed by each affected vendor or subcontractor, as applicable, in accordance with KRS 224.60-140(18);

(d)[(e)] The submittal of required backup documentation as identified on the instruction sheet associated with each worksheet;

(e)[(f)] Payment has been received for all applicable annual[registration] fees in accordance with KRS 224.60-150[224.60-10] and 401 KAR 42:020 Section 2[42:200];

(f)[(g)] The UST Optional Soil Removal at Permanent Closure[Outside the Excavation Zone] Reimbursement Worksheet, DWM 4288[DEP 6094], has been completed and submitted to the UST[Underground Storage Tank] Branch for optional soil removal outside of the excavation zone at permanent closure in accordance with 401 KAR 42:060[42:070] for actions listed in subsection (1)(a) of this section, if applicable[performed];

(g)[(h)] The UST Miscellaneous Tasks Reimbursement Worksheet, DWM 4287[DEP 6093], has been completed and submitted to the UST[Underground Storage Tank] Branch for actions listed in subsection (1)(b), (c), (d), (e), or (f) of this section, if applicable[performed]; and

(h)[(i)] The technical report submitted in accordance to subsections[for subsection] (1)(a), (b), or (c) of this section has been deemed[is] technically complete, if applicable, in accordance with 401 KAR Chapter 42.

(3) Reimbursement shall be contingent upon the contracted eligible company or partnership complying with[meeting and maintaining] the requirements established in accordance with Section 19 of this administrative regulation[401-KAR-42:316].

(4) Reimbursement shall be contingent upon a certified laboratory performing the required analysis in accordance with Section 20 of this administrative regulation[401-KAR-42:340].

(5) The UST[Underground Storage Tank] Branch may require additional information and documentation to determine that a[an eligible] request for reimbursement is reasonable and necessary[and reasonable].

(6) If the applicant fails to correct a claim-related deficiency, or to supply additional claim information, within thirty (30) days of written notice from the UST[Underground Storage Tank] Branch, that portion of the claim shall be denied.

(7) The UST[Underground Storage Tank] Branch shall issue a determination, in accordance with[pursuant to] KRS 224.60-140(7),

as to ~~the eligibility for reimbursement of~~ the costs submitted in the claim ~~[shall be eligible for reimbursement]~~.

(8) All claims shall be submitted within two (2) years after issuance of a no further action letter by the ~~UST~~ Underground Storage Tank Branch ~~in accordance with KRS 224.60-130(1)(n)]~~.

Section 10. ~~[Reimbursement—Procedures—for]~~ Facility Restoration.

(1) The UST Branch shall issue a written directive in accordance with Section 7 of this administrative regulation, once the applicant provides the information required by Section 5.9.2 in the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060 ~~[An itemized cost estimate shall be submitted to the Underground Storage Tank Branch on the Facility Restoration Worksheet, DEP 6095, for the completion of facility restoration actions]~~.

(2) ~~If the UST Branch does not issue a written directive in accordance with subsection (1) of this section, the applicant may submit an obligation request to the cabinet, with the information required by Section 5.9.2 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, for the completion of facility restoration actions~~ Written approval, by the Underground Storage Tank Branch, of the cost estimate shall constitute, subject to adjustment in accordance with subsection (4) of this section, an obligation and guarantee of payment, in accordance with KRS 224.60-140(5), for the cost of actions that are completed in full].

(3) ~~Reimbursement for facility restoration activities shall be made in accordance with Section 8 of this administrative regulation~~ Costs incurred prior to the written approval of the cost estimate by the Underground Storage Tank Branch shall be ineligible for reimbursement.

(4) ~~Upon the completion of site restoration actions, final reimbursement shall be based on the costs identified through the submittal of the Facility Restoration Worksheet, DEP 6095, that identified the actual work completed.~~

(5) ~~Reimbursement for facility restoration actions involving the replacement of surface material shall be limited to costs necessary for the replacement of surface material removed during corrective action activities.~~

(6) ~~Reimbursement for site restoration activities shall be made after the following actions are completed:~~

(a) ~~The submittal and approval of an Application for Assistance, DEP 6063, in accordance with Section 2 of this administrative regulation;~~

(b) ~~The Claim Request Form For Actions Not Directed by the USTB, DEP 6064, has been completed, signed, and submitted to the Underground Storage Tank Branch;~~

(c) ~~The Payment Verification Affidavit form, DEP 6075, as required by KRS 224.60-140(18);~~

(d) ~~The Payment Waiver form, DEP 6077, executed by each affected vendor or subcontractor, as applicable, in accordance with KRS 224.60-140(18);~~

(e) ~~The Facility Restoration Worksheet, DEP 6095, has been completed and submitted, with the required documentation, to the Underground Storage Tank Branch; and~~

(f) ~~Payment has been received for all applicable annual registration fees in accordance with KRS 224.60-150 and 401 KAR 42:200.~~

(7) ~~Reimbursement shall be contingent upon the contracted eligible company or partnership meeting and maintaining the requirements of 401 KAR 42:316.~~

(8) ~~The Underground Storage Tank Branch may require additional information and documentation to determine that an eligible request for reimbursement is necessary and reasonable.~~

(9) ~~If the applicant fails to correct a claim-related deficiency or to supply additional claim information within thirty (30) days of written notice from the Underground Storage Tank Branch, that portion of the claim shall be denied.~~

(10) ~~The Underground Storage Tank Branch shall issue a determination pursuant to KRS 224.60-140(7) as to if the costs submitted in the claim are eligible for reimbursement.~~

(11) ~~All claims shall be submitted within two (2) years after issuance of a no further action letter by the Underground Storage~~

~~Tank Branch]~~.

Section 11. ~~Payment~~ Reimbursement for Actions Directed ~~and Documented~~ by the Environmental Response ~~Team~~ Branch ~~during a Declared Environmental Emergency]~~. ~~Payment~~ Reimbursement for actions directed and documented by the Environmental Response ~~Team~~ Branch during a declared environmental emergency shall not be governed by this administrative regulation and shall be made in accordance with KRS Chapter 224 ~~[procedures established by the cabinet]~~.

Section 12. Third-Party Claims.

(1) An eligible third-party claim shall be limited to bodily injury and property damage, asserted against an owner or operator as a result of sudden or non-sudden accidental releases into the environment from a petroleum storage tank at a facility eligible for participation in the FRA.

(2) A petroleum storage tank owner or operator shall be eligible to apply for reimbursement or payment for a third-party claim if:

(a) The cabinet has approved an application for assistance; and

(b) The owner or operator has maintained compliance with the eligibility requirements for participation in the FRA in effect at the time the application for assistance was approved.

(3) If a petroleum storage tank owner or operator receives a written notice from the cabinet indicating noncompliance with the eligibility of the FRA in accordance with Section 4 of this administrative regulation, the petroleum storage tank owner or operator shall only be eligible for reimbursement of the costs of third-party claims brought against the petroleum storage tank owner or operator within sixty (60) days from the date of the written notice.

(4) To assert a claim for payment or reimbursement of a third-party claim, an eligible owner or operator shall:

(a) Submit a new UST Application for Assistance for PSTeAF, DWM 4282; and

(b) Notify the cabinet of the assertion of the third-party claim within twenty-one (21) days of service of process of an action against the owner or operator by the third party, or the receipt of an assertion of a claim in writing by a third party.

(5) A third-party claim shall be paid on the basis of:

(a) A final and enforceable judgment; or

(b) A written agreement between a third party and the owner or operator, upon review and concurrence by the cabinet.

(6) (a) A settlement of a third-party claim shall not be made by an owner or operator without the prior approval of the cabinet.

(b) The cabinet shall not pay a third-party judgment, or reimburse an owner or operator for payment of the judgment, in an amount exceeding a settlement offer rejected by the owner or operator if the settlement offer was:

1. Not submitted to the cabinet for consideration; or

2. Previously approved by the cabinet.

(7) Claim payment shall be limited to actual, documented, bodily injury and property damage caused by the release of petroleum.

(a) A claim for bodily injury and property damage shall be paid to the extent that the damages are not addressed by the performance of corrective action.

(b) The aggregate amount of payment of all third-party claims shall not exceed \$1,000,000 per occurrence.

1. Claim requests shall be submitted on the UST Third-Party Claim, DWM 4292.

2. The applicant shall retain a copy of the completed form for their records.

(c) The cabinet shall acquire by subrogation the right of the third-party to recover, from the person responsible or liable for the release, the amount of damages paid to the third-party.

(d) Reimbursement for third-party claims shall be made in accordance with Section 21 of this administrative regulation.

(e) Payment of a third-party claim shall be made after approval by the cabinet.

Section 13. Eligible and Ineligible Costs.

(1) Eligible costs for regulated petroleum storage tanks containing motor fuel shall include:

(a) Initial and immediate response actions taken outside of the excavation zone, in accordance with Section 2.0 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, prior to a written directive from the UST Branch or prior to the date of a declared emergency by the cabinet[Tank and Line Tightness Testing as requested in writing by the Underground Storage Tank Branch in conjunction with Site Check, Site Investigation, or Corrective Action activities for a facility];

(b) Site checks at a facility, in accordance with[upon] a written directive issued after September 13, 2006[,] by the UST[Underground Storage Tank] Branch;

(c) Tank and line tightness testing as requested in writing by the UST Branch in conjunction with site check, site investigation, or corrective action activities for a facility;

(d) Performance of "corrective action" as defined by[in] KRS 224.60-115(4), due to a release of motor fuel from a regulated petroleum storage tank system, upon written direction by the UST[Underground Storage Tank] Branch;

(e)[(d)] Transportation, disposal, or treatment at a permitted facility, and replacement of excavated[backfill] material[excluding the tank volume], contaminated above applicable screening levels;

1. Within the excavation zone,[;] excluding the tank volume, in accordance with Section 4.0 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060; or

2. Outside the excavation zone, in accordance with Section 4.16 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060;

(f)[(e)] Transportation and disposal, treatment, or recycling, at a permitted facility, of free product or water, contaminated above screening levels encountered;

1. Within the excavation zone, during[permanent closure] activities in accordance with Section 4.0 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060[42:070, or as directed in writing by the Underground Storage Tank Branch for those facilities currently performing corrective action activities in accordance with 401 KAR 42:060]; and

2. During activities in accordance with Section 4.16 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060;

(g) A fifteen (15) percent total markup above the cost of materials purchased associated with a task for which there is not a formulated task rate established in the UST PSTeAF Reimbursement Rates;

(h) An eligible company or partnership that employs an unaffiliated subcontractor or other vendor shall receive a fifteen (15) percent markup for costs that do not have a formulated task rate established in the UST PSTeAF Reimbursement Rates;

(i)[(f)] The cost of] Surface material to replace removed or damaged[replacement for excavated] areas directly associated with corrective action activities, upon written direction by the UST Branch; [(g)] Initial response actions taken outside of the excavation zone, in accordance with Section 2 of the Release Response and Initial Abatement Requirements Outline, incorporated by reference in 401 KAR 42:060, prior to a written directive from the Underground Storage Tank Branch or prior to the date of a declared emergency by the cabinet;] and

(j)[(h)] Other costs, associated with corrective action activities, as required[identified] in a written directive issued by the UST[Underground Storage Tank] Branch for the facility.

(2) Ineligible costs for regulated petroleum storage tanks containing motor fuel shall include:

(a) Except as established in subsection (1) of this section, costs incurred prior to written approval by the UST Branch;

(b) Costs incurred for the purpose of complying with the requirements of 401 KAR 42:020;

(c) Replacement, repair, maintenance, or retrofitting of tanks or piping;

(d)[(b)] Out-of-state travel expense, including air fare;

(e) Loss of business, income or profits;

(d) An attorney fee related to:

1. Judicial or administrative litigation;

2. Consultation on administrative regulations;

3. Preparation or submittal of documentation related to reimbursement process; or

4. Other legal services determined by the Underground Storage Tank Branch not to be integral to the performance of corrective action.

(e) Decreased property values for the facility;

(f) Facility improvements, including costs to upgrade the facility;

(g) An aesthetic improvement to the facility;

(h) The cost of surface material replacement for areas not removed as part of corrective action;

(i) Payment of the owner or operator's personnel for overtime or for staff time in planning or implementing corrective action as defined in KRS 224.60-115(4);

(j) Interest on an overdue account or loan;

(k) A cost covered by insurance payable to the owner or operator;

(l) A contractor surcharge implemented because the owner or operator failed to act in a timely fashion;

(m) Work performed that is not in compliance with safety codes;

(n) A cost associated with a release from a storage tank exempt from requirements of 401 KAR Chapter 42 as established in KRS 224.60;

(e)[(e)] Contractor markup expense for a normally expected overhead item or in-stock material;

(p) Contractor markup expense for personnel cost;

(q) A laboratory "rush" fee, unless directed by the Underground Storage Tank Branch;

(r) A cost or cost recovery for governmental emergency services;

(f)[(s)] Corrective action activities subsequent to the issuance of a no further action letter, unless otherwise directed in writing by the Underground Storage Tank Branch;

(t) Reimbursement for work or a portion of work performed at a facility if the results of laboratory analysis do not confirm the need for corrective action or for actions to achieve more stringent allowable levels than those prescribed by the cabinet, except for investigatory or corrective actions otherwise directed from the Underground Storage Tank Branch in writing;

(u) A cost of a party employed to act as a surrogate or stand-in for the owner or operator of the facility;

(g)[(v)] Preparation of documentation, cost estimates, written agreements, contracts, or client invoices that will be submitted to the UST[Underground Storage Tank] Branch for reimbursement purposes;

(h)[(w)] Except as established[provided] in 401 KAR 42:330, costs[cost] related to the removal, or actions incidental to the removal of a tank system;

(i) Road mileage beyond 1,000 miles round trip;

(j) Reimbursement for work or a portion of work, performed at a facility if the results of laboratory analysis do not confirm the need for corrective action, or for actions to achieve contaminant concentrations less than those directed by the cabinet, except for investigatory or corrective actions directed from the UST Branch in writing;

(k) Work performed that is not in compliance with safety codes;

(l)[(x)] Cost of resampling and laboratory tests performed as a result of an operational or methodology mistake by the analytical laboratory, or cost for an analytical laboratory to become certified or accredited under the requirements of KRS 224.60-130(1)(a) and 401 KAR 42:340;

(y) Costs relating to compliance with a local program having corrective action standards more stringent than those required by the cabinet;

(z) Costs to achieve corrective action standards more stringent than those required by the applicable administrative regulation;

(aa) Actions resulting from contractor error or negligence;

(bb) Costs covered by the contractor's liability insurance;

(cc) Other services or costs determined by the Underground Storage Tank Branch to be an unreasonable or unnecessary cost

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of corrective action;

(dd) Overtime for individual personnel exceeding forty (40) hours during a standard workweek;

(ee) Free product recovery from monitoring wells or borings during corrective action activities, unless directed in writing by the UST[Underground Storage Tank] Branch;

(m)[(ff)] Costs incurred for additional assessment or Corrective Action Plan modification necessary as a result of delayed implementation of the Corrective Action Plan, beyond the deadline established in writing by the Underground Storage Tank Branch;

(gg) Costs incurred for the purpose of compliance with permit conditions for permitted soil treatment facilities;

(hh) The portion of the lease or rental cost for capital equipment that exceed the purchase price of the equipment;

(ii) Costs incurred for the removal, transportation and disposal, recycling, or treatment of free product from within the excavation zone of a UST system, that is not permanently closed, for which contamination above applicable screening levels outside the excavation zone has not been confirmed;

(jj) Costs incurred for the purpose of meeting the requirements of 401 KAR 42:020, 42:030, and 42:040;

(kk) Equipment replacements costs covered by equipment warranty;

(ll) Costs incurred to replace a monitoring well destroyed, damaged, or that cannot be accessed or located due to actions within the control of the applicant;

(n) Costs incurred for the purpose of compliance with permit conditions for permitted soil treatment facilities;

(o) Costs incurred for the removal, transportation and disposal, recycling, or treatment of free product from within the excavation zone of a UST system, that is not permanently closed, for which contamination above applicable screening levels outside the excavation zone has not been confirmed;

(p) Costs relating to compliance with a local program having corrective action standards more stringent than those directed by the cabinet;

(q) A laboratory "rush" fee, unless directed by the UST Branch;

(r) Costs of resampling and laboratory tests performed as a result of an operational or methodology mistake by the analytical laboratory, or costs for an analytical laboratory to become certified or accredited in accordance with the requirements of KRS 224.60-130(1)(a) and Section 20 of this administrative regulation;

(s) Laboratory costs incurred after the laboratory certification eligibility expiration date;

(t) Costs incurred for additional assessment or Corrective Action Plan modification necessary as a result of delayed implementation of the Corrective Action Plan, beyond the deadline established in writing by the UST Branch;

(u) Cost incurred as a result of delayed implementation of a written directive, beyond twelve (12) months from the issuance date of the deadline established in writing by the UST Branch;

(v) The portion of a lease or rental cost for capital equipment that exceeds the purchase price of the equipment;

(w) Equipment replacement costs covered by equipment warranty;

(x) Payment of the owner's or operator's personnel for overtime or for staff time in planning or implementing "corrective action" as defined by KRS 224.60-115(4);

(y) Out-of-state travel expense, including air fare;

(z) Contractor markup expense for a normally expected overhead item or in-stock material;

(aa) Contractor markup expense for personnel costs;

(bb) Markup for pass-through costs for utilities and employee expense accounts;

(cc) Fifteen (15) percent markup for the costs of corrective action for[and

(mm)] an eligible company or partnership that employs a subcontractor, a subsidiary company, or other vendor, that is affiliated with the eligible company or partnership or a principal[principle] of the eligible company or partnership[partnerships]

(dd) Overtime for eligible company or partnership personnel exceeding forty (40) hours, individually, during a standard

workweek;

(ee) Actions resulting from contractor error or negligence;

(ff) A contractor surcharge implemented because the owner or operator failed to act in a timely fashion;

(gg) Costs covered by the contractor's liability insurance;

(hh) Costs covered by insurance payable to the owner or operator;

(ii) Interest on an overdue account or loan;

(jj) Loss of business, income or profits;

(kk) An attorney fee related to:

1. Judicial or administrative litigation;

2. Consultation on administrative regulations;

3. Preparation or submittal of documentation related to the reimbursement process; or

4. Other legal services not integral to the performance of corrective action;

(ll) Corrective action costs incurred after the eligible company or partnership eligibility expiration date;

(mm) Corrective action activities performed subsequent to the issuance of a no further action letter, unless directed in writing by the UST Branch;

(nn) Facility or aesthetic improvements, including costs to upgrade the facility, except for approved surface replacement in accordance with Section 10 of this administrative regulation;

(oo) Decreased property values for the facility;

(pp) Costs of surface material replacement for areas not removed or damaged as part of corrective action; and

(qq) Unreasonable or unnecessary costs and expenses for corrective action, in accordance with KRS 224.60-140(5). [shall not receive the fifteen (15) percent mark up for the cost of corrective action.

Section 13. Reimbursement Rates. (1) Established rates for eligible reimbursement shall be identified in the Contractor Cost Outline.

(2) Costs not included in the Contractor Cost Outline shall be reasonable and necessary to the performance of corrective action in order to be eligible for reimbursement.

(3) Pass-through costs for utilities and employee expense accounts shall not receive a markup on the actual cost.

(4) A fifteen (15) percent total markup above the estimated cost of materials purchased associated with a task for which there is not a formulated unit rate shall be allowed.]

Section 14. [Request for] Re-Evaluation of a [the] Reimbursable Amount [Identified in a Written Directive]. (1) If the applicant determines that the scope of work required [identified] in a written directive cannot be completed without exceeding the total reimbursable amount set forth in the written directive, a request for re-evaluation of the reimbursable amount may be submitted to the UST [Underground Storage Tank] Branch on the UST Re-Evaluation of a Reimbursable Amount [Re-Evaluation Form], DWM 4291 [DEP-0062], and shall include:

(a) The submittal of three (3) current written estimates, for services or materials not provided by the contracting company or partnership, from subcontractors in the area in which the facility is located, if applicable;

(b) The submittal of an itemized cost breakdown of the eligible company's [contracting company] or partnership's time and materials to be used for the completion of [in-completing] the written directive; and

(c) The costs [shall be] calculated using the personnel and equipment rates established in Section 3.0 [3] of the UST PSTEF Reimbursement Rates [Contractor Cost Outline].

(2) The UST [Underground Storage Tank] Branch shall review the itemized cost breakdown, determine the [and based upon a determination of] reasonable and necessary costs for the scope of work and [the Underground Storage Tank Branch shall either:

(a) [Determine that the itemized cost breakdown exceeds the reimbursable amount;] Rescind the original written directive, and issue a new written directive establishing a not-to-exceed amount if the itemized cost breakdown, as adjusted for reasonable and necessary costs, exceeds the reimbursable amount; or

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(b) ~~[Determine that the reasonable and necessary costs itemized are at or below the initial reimbursement amount, and] Deny the request for re-evaluation, established[leaving the reimbursable amount identified] in the original directive letter, if costs itemized are at or below the initial reimbursement amount[in effect].~~

(3) If the establishment of a not-to-exceed amount is warranted, in accordance with subsection (2)(a) of this section, final reimbursement shall be determined on an actual time and materials basis, and the appropriate supporting documentation shall be submitted to the UST[Underground Storage Tank] Branch, in accordance with Section 8(9)[~~8(8)~~] of this administrative regulation, as an attachment to the claim.

Section 15. Reconsideration for a Claim. (1) An applicant may request a reconsideration of a denial of a claim request, or portion thereof by submitting a completed UST Reconsideration Request, DWM 4290, within thirty (30) days from the date the person has notice, or could reasonably have had notice, of the denial, which shall include:

- (a) A statement of the grounds for reconsideration;
- (b) Supporting documents; and
- (c) Other evidence not previously considered.

(2) The cabinet shall review the previous claim decision, and may revise the claim if the evidence accompanying the request warrants revision by demonstrating clear error or through submittal of additional documentation.

(3) The cabinet shall not reconsider a claim more than once.

Section 16. Signatures. (1) Application and reimbursement forms required by this administrative regulation for which a signature is required shall be signed by an eligible petroleum storage tank owner or operator as follows:

(a) For a corporation or limited liability company, by:

1. A president, ~~vice-president of the corporation in charge of a principal business function, or member, or any other person who performs similar policy- or decision-making functions for the corporation~~[or secretary]; or

2. A ~~legally~~[The duly] authorized representative or agent, except that a representative of an eligible company or partnership shall not have signatory authority for an owner or operator[of the president or secretary if the representative or agent is responsible for overall operation of the facility; or

3. A person designated by the board of directors by means of a corporate resolution];

(b) For a partnership, sole proprietorship or individual, by:

1. A general partner;[;]

2. [the] Proprietor; or

3. Individual named as the applicant[respectively];

(c) For a state or local governmental agency or unit, or non-profit organization[municipality], by:

1. A principal executive officer, which includes a chief executive officer of an agency, or a senior executive officer, having responsibility for the overall operations of a principal geographic unit; or

2. [Executive officer; or

3.] A ranking elected official; or

(d) A person designated by a court to act on behalf of the eligible petroleum storage tank owner or operator.

(2) A claim form or application for assistance shall also be signed by:

(a) The professional engineer or professional geologist responsible for overseeing corrective action; and

(b) an authorized representative of the eligible company or partnership, unless corrective action commenced prior to July 1, 1999.

(3) The owner or operator shall submit documentary evidence to substantiate the legality of an authorized representative's power of agency or power of attorney.

Section 17. Financial Audits. (1) An entity shall be subject to a financial audit if it is an entity referenced in KRS 224.60-130(1)(k).

(2) The cabinet shall have the authority to audit an entity if:

(a) A required document, or other document relevant to a cabinet determination, submitted to the cabinet appears to be fraudulent; or

(b) There is evidence that the entity has violated a federal or state law, or a requirement of Title 401 of the Kentucky Administrative Regulations related to its actions.

(3) Upon written request by the cabinet, records, as established in KRS 224.60-130(1)(k), shall be provided to the cabinet during a financial audit.

(4) The cabinet shall notify the subject of the audit, in writing, of the date that the audit is scheduled to begin. The notice shall be sent at least ten (10) working days before the scheduled start of the audit or a rescheduled audit.

(5)(a) If the petroleum storage tank owner or operator fails to maintain records as required by KRS 224.60-130(1)(k), the cabinet shall recover any monies reimbursed to the owner or operator for the cost of corrective action at the facility to which the missing documents relate.

(b) If an eligible company or partnership or subcontractor fails to maintain records as required by KRS 224.60-130(1)(k), the cabinet shall recover any monies paid to the entity pursuant to a contract or agreement to perform a corrective action service at that facility, for which costs have been reimbursed by the cabinet.

(6) If the audit by the cabinet finds an improper, irregular, or illegal use of any monies received directly or indirectly from the cabinet, or that the monies were obtained by fraud or misrepresentation, the cabinet shall report the results of the audit to the proper authorities for civil and criminal investigation.

(7)(a) Reimbursements to an owner or operator that fails to cooperate with an audit shall be subject to recovery by the cabinet.

(b) Failure by an entity, that contracts or subcontracts for corrective action services at a facility, to cooperate with an audit shall result in the recovery of funds paid by the cabinet for corrective action services at that facility.[16. Loss of Future Reimbursement Eligibility.

(1) A petroleum storage tank owner or operator shall be ineligible to receive future reimbursement from the Financial Responsibility Account or Petroleum Storage Tank Account if the petroleum storage tank owner or operator has:

(a) Knowingly or intentionally submitted false or inaccurate information to the cabinet; or

(b) Knowingly made a false statement, representation, or certification in an application, reimbursement request, or other document submitted to the cabinet.

(2) A cost incurred by, or paid from, the cabinet based on false or inaccurate information, or a false statement, representation, or certification shall be recovered by the cabinet from the person who asserted the false or inaccurate information, or false statement, representation, or certification.

(3) The cabinet shall have the right to recover the money paid to a petroleum storage tank owner or operator, or a contractor if:

(a) The amount was paid due to an error of the cabinet in processing a claim for reimbursement;

(b) The amount was paid due to a mistake, error, or inaccurate information in the claim submitted by the petroleum storage tank owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained reimbursement from the cabinet by fraud or intentional misrepresentation.

Section 17. Subrogation. Prior to making reimbursement of a claim, the cabinet shall require, by subrogation, the rights of the person seeking reimbursement or recover the amounts paid by the cabinet for the performance of corrective action from the person responsible or liable for the release.]

Section 18. Facility Inspections. The cabinet shall conduct inspections in accordance with KRS 224.60-130(1)(l) to determine the reasonableness and necessity of the costs of corrective action.

(1) The cabinet shall be authorized to enter and inspect a facility seeking reimbursement for the costs of corrective action.

(2) Refusal to allow a cabinet employee entry and inspection of a facility shall make the owner or operator ineligible for reimbursement. Money previously paid to the petroleum storage tank owner or operator of the facility shall be repaid to, or

recovered by, the cabinet.

(3)(a) The cabinet shall be present at the facility during all petroleum storage tank permanent closure activities, except as provided in paragraphs (d) and (e) of this subsection;

(b) A petroleum storage tank owner or operator shall contact the appropriate Field Operations Branch regional office, by certified mail, to schedule a date to have an inspector present at the facility during petroleum storage tank permanent closure activities. The certified mail notice shall be received a minimum of fourteen (14) calendar days prior to commencement of the permanent closure.

(c) If the inspector cannot be present at the facility on the day scheduled by the notice sent as required in paragraph (b) of this subsection, the inspector shall, by written notice, require the petroleum storage tank owner or operator to reschedule the permanent closure to a proposed date. This notice shall be mailed by the cabinet no later than ten (10) days prior to the date scheduled by the petroleum storage tank owner or operator.

(d) If the inspector fails to issue notice to reschedule the permanent closure, or is not present on the day set by the notice, the permanent closure may proceed without penalty.

(e) This subsection shall not apply to an emergency removal ordered by the cabinet.

(4)(a) A petroleum storage tank owner or operator shall:

1. Provide an inspector full access to an area or well for the collection of samples;

2. Split samples obtained at the facility with the cabinet, if required by the inspector;

3. Resample an area or well for which the result of analytical testing obtained by the cabinet differs significantly from the result obtained by the petroleum storage tank owner or operator; and

4. Have the burden of proving the validity of analytical results, if a discrepancy remains after resampling.

(b) The cabinet shall not reimburse the costs of resampling if proper sampling, sample handling, or analytical protocols were not adhered to by the contractor or certified laboratory.

(c) Failure to allow sample collection, or to split samples with the cabinet, shall render the owner or operator ineligible for reimbursement.

Section 19.] Account Balance. (1) The unobligated balance of the FRA[Financial Responsibility Account] shall not be less than \$1,000,000, [so as] to ensure a reserve balance adequate to comply with[meet] federal financial responsibility requirements for participants in the account.

(2)(a) If the unobligated balance of the FRA[Financial Responsibility Account] is \$1,000,000[or less], or the reimbursement of additional claims would cause the unobligated balance of the fund to be less than \$1,000,000, the cabinet shall immediately suspend claim reimbursements and the approval of applications until the unobligated balance is greater than \$1,000,000.

(b) If the suspension is lifted, the priority of reimbursement for claims submitted related to an approved application for assistance shall be determined by the date of the claim submittal.

(c) During the suspension, all written directives from the cabinet shall be issued in accordance with Section 21 of this administrative regulation.

Section 19. Eligible Companies and Partnerships. (1) To be eligible to contract with a petroleum storage tank owner or operator seeking reimbursement from the cabinet, a company or partnership shall:

(a) Employ or contract with a professional engineer or a professional geologist;

(b) Be authorized to conduct business in the Commonwealth of Kentucky and remain active, and in good standing, with the Kentucky Secretary of State;

(c) Hold, in good standing, all licenses, permits, training certifications, or other authority required to perform corrective action services, or otherwise conduct business, in Kentucky;

(d) 1. Maintain, at a minimum, general and professional liability insurance and pollution or property coverage in the amount of \$1,000,000; and

2. Add the cabinet as an additional interest on the policy to be notified, by the insurance company, if there is a lapse of insurance coverage;

(e) Be approved in writing by the cabinet as eligible to contract with a petroleum storage tank owner or operator seeking reimbursement from the cabinet to perform corrective action services;

(f) Submit the UST Application for a PSTeaf Eligible Companies or Partnerships, DWM 4284; and

(g) Sign an application or claim payment request in addition to the eligible owner or operator. The eligible company or partnership shall certify that:

1. The information provided in the claim is true and correct; and

2. Each claim payment cost is reasonable, necessary, and was performed in compliance with 401 KAR 42:060 and this administrative regulation.

(2) Application requirements for a company or partnership eligibility shall include submittal of:

(a) A completed UST Application for a PSTeaf Eligible Companies or Partnerships, DWM 4284;

(b) Verification of the employment or contracting of a professional engineer or a professional geologist; and

(c) A list of the names and address of officers and principals of the applicant.

(3) The cabinet shall inspect the records and business premises of the applicant if necessary to verify information in the application or to assist in the evaluation of the applicant's capabilities.

(4) The cabinet shall require additional information and documentation if necessary to verify information in the application.

(5) An application for eligible company or partnership status shall be denied if the applicant:

(a) Fails to provide the information required in the application or in this administrative regulation;

(b) Does not comply with the requirements of subsection (1) of this section;

(c) Fails to allow cabinet staff to access company records for audit purposes in accordance with Section 17 of this administrative regulation;

(d) Fails to provide additional information and documentation requested by the cabinet to verify that the requirements of this administrative regulation have been met;

(e) Provides false or misleading information in the application; or

(f) Fails to maintain general and professional liability insurance and pollution or property coverage.

(6) An applicant whose application for company or partnership eligibility is denied may appeal the determination, by requesting a reconsideration in accordance with Section 15 of this administrative regulation.

(7) The cabinet shall issue a letter of eligibility to a qualifying applicant.

(8) An amended application for a company or partnership shall be submitted if:

(a) The information in the UST Application for a PSTeaf Eligible Companies or Partnerships, DWM 4284, has changed; or

(b) Requested by the cabinet to submit an updated application upon the receipt of information indicating a change to application information.

(9) Eligibility and renewal procedures shall be established in this subsection of this section.

(a) The cabinet shall issue a letter of eligibility to each company or partnership that successfully complies with this administrative regulation.

(b) Eligibility shall be renewed two (2) years from the date of the letter of eligibility. The company or partnership shall be responsible for renewing eligibility prior to expiration.

(c) An application for eligibility renewal shall be submitted to the cabinet on the UST Application for a PSTeaf Eligible Companies or Partnerships, DWM 4284.

(d) The failure of the company or partnership, under contract with an owner or operator, to renew eligibility shall render

corrective action costs incurred after the expiration date ineligible for reimbursement.

(10) Revocation of eligibility procedures shall be as established in this subsection of this section.

(a) A letter of eligibility issued in accordance with this administrative regulation shall be revoked if the eligible company or partnership:

1. No longer complies with the eligibility requirements established in subsection (1) of this section;

2. Employs, or has a business relationship with, an employee or agent that knowingly submits materially false information or documentation, or a false payment request, to an owner, operator, or the cabinet;

3. Has a current officer, director, or principal of that company, that has been convicted of, or found liable for, civil or criminal fraud or an environmental crime;

4. Has failed to comply with the terms established in Section 17 of this administrative regulation; or

5. Obtained eligibility through fraud or misrepresentation.

(b) The cabinet shall issue a letter by certified mail notifying a noncompliant company or partnership that its eligibility has been revoked by action of the cabinet.

Section 20. Laboratory Certification. (1) Applicability and requirements for PSTEAF eligibility criteria for laboratory certification shall be as established in this section.

(a) Owners or operators seeking reimbursement from the PSTEAF for analytical testing shall utilize a laboratory certified in accordance with this section.

(b) This section shall apply to analytical testing performed on or after October 1, 1999.

(c) Owners or operators of a petroleum storage tank that fail to comply with this requirement shall not be reimbursed by the cabinet for costs related to analytical testing.

(2) Certification requirements for laboratory certification shall be as established in this subsection of this section.

(a) A laboratory shall demonstrate current accreditation by submitting documentation of certification by:

1. The American Association for Laboratory Accreditation; or

2. A state approved to accredit environmental laboratories, in accordance with National Environmental Laboratory Accreditation Program requirements and standards.

(b) A laboratory seeking certification from the cabinet shall submit a completed UST Application for Laboratory Certification, DWM 4283.

1. The application shall include proof of accreditation as established in subsection (2)(a) of this section.

2. The laboratory shall be capable of analyzing each of the parameters listed in Table 7 and Table 8 in the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, using at least one (1) of the acceptable methods listed in the tables, except for mobile laboratories.

(3) The cabinet shall reimburse a petroleum storage tank owner or operator for the cost of a laboratory analysis if the:

(a) Analysis is conducted in accordance with the established parameters and methods;

(b) Analysis is required by written directive by the cabinet and performed in accordance with 401 KAR Chapter 42; and

(c) Laboratory is certified by the cabinet to conduct that analysis.

(4) Requirements for maintaining laboratory certification shall be as established in this subsection of this section.

(a) A certified laboratory shall maintain accreditation by the American Association for Laboratory Accreditation or the National Environmental Laboratory Accreditation Program for the duration of certification.

(b) If a certified laboratory's accreditation, in accordance with subsection (1) of this section, is renewed, or otherwise changes in status, the certified laboratory shall submit updated documentation of the accreditation status to the cabinet within thirty (30) days.

(c) 1. A laboratory holding valid certification from the UST Branch issued prior to October 6, 2011 shall not be required to submit a new UST Application for Laboratory Certification, DWM

4283.

2. In order to maintain certification status, the certified laboratory shall comply with this subsection of this section.

(d) If a certified laboratory fails to maintain certification in accordance with this subsection of this subsection, the laboratory shall be required to submit a UST Application for Laboratory Certification, DWM 4283, in accordance with subsection (2) of this section.

(5)(a) The cabinet shall revoke a certification if the applicant:

1. Obtains the certification through fraud or misrepresentation; or

2. Knowingly or intentionally submits materially false information to owners, operators, contractors, or the cabinet.

(b) The cabinet shall, within ten (10) days of a revocation determination, notify the laboratory, in writing, of the revocation of certification.

Section 21. Facility Ranking System. (1) Upon a determination of insufficient PSTEAF funding to initiate corrective action at facilities, facilities shall be ranked according to the extent of damage to the environment, the potential threat to human health, and the financial ability of the petroleum storage tank owner or operator to perform corrective action, in order to prioritize the completion of corrective action and the subsequent reimbursement of eligible costs.

(2) Actions directed and documented by the Environmental Response Team, upon the cabinet's declaration of an environmental emergency, shall take priority over the ranking system in this administrative regulation. Once the Environmental Response Team terminates the emergency phase, subsequent actions at the facility shall be prioritized in accordance with this administrative regulation.

(3) Actions performed by, or on behalf of, the cabinet in accordance with KRS 224.60-135(2) shall not be subject to the ranking system.

(4) Facilities performing site checks or initial abatement, at the written direction of the cabinet in accordance with the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, shall not be subject to the ranking system.

(5) Those facilities for which the owner or operator has verified, through submittal of a notarized UST Affidavit of Waiver for PSTEAF Reimbursement, DWM 4281, that reimbursement from the PSTEAF will not be sought shall not be subject to the ranking system.

(6)(a) Facilities eligible to participate in the FRA and the PSTA shall be ranked for purposes of addressing the completion of corrective action.

1. Facilities with releases for which the cabinet has not issued a No Further Action Letter shall be a Rank 1, if:

a. Contamination is confirmed within domestic-use wells, domestic-use springs, or domestic-use cisterns exceeding the maximum contaminant levels established in 401 KAR Chapter 8; or

b. "Vapor intrusion", as defined by 401 KAR 42:005, is confirmed in occupied residential or commercial buildings.

2. All other facilities with releases for which the cabinet has not issued a No Further Action Letter shall be a Rank 2.

(b) Facilities shall be further categorized within their respective Rank based on the financial ability of the owner or operator.

1. Facilities shall be placed in Category 1 within their respective rank if:

a. The owner's or operator's average total income for the last five (5) years is less than or equal to \$100,000; or

b. The owner or operator is registered and recognized by the federal government as a tax-exempt nonprofit organization.

2. Facilities shall be placed in Category 2 within their respective rank if the owner's or operator's average total income for the last five (5) years is more than \$100,000.

3. The cabinet shall utilize the information provided in an owner's or operator's application for assistance for PSTEAF, for purposes of determining financial ability to perform corrective action.

(c) The cabinet shall be provided access to a facility for the purpose of verifying classification. Refusal by an owner or operator

to allow access requested by the cabinet shall render the facility ineligible for reimbursement from the cabinet.

(d) If the cabinet receives misrepresentations, or otherwise inaccurate information, or receives new information related to specific facilities, it shall amend facility rankings and categories in accordance with this subsection of this section.

(e) Issuance of written directives shall be prioritized for facilities within the FRA and the PSTA, respectively, according to rank and category, in the following order:

1. Rank 1, Category 1;
2. Rank 1, Category 2;
3. Rank 2, Category 1; and
4. Rank 2, Category 2.

(f) The cabinet shall consider the current legislatively enacted budget and available funding in making the allocations established in subsection (1) of this section.

(g) The cabinet shall notify an owner or operator of the decision to suspend written directives for rankings within either the PSTA or the FRA, upon a determination of insufficient PSTEAF funding to initiate corrective action in all rankings.

Section 22. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in a written directive.

(2) The extension request shall be received by the UST Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if an extension would be equitable, does not impact the PSTEAF's financial viability, and would not have a detrimental impact on human health or the environment.

(4) The cabinet shall not grant an extension for any requirements established in Sections 12 or 15 of this administrative regulation.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "UST Affidavit of Termination of PSTEAF Contract", DWM 4280, August 2018 [Application for Assistance", DEP 6063, November 2016];

(b) "UST Affidavit of Waiver for PSTEAF Reimbursement", DWM 4281, August 2018 [Affidavit of Termination of Contract", DEP 6061, November 2016];

(c) "UST Application for Assistance for PSTEAF", DWM 4282, August 2018; ["Reimbursable Amount Re-Evaluation", DEP 6062, November 2016];

(d) "UST Application for Laboratory Certification", DWM 4283, August 2018 ["Claim Request for Actions Not Directed by the USTB", DEP 6064, November 2016];

(e) "UST Application for a PSTEAF Eligible Companies or Partnerships", DWM 4284, August 2018 ["Miscellaneous Task Reimbursement Worksheet", DEP 6093, November 2016];

(f) "UST Claim Request for Actions Not Directed", DWM 4285, August 2018 ["Facility Restoration Reimbursement Worksheet", DEP 6095, November 2016];

(g) "UST Claim Request for Directed Actions", DWM 4286, August 2018 ["Optional Soil Removal Outside the Excavation Zone Reimbursement Worksheet", DEP 6094, November 2016];

(h) "UST Miscellaneous Tasks Reimbursement Worksheet", DWM 4287, August 2018 ["Payment Verification Affidavit", DEP 6075, November 2016];

(i) "UST Optional Soil Removal at Permanent Closure Reimbursement Worksheet", DWM 4288, August 2018 ["Payment Waiver", DEP 6077, November 2016];

(j) "UST Payment Waiver", DWM 4289, August 2018 ["Cost Es

(k) "UST Reconsideration Request", DWM 4290, August 2018; ["Underground Storage Tank Branch Written Directive Claim Request", DEP 6091, November 2016; and]

(l) "UST Re-Evaluation of a Reimbursable Amount", DWM 4291, August 2018; and

(m) "UST Third-Party Claim", DWM 4292, August 2018;

(n) "UST PSTEAF Reimbursement Rates", August 2018 ["Contractor Cost Outline", November 2016].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at the Division of Waste Management's Web site at <http://waste.ky.gov/ust>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 10, 2018

FILED WITH LRC: October 11, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2018, at 6:00 p.m., at 300 Sower Blvd., 1st Floor, Training Room B. 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 November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather Alexander, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone: (502) 782-6303, fax: (502) 564-4245, email heather.alexander@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures to administer the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF), payment for third-party claims, financial audits, eligible company and partnership certification, laboratory certification, and facility ranking.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures to administer the PSTEAF, payment for third-party claims, financial audits, eligible company and partnership certification, laboratory certification, and facility ranking.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.60-130(1)(a) through (e) requires the establishment of the procedures to administer the (PSTEAF). KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.60-120(6) requires the cabinet to establish administrative regulations to implement the requirements for financial responsibility of petroleum storage tank owners or operators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures to administer PSTEAF as required by KRS 224.60-130(1)(a) through (e) and implements the requirements for financial responsibility of petroleum storage tank owners or operators as required by KRS 224.60-120(6).

(2) If 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 this existing administrative regulation by establishing the procedures to administer the PSTEAF, payment for third-party claims, financial audits, eligible company and partnership certification, laboratory certification, and facility ranking rather than only establishing the procedures to administer the PSTEAF as it was previously established to do. This is a part of consolidating and streamlining the number of regulations for the underground storage tank program. In addition, this amendment will adopt the federal mandate for financial responsibility of owners and operators of a petroleum UST system. Facility inspection requirements were removed from the regulation. Removed the Certificate of Registration and Reimbursement Eligibility (CORRE)

requirement to be eligible for the Financial Responsibility Account (FRA). Allow owners and operators to become eligible for the Petroleum Storage Tank Account (PSTA) if they do not comply with the requirements of the FRA. Amended the entry level requirement for initial response actions (\$1,000), optional soil removal at the time of permanent closure, and disposal of contaminated soil and groundwater during permanent closure. Allow a state-owned facility to apply and become eligible for reimbursement for corrective action. Allow for an adjustment to a reimbursable amount for directed work that is not completed due to reasons beyond the control of the applicant or the eligible company or partnership. Clarified that the UST Branch has final authority to determine all reimbursable actions. The cost of the surface material is limited to the cost to replace the material damaged, not the actual area damaged. Facility restoration will be directed in writing with a reimbursable amount prior to the work being performed. Clarified if eligible companies and partnerships will receive a fifteen (15) percent markup for subcontractors and materials. Amended to add that costs incurred prior to a written directive are ineligible for reimbursement. Mobilization for an eligible company is limited to a 1,000-mile round trip. Amended ineligible costs to include laboratory costs if a certified laboratory fails to maintain eligibility, costs incurred due to a significant delay in implementation or corrective action, and costs incurred after an eligible company fails to maintain eligibility. Removed hearings from the regulation. Professional Engineers or Professional Geologists are no longer required to sign the claim form. Amended to clarify all written directives will be issued in accordance with the ranking system if PSTEAF reimbursements are suspended. Eligible companies and partnerships shall: be active and in good standing with the Secretary of State; add the cabinet to be notified by the insurance company, if there is a lapse of insurance coverage; and maintain eligibility requirements or receive revocation for failure to maintain eligibility requirements. Allow for reimbursement for field instruments that are not certified by the American Association for Laboratory Accreditation or the National Environmental Laboratory Accreditation Program. Require laboratories to be capable of analyzing for all of the constituents listed in the analytical requirements for soil samples, pit water, and groundwater samples (Tables 7 and 8) in the UST Corrective Action Manual in order to be certified. Redevelop the ranking system to simplify the overall ranking process for the payment to applicants seeking reimbursement of two (2) environmental ranks and two (2) financial categories. Amended to allow for extension requests for a deadline established by the cabinet, except for third-party claims and reconsiderations. Amended the UST PSTEAF Reimbursement Rates to include additional formulated task rates for tasks not previously included and a cost of living increase on existing rates.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish procedures to administer the PSTEAF and to implement the requirements for financial responsibility of petroleum storage tank owners or operators.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.60-130(1)(a) through (e) requires the establishment of the procedures to administer the PSTEAF. KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.60-120(6) requires the cabinet to establish administrative regulations to implement the requirements for financial responsibility of petroleum storage tank owners or operators.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes procedures to administer the PSTEAF as required by KRS 224.60-130(1)(a) through (e), and implements the requirements for financial responsibility of petroleum storage tank owners or operators as required by KRS 224.60-120(6).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and operators of underground storage tank eligible companies that contract with those owners or operators, certified laboratories that process samples collected at underground

storage tank facilities, and certified tank installers/removers. There are 3,216 underground storage tank facilities, 58 eligible companies that contract with those owners or operators, 37 certified laboratories that process samples collected at underground storage tank facilities, and 228 certified tank installers/removers.

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

(a) List 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 have to submit the new forms incorporated in this amendment for reimbursement, contract execution changes, etc. Owners and operators of petroleum storage tanks, eligible companies and partnerships, and certified laboratories will have to comply with the eligibility requirements of this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not have a cost for the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3): Corrective action from the release of an underground storage tank would be reimbursed up to \$1 Million. The benefits to owners and operators include compliance with both the federal and state regulations.

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

(a) Initially: There is no cost associated with implementing this amendment.

(b) On a continuing basis: There is no cost associated with implementing this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of tank fees, the PSTEAF, and grants from the U.S. Environmental Protection Agency.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees directly, but does establish an entry level for owner or operators that are reimbursed from PSTEAF.

(9) TIERING: Is tiering applied? Tiering is applied. The entry level for petroleum storage tank owners is based on the number of tanks owned.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact state or local governments that own or operate an underground storage tank facility as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(28), 224.60-120(6), 224.60-130(1)(a) through (e), and 40 C.F.R. 280, Subpart H.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not affect the expenditures and revenues of a state or local government agency as the underground storage tank program is already in effect.

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional revenue for state or local government as the underground storage tank program is already in effect. Currently the division receives \$287,700 in tank fees and \$24.2 Million PSTeAF annually, and \$1,925,333 Leaking Underground Storage Tank (LUST) Prevention and LUST Cleanup biennially in federal grants to administer the underground storage tank program.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue for state or local government as the underground storage tank program is already in effect. However, the division expects to receive \$287,700 in tank fees and \$24.2 Million PSTeAF annually, and \$1,925,333 LUST Prevention and LUST Cleanup biennially in federal grants to administer the underground storage tank program for subsequent years.

(c) How much will it cost to administer this program for the first year? The underground storage tank program is already in effect and costs \$25.5 Million to administer as a whole, including reimbursement to owners and operators for eligible corrective action costs.

(d) How much will it cost to administer this program for subsequent years? \$25.5 Million, as a whole, including reimbursement to owners and operators for eligible corrective action costs.

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

Revenues (+/-): \$1,925,333(biennially) in federal grant funding (LUST Prevention and LUST Cleanup), \$287,700 tank fees, \$24.2 Million PSTeAF.

Expenditures (+/-): \$24.4 Million, as a whole.

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 280, Subpart H.

2. State compliance standards. KRS 224.60-130(1)(a) through (e), 224.60-120(6).

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 280, Subpart H.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation imposes additional or different requirements than those required by the federal rule. The state administered PSTeAF may be used to satisfy financial responsibility required by the federal regulation. Entities will have to comply with the procedures of this administrative regulation as they relate to reimbursement, third-party claims, financial audits, eligible companies and partnerships, and laboratory certification as required by KRS 224.60-120, 224.60-130, 224.60-135, 224.60-140, and 224.60-150.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The differences in this administrative regulation are statutory requirements.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 42:330. Small Owners Tank Removal Account.

RELATES TO: KRS 224.60-105, 224.60-130(1)(a), (b), (j), 224.60-140, 224.60-150, 40 C.F.R. 280 Subpart[Part] H

STATUTORY AUTHORITY: KRS 224.60-130(1)(j)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-

130(1)(j) requires the establishment of an account to reimburse small owners for the reasonable cost of permanent closure, and authorizes the cabinet to promulgate administrative regulations to establish this account. This administrative regulation establishes the eligibility requirements and rates for reimbursement from the Small Owners Tank Removal Account (SOTRA).

Section 1. Eligibility. (1) To demonstrate eligibility, an owner shall submit a completed UST[SOTRA] Application for Assistance for SOTRA, DWM 4293[, DEP 6067]. An owner shall be eligible for reimbursement from this account if:

(a) The petroleum storage tank owner complies with/meets the financial eligibility criteria of \$100,000 total income, or less, averaged over the last five (5) years as documented by:

1. The applicant's signed federal income tax returns for the last five (5) years, with the exception of Non-Profit Public Service Corporations, eligible governmental bodies, and all other Non-Profit entities, which shall provide tax exemption documentation and budgets for the last five (5) years; or

2. If the applicant is not required to file federal income tax returns, the applicant shall submit in lieu of federal income tax returns:

a. Budget and tax exemption documentation; or

b. Other financial statements sufficient to document income;

(b) The tanks are located at/on a facility that is or was involved in the storage[retail sale or wholesale distribution] of motor fuel;

(c) The tanks are registered with the Division of Waste Management by the owner[applicant] seeking reimbursement from SOTRA[the Small Owners Tank Removal Account (SOTRA)] pursuant to KRS 224.60-105 and 401 KAR 42:020;

(d) The owner certifies that:

1. Permanently closed tanks shall not be replaced or upgraded[The retail sale or wholesale distribution of motor fuel at the facility from a UST system or systems permanently cease upon permanent closure of the tanks]; and

2. All known tanks at the facility shall be permanently closed[are being removed or closed in place]; and

(e) The owner has owned the tanks for more than one (1) year prior to the date of the application for reimbursement from this account.

(2) A newly discovered underground storage tank (UST) system shall not affect the eligibility of an owner[otherwise eligible in accordance with subsection (1) of this section].

(3) A tank shall not need to be in use[operation] prior to its permanent closure[removal].

(4) An owner shall submit to the cabinet a UST Notice of Intent to Permanently Close Underground Storage Tank System, DWM 4266, incorporated by reference in 401 KAR 42:060[A written notice shall be submitted to the applicable regional office at least fourteen (14) calendar days prior to commencement of the permanent closure of the petroleum storage tank to maintain eligibility for reimbursement].

(5) Federally-owned[Federal and state-owned] facilities shall not be eligible for reimbursement from SOTRA in accordance with KRS 224.60-115(16)[the Small Owners Tank Removal Account].

Section 2. Account Use. (1) Funds in this account shall be used to reimburse eligible petroleum storage tank owners for those reasonable and necessary costs incurred through performance of permanent closure in accordance with[actions required in] 401 KAR 42:060[42:070].

(2) The use of this account shall be limited as established[specified] in KRS 224.60-130(1)(j).

(3)(a) The owner of a facility shall be eligible for reimbursement of the cost of permanent closure, but shall not be eligible for payment of corrective action cost from this account.

(b) If corrective action is required, eligible reimbursement shall be made in accordance with[governed by] 401 KAR 42:250.

(4)(a) If expenditures from this account exceed \$3,000,000 during a[any] fiscal year, the cabinet shall suspend further reimbursements for that fiscal year[from this account]. The suspension shall be in effect until the cabinet determines that further reimbursements from this account will not threaten the

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solvency of the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF).

(b) This determination shall be based upon legislatively enacted budgets and associated appropriations.

(5) The owner shall have one (1) year from the application approval date to perform permanent closure in accordance with 401 KAR 42:060.

Section 3. Application Procedure. (1) The owner shall file a completed UST[SOTRA] Application for Assistance for SOTRA, DWM 4293,[DEP-6067] for participation in this account at least forty-five (45) days prior to the permanent closure of the petroleum storage tank. The owner shall also provide[the following information]:

(a) Verification of income through the submittal of:

1. Copies of the applicant's signed federal income tax returns for the last five (5) years, with the exception of Non-Profit Public Service Corporations, eligible governmental bodies, and all other Non-Profit entities, which shall provide tax exemption documentation and budgets for the last five (5) years; or

2. If the applicant is not required by federal law to file federal income tax returns, the applicant shall submit in lieu of federal income tax returns:

a. Budget and tax exemption documentation; or

b. Other financial statements sufficient to document income;

(b) A copy of the contract between the owner and the primary contractor;

(c) A facility map identifying approximate property boundaries, placement of petroleum storage tank pits, location of other relevant facility features including buildings, canopies, driveways, piping, dispenser islands, paved areas, and the proposed extent of areas to be excavated[evacuated] in the performance of permanent closure, including dimensions;

(d) Color photographs of the facility and the areas to be impacted by the permanent closure; and

(e) A copy of a deed or other documentation indicating ownership of the tanks, if the tanks have not been registered in the applicant's name[~~in accordance with 401 KAR 42:020;~~] with the Division of Waste Management for twelve (12) months prior to the SOTRA application being submitted.

(2)[The owner shall retain a copy of the SOTRA Application for their records.

(3)]

(a) In response to the application submitted, the UST Branch[cabinet] shall issue a letter setting forth the owner's eligibility status and, if eligible, establishing a reimbursable amount in accordance with Section 4 of this administrative regulation[the availability of funding for the closure of the petroleum storage tank].

(b) Permanent closure of the tank system shall not begin until the UST Branch[cabinet] has approved the application and established the reimbursable amount. Failure to comply with this requirement shall result in denial of the reimbursement.

Section 4. Permanent Closure Costs. (1) Costs for the permanent closure and facility restoration shall be established in the UST PSTEAF Reimbursement Rates, incorporated by reference in 401 KAR 42:250. The reimbursable amount, issued in a written approval by the UST Branch, shall be based on[The rates established for permanent closure costs in this section shall apply to a SOTRA Application for Assistance approved after October 6, 2011. (1)(a) Reimbursement from this account shall be determined from the lesser of two (2) dollars and sixty (60) cents per gallon of tank capacity or the following matrix table]:

(a) The formulated task rates established in Section 2.0 of the UST PSTEAF Reimbursement Rates, incorporated by reference in 401 KAR 42:250; and

(b) For a specific task that does not have a formulated task rate in the UST PSTEAF Reimbursement Rates, incorporated by reference in 401 KAR 42:250, a cost estimate submitted by the owner. The cost estimate shall include:

1. A cost itemization to complete the individual task using those personnel and equipment rates established in Section 5.0 of the UST PSTEAF Reimbursement Rates, incorporated by

reference in 401 KAR 42:250, applicable to individual components of the task;

2. Three (3) competitive bids from suppliers or manufacturers of corrective action equipment for individual equipment purchase or rental, exceeding \$3,000, if applicable, containing a description of the equipment to be purchased or rented provided by the supplier or manufacturer for new equipment purchased; and

3. An estimate for materials to be purchased, if applicable.

(2) The reimbursable amount for Facility Restoration that has not been directed by the UST Branch shall be established by the submittal of an obligation request to the cabinet, with the information required by Section 5.9.2 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, for the completion of facility restoration actions.

(a) Upon an obligation request approval, a written approval of an obligation and guarantee of payment shall be issued in writing by the UST Branch in accordance with KRS 224.60-140(5).

(b) Reimbursement for facility restoration activities shall be made in accordance with Section 5 of this administrative regulation.

(3) The UST Branch shall establish the reimbursable amount in accordance with subsection (1) of this section. The cabinet shall attach to the written approval:

(a) An itemization of the reimbursable amount; and

(b) The UST Claim Request for Directed Actions, DWM 4286, incorporated by reference in 401 KAR 42:250.

(4) The issuance of a written approval by the UST Branch shall, subject to the provisions of Section 5 of this administrative regulation, constitute an obligation and guarantee of payment of the reimbursable amount identified within a written approval, in accordance with KRS 224.60-140(5).

(5) The reimbursable amount established by the UST Branch shall be adjusted to:

(a) Include the formulated task rates for mobilization, per diem, and field equipment; and

(b) Deduct those actions approved but that could not reasonably be completed for reasons beyond the control of the applicant eligible company or partnership.

(6) Optional soil removal outside of the excavation zone in accordance with Section 4.15 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, shall be reimbursable:

(a) If a no further action letter has been issued for the subject facility upon completion of permanent closure activities, without additional corrective action activities being performed; or

(b) In accordance with 401 KAR 42:050, if additional corrective action is necessary.

(7) Facility restoration activities shall be reimbursable:

(a) If a no further action letter has been issued for the subject facility upon completion of permanent closure activities in accordance with KAR 42:060, without additional corrective action activities being performed; and

(b) In accordance with 401 KAR 42:250, if additional corrective action is necessary.

Number of Tanks in Pit	Size of Largest Tank in Pit (gallons)			
	Less than 3,100	3,101 to 5,401	5,401 to 10,000	Greater than 10,000
1	\$3,900	\$4,420	\$6,370	\$7,020
2	\$6,370	\$7,150	\$9,620	\$11,180
3	\$8,320	\$9,750	\$12,610	\$15,340
4	\$10,270	\$11,700	\$15,340	\$18,200
5	\$12,220	\$13,650	\$17,940	\$21,970
Each Extra	\$1,950	\$1,950	\$2,340	\$2,860

(b) In addition to the cost listed in subsection (1)(a) of this section, the cabinet shall reimburse a one (1) time amount of \$2,095, for the preparation and submission of a Closure Assessment Report, incorporated by reference in 401 KAR 42:070.

1. This shall include the cost of preparing a classification guide.

2. The cabinet shall also reimburse a one (1) time amount of \$500 for the mobilization and demobilization of equipment.

(c) If more than one (1) tank pit is located on a facility, the reimbursement shall be calculated by adding the matrix table cost for each pit, in addition to the costs allowed in subsection (3) of this

section.

(2) The following items shall be included in the cost listed in subsection (1)(a) of this section:

- (a) Tank system removal, cleaning, and disposal or closure-in-place requirements;
- (b) Permanent closure of thirty-five (35) feet of associated piping outside of the tank pit;
- (c) Removal of the pump island and canopy;
- (d) Drumming of cleaning material;
- (e) Backfilling to return the excavation to grade less the reimbursable volume of contaminated backfill disposed or treated at a permitted facility and replaced in accordance with subsection (3) of this section;
- (f) Concrete or asphalt surface removal;
- (g) Equipment and material necessary for the permanent closure;
- (h) Preparation of a permit if required for permanent closure or testing of a tank system;
- (i) Excavation and loading of material;
- (j) Collection of samples, including domestic-use wells, domestic-use springs, and domestic-use cisterns within a 100-meter radius of the UST system; and
- (k) Labor charges relating to paragraphs (a) through (j) of this subsection.

(3) The costs of the following items shall be allowed, if necessary, in addition to the cost established in subsection (1)(a) of this section upon the submittal of a claim in accordance with Section 5 of this administrative regulation:

- (a) Facility restoration. Facility restoration activities shall only be reimbursable under this account if a No Further Action Letter has been issued for the subject facility upon completion of permanent closure activities in accordance with 401 KAR 42:070, without corrective action activities being performed outside of the excavation zone. A cost estimate shall be submitted, through the completion of Section 12 of the SOTRA Reimbursement Worksheet, DEP 0064, and shall be approved by the Underground Storage Tank Branch, in writing, prior to incurring costs. Additional costs related to the repair of subsidence resulting from improper placement of fill material shall not be reimbursable;
- (b) Transportation, disposal, or treatment, and replacement of backfill contaminated above the applicable screening levels established in 401 KAR 42:080;
- (c) Disposal of asphalt surface material;
- (d) Installation of up to four (4) soil borings in accordance with Section 4.4 of the Closure Outline, incorporated by reference in 401 KAR 42:070;
- (e) Transportation and disposal, treatment, or recycling of tank contents or waste;
- (f) Removal, transportation, and disposal or treatment of water from within the excavation zone in accordance with Section 4.1 of the Closure Outline, contaminated above the applicable screening levels established in 401 KAR 42:080;
- (g) Laboratory analysis, as required in accordance with the Closure Outline, incorporated by reference in 401 KAR 42:070, with the exception of laboratory analysis of samples collected in accordance with Section 6 of the Closure Outline; and
- (h) Grain size analysis for facilities accurately classified as Class B in accordance with the Classification Outline, incorporated by reference in 401 KAR 42:080.

(4) Optional soil removal outside of the excavation zone in accordance with Section 6 of the Closure Outline, incorporated by reference in 401 KAR 42:070 shall be reimbursed in accordance with 401 KAR 42:250.

(5) Facility restoration for corrective action activities performed outside of the excavation zone shall be reimbursed in accordance with 401 KAR 42:250.]

Section 5. Claims. (1) Eligible reimbursement for permanent closure costs associated with a SOTRA Application for Assistance approved prior to April 5, 2019 [October 6, 2014] shall be made in accordance with the requirements [administrative regulations] in effect at the time the SOTRA Application for Assistance was approved.

(2) To receive reimbursement, an owner shall submit a completed UST Claim Request for Directed Actions, DWM 4286, incorporated by reference in 401 KAR 42:250[(1)(a) To receive reimbursement, an owner shall submit a completed SOTRA Claim Request, DEP 6068; and

(b) The owner shall retain a copy of the form for his or her records].

(3)[(2)(a)] In addition to the completed claim form, the owner shall submit supporting documentation of actual cost, including invoices, and weigh tickets[the required SOTRA Reimbursement Worksheet, DEP 0064].

(4)[(b) Documentation of actual cost, including invoices and weigh tickets, shall be attached to the worksheet.

(3) The UST Branch [cabinet] shall review a claim request for [the following]:

- (a) The number and size of tanks removed; and
- (b) Verification of eligible costs.

(5)[(4)] To receive reimbursement, an owner shall have paid all annual tank fees as required by KRS 224.60-150.

(6)[(5)] The cabinet may request additional supporting documentation to verify the reasonableness or necessity of a cost.

(7)[(6)] If a claim is [determined to be] deficient [by the Underground Storage Tank Branch], a written correspondence [deficiency letter], stating [outlining] the deficiencies, shall be issued to the applicant. Failure by the applicant to provide the requested information and documentation within thirty (30) days of receipt of the request shall cause the claim to be denied.

(8)[(7)] Reimbursement shall be contingent upon a determination by the cabinet that the report required has been deemed technically [is] complete and complies with [meets] the requirements of 401 KAR 42:060 [Chapter 42].

(9)[(8)(a)] An entry level shall not be assessed for eligible reimbursement in accordance with this administrative regulation.

(b) An entry level shall be assessed upon confirmation of a release, constituting an occurrence, that requires corrective action for which the applicant is seeking reimbursement through the Financial Responsibility Account or Petroleum Storage Tank Account in accordance with 401 KAR 42:250.

(10) An applicant may request a reconsideration of a denial of a claim request, or portion thereof, and the cabinet shall review the request, in accordance with the procedures established in 401 KAR 42:250, Section 15.

(11)[(9)] All claims shall be submitted within two (2) years after issuance of a No Further Action letter by the UST [Underground Storage Tank] Branch in accordance with KRS 224.60-130(1)(n).

Section 6. Extensions. (1) The owner [or operator] of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in a written directive [writing pursuant to this administrative regulation].

(2) The extension request shall be submitted in writing and received by the UST [Underground Storage Tank] Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet may [shall] grant an extension, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

Section 7. Incorporation by Reference. (1) "UST Application for Assistance for SOTRA", DWM 4293, August 2018 [The following material] is incorporated by reference:]

- (a) "SOTRA Application for Assistance", DEP 6067, November 2016;
- (b) "SOTRA Claim Request", DEP 6068, November 2016; and
- (c) "SOTRA Reimbursement Worksheet", DEP 0064, August 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the Division of Waste Management's Web site at <http://waste.ky.gov/ust>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 10, 2018

FILED WITH LRC: October 11, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2018, at 6:00 p.m., at 300 Sower Blvd., 1st Floor, Training Room B. 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 November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather Alexander, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone: (502) 782-6303, fax: (502) 564-4245, email heather.alexander@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility requirements and rates for reimbursement from the Small Owners Tank Removal Account (SOTRA).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to institute the eligibility requirement and rates for reimbursement from SOTRA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.60-130(1)(j) requires the establishment of an account to reimburse small owners for the reasonable cost of permanent closure, and authorizes the cabinet to promulgate administrative regulations to establish this account. This administrative regulation establishes the eligibility requirements and rates for reimbursement from the Small Owners Tank Removal Account (SOTRA).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in administration of the statutes and the underground storage tank (UST) program, implemented by the provisions of KRS 224.60-130(1)(j) by establishing SOTRA to reimburse reasonable costs of a petroleum storage tank removal for small owners.

(2) If 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 part of consolidating and streamlining the number of regulations for the UST program by the Governor's Red Tape Initiative. The SOTRA eligibility requirements were amended to allow an applicant to submit other financial records to demonstrate eligibility, and clarified to include facilities associated with tanks dispensing motor fuel. Clarified that applicants are to submit the UST Notice of Intent to Permanently Close Underground Storage Tank System form to notify the cabinet of a permanent closure. Allow state-owned facilities to apply and be eligible for SOTRA reimbursement. Amended to allow an owner of a facility one (1) year from the application approval date to perform permanent closure under the SOTRA program. Removed the requirement that the owner retain a copy of the application and claims for their records. Removed the status of the availability of funding to be placed in the approval letter. Streamlined the SOTRA process by directing all actions for SOTRA, including facility restoration, which will include establishing a reimbursable amount. Permanent closure and associated costs have been established as formulated task rates. In addition, the regulation was amended to require invoices and weight tickets be submitted with claims. Two (2) forms have been eliminated from this regulation.

(b) The necessity of the amendment to this administrative

regulation: The necessity of the amendment to this regulation is to establish eligibility requirements and rates for reimbursement from SOTRA.

(c) How the amendment conforms to the content of the authorizing statutes: How the amendment conforms to the content of the authorizing statutes: KRS 224.60-130(1)(j) requires the establishment of an account to reimburse small owners for the reasonable cost of permanent closure, and authorizes the cabinet to promulgate administrative regulations to establish this account. This administrative regulation establishes the eligibility requirements and rates for reimbursement from SOTRA.

(d) How the amendment will assist in the effective administration of the statutes: KRS 224.60-130(1)(j) requires the establishment of an account to reimburse small owners for the reasonable cost of permanent closure, and authorizes the cabinet to promulgate administrative regulations to establish this account. This administrative regulation establishes the eligibility requirements and rates for reimbursement from the SOTRA. This amendment is part of the consolidation and streamlining of administrative regulations implementing the underground storage tank program as a part of the Governor's Red Tape Initiative.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and operators of underground storage tank facilities. There are 3,216 UST facilities that are potentially eligible for SOTRA. The SOTRA program is voluntary; therefore the number of entities is dependent upon the level of participation by these entities. The type of entities affected would include individuals, businesses, organizations, state, and local governments that are small owners of USTs. There are approximately thirty (30) SOTRA applications submitted per year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will not have to take any actions as it is a voluntary program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not cost entities identified in question (3) any funds as it is a voluntary program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question:

Benefits for entities in compliance with SOTRA will include reimbursement for expenses incurred during permanent tank closure.

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

(a) Initially: There is no cost associated with implementing this amendment.

(b) On a continuing basis: There is no cost associated with implementing this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of tank fees, the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF), and grants from the U.S. Environmental Protection Agency.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation applies to all entities that are small owners of USTs, including individuals, businesses, organizations,

state and local governments.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact state or local governments that own or operate an underground storage tank (UST) facility as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.60-130(1)(j).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not affect the expenditures and revenues of a state or local government agency as the UST program is already in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional revenue for state or local government as the UST program is already in effect. Currently the division receives \$287,700 in tank fees and \$24.2 Million Petroleum Storage Tank Environmental Assurance Fund (PSTEAF) annually, and \$1,925,333 Leaking Underground Storage Tank (LUST) Prevention and LUST Cleanup biennially in federal grants to administer the UST program.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue for state or local government as the underground storage tank program is already in effect. However, the division expects to receive \$287,700 in tank fees, \$24.2 Million PSTEAF annually, and \$1,925,333 LUST Prevention and LUST Cleanup biennially in federal grants to administer the UST program for subsequent years.

(c) How much will it cost to administer this program for the first year? The underground storage tank program is already in effect and costs \$25.5 Million to administer as a whole, including reimbursement to owners and operators for eligible corrective action costs and the reimbursement of tank removals under SOTRA.

(d) How much will it cost to administer this program for subsequent years? \$25.5 Million, as a whole, including reimbursement to owners and operators for eligible corrective action costs and reimbursement of tank removals under SOTRA.

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

Revenues (+/-): \$1,925,333(biennially) in federal grant funding (LUST Prevention and LUST Cleanup), \$287,700 tank fees, \$24.2 Million PSTEAF.

Expenditures (+/-): \$24.4 Million, as a whole.

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
(Amendment)

500 KAR 2:030. Special law enforcement officers:
evaluation examination.

RELATES TO: KRS 61.906

STATUTORY AUTHORITY: KRS Chapter 13A, 15A.160, 61.904

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.906 authorizes the Secretary of Justice or the Secretary's designee to issue a commission to a person who has successfully completed a written, oral and practical examination, approved by the council, dealing comprehensively with certain prescribed subject areas and

demonstrates knowledge and proficiency in firearms safety, range firing and first aid. This administrative regulation prescribes requirements for applying for an evaluation examination and the contents and requirements for such examinations.

Section 1. Application. A person who desires to receive a commission as a special law enforcement officer may file an application for an evaluation examination and waiver of training requirements with the Secretary of Justice or the Secretary's designee. The application is made a part hereof by reference.

Section 2. Evaluation Examination. (1) After the Secretary of Justice or the Secretary's designee has received an application for an evaluation examination and waiver and upon a determination that statutory requirements have been met, the secretary may recommend a candidate for training.

(2) When the Secretary of Justice or the Secretary's designee recommends a candidate for an evaluation examination the Department of Criminal Justice Training shall administer the examination as soon as is reasonably convenient upon written notice to the applicant.

(3) The evaluation examination shall test the knowledge and ability of the applicant in six (6) areas. The areas are:

- (a) Introduction to law enforcement;
- (b) Law enforcement procedures;
- (c) Physical security and safety;
- (d) Firearms academics;
- (e) Firearms practical and;
- (f) First aid and CPR.

The first four (4) areas are to be tested by written testing procedures. The fifth area is to be a practical firearms proficiency test to be given on a pistol range. That test will consist of eighteen (18) rounds, fired in three (3) sets, from the "weaver stance" at the seven (7) yard line; and eighteen (18) rounds, six (6) rounds point shoulder, six (6) rounds kneeling (strong hand), six (6) rounds kneeling (weak hand), all to be fired from the fifteen (15) yard line.

Candidates participating in the firearms practical evaluation examination shall furnish their firearms (not greater than forty-five (45) caliber) and ammunition for the exercises.

(4) If the candidate passes fifty (50) percent or more of the five (5) examination areas he shall take and successfully complete those areas of the special law enforcement officers 120 hour basic course that are comparable to the failed areas. If the candidate fails more than fifty (50) percent of the examination areas he shall successfully take and complete the entire 120 hour basic course. Seventy (70) percent or greater of correct answers shall constitute a passing grade. If a candidate holds a valid American Red Cross Standard First Aid and CPR cards or a recognized equivalent the first aid portion of the examination shall be waived.

JOHN C. TILLEY, Secretary

APPROVED BY AGENCY: October 10, 2018

FILED WITH LRC: October 15, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2018, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Julie Foster, Attorney, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

VOLUME 45, NUMBER 5 – NOVEMBER 1, 2018

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Foster

(1) Provide a brief summary of:

(a) What this administrative regulation does: Prescribes requirements for SLEO examination that would exempt them from attending the mandatory 80 hours of training.

(b) The necessity of this administrative regulation: Provides details of SLEO examination and qualification requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.906 authorizes the Secretary of the Justice and Public Safety Cabinet (Secretary) or designee to issue SLEO commissions to qualified applicants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Regulation provides details on the SLEO application and qualification 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: Authorizes Secretary's designee to process and approve SLEO commissions.

(b) The necessity of the amendment to this administrative regulation: Secretary needs designee to be able to act on SLEO commissions.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 61.904 permits Secretary's designee to administer the SLEO program.

(d) How the amendment will assist in the effective administration of the statutes: Designee can take action on SLEO applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Department of Criminal Justice and Training, any governmental entity wanting to have a commissioned officer on their property.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: File an evaluation examination and waiver of training with the Secretary or designee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Negligible, since SLEO applicants pay all associated fees pursuant to KRS 61.908.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): SLEOs able to receive their commissions more quickly.

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

(a) Initially: The cost is part of the Justice and Public Safety Cabinet's budget.

(b) On a continuing basis: The cost is part of the Justice and Public Safety Cabinet's budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: No increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: no fees or increase in fees

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Justice and Public Safety Cabinet

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.904

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No financial impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? \$0

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? \$0

(c) How much will it cost to administer this program for the first year? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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: Associated fees are paid by the SLEO applicant.

JUSTICE AND PUBLIC SAFETY CABINET (Amendment)

500 KAR 3:020. Filing and processing SLPO commissions.

RELATES TO: KRS 61.300, 61.360, 61.990[61.994], 62.010, 62.990

STATUTORY AUTHORITY: KRS 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A and direct proceedings and actions for the administration of all laws and functions which are vested in the cabinet, except laws and functions vested in the Department for Public Advocacy. KRS 61.360 authorizes the Governor or his agent to appoint Special Local Peace Officers. This administrative regulation establishes the procedure for applying for a commission as a Special Local Peace Officer.

Section 1. Qualifications to Apply for Commission as a Special Local Peace Officer. To qualify for a commission as a SLPO, an applicant shall present satisfactory evidence of compliance with the conditions and requirements set forth in KRS 61.360.

Section 2. Application for Commission as a Special Local Peace Officer. Applications from the property owner shall be sent to the cabinet SLPO program administrator and shall comply with the following requirements:

(1) An applicant shall meet all of the requirements of KRS 61.360 before a commission shall be granted. An applicant who qualifies may hold additional commissions for different property locations.

(2) The applicant shall complete two (2) notarized "SLPO Application Candidate Information (SLPO-1)" forms, which shall include the following:

(a) The name of the property owner;

(b) The name, address, date of birth, and Social Security number of the applicant and a detailed personal description;

(c) A certified copy of the applicant's birth certificate;

- (d) Two (2) photographs of the applicant, which shall be:
1. Full face;
 2. At least three (3) inches by five (5) inches in size; and
 3. Taken within thirty (30) days prior to submission of the application;
- (e) A copy of the applicant's military discharge or Form DD-214, if the applicant is a veteran;
- (f) The signature of the property owner;
- (g) A statement of all arrests and convictions, including traffic offenses committed within the past ten (10) years, violations, misdemeanors, or felonies; and
- (h) The notarized signature of the applicant.
- (3) The ten (10) dollar application fee shall be:
- (a) Submitted with the application form;
 - (b) Nonrefundable; and
 - (c) Submitted by check or money order made payable to the Kentucky State Treasurer.
- (4) Submission of any false or misleading information or the withholding of information requested on the application or by the cabinet investigator[.] may be grounds for rejection without further consideration.
- (5) If not on file from a previous application, an applicant shall be fingerprinted at the AFIS Section, Kentucky State Police, 1250 Louisville Road, Frankfort, Kentucky 40601.
- (6) The application shall also contain the Authority to Release Information Form (SLPO-4) to allow the release of all necessary information to the SLPO program administrator. It shall be signed by the applicant and notarized or may be witnessed by a cabinet official.
- (7) The applicant shall also sign the SLPO Acknowledgment Notice Form (SLPO-5) which indicates that:
- (a) He has received, read, and understands:
 1. KRS 61.300;
 2. KRS 61.360;
 3. KRS 61.991;
 4. KRS 62.010;
 5. KRS 62.990; and
 6. The administrative regulations in 500 KAR Chapter 3;
 - (b) He acknowledges that his authority is limited and restricted under the SLPO Act, cited in paragraph (a) of this subsection; and
 - (c) He understands and acknowledges that his commission as a SLPO does not give him the right or authority to carry a concealed weapon off the premises of the said property, unless he holds a license to carry a concealed deadly weapon issued pursuant to KRS 237.110.
- (8) A Letter of Intent Form (SLPO-3) shall be filed with each application by the property owner giving the name of applicant and the specific private property to be protected. This letter shall accompany the application forms for SLPO initial application or renewals.
- (9) The applicant shall arrange for an interview with the SLPO program administrator.
- (10) If the application is defective or in conflict with the SLPO Act, cited in subsection (7)(a) of this section or 500 KAR Chapter 3, the application shall be returned to the property owner. An application may be corrected and resubmitted at no additional cost if it is resubmitted within sixty (60) days of the date the applicant is sent notice of the deficiencies by the program administrator.

Section 3. The Grant of the Commission and the Required Oath of Office. A commission for a special local peace officer shall be validated and granted as follows:

- (1) If the applicant has successfully satisfied the requirements of the statutes cited in Section 2(7)(a) of this administrative regulation, a commission certificate and a Special Local Peace Officer Recommendation of Background Investigator (SLPO-2) form shall be forwarded by the SLPO program administrator to the secretary or the secretary's designee for review. After the commission is issued by the secretary or the secretary's designee, a copy of the commission shall be placed in the officer's file.
- (2) If a commission is granted:
 - (a) The commission, one (1) application, and two (2) County Clerk Oath forms (SLPO-6) shall be forwarded by the cabinet to

the property owner.

(b) The appointed applicant shall promptly take the application and the two (2) County Clerk Oath forms to the county clerk in the county where the applicant is to serve and shall take the constitutional oath of office within thirty (30) days after notice of appointment.

(c) The county clerk shall then complete and sign the clerk's attestation on both County Clerk Oath forms and retain the application and one (1) of the County Clerk Oath forms for filing purposes in the county clerk's office.

(d) The applicant shall return the second County Clerk Oath form signed by the clerk to the property owner.

(e) The property owner shall then return the second County Clerk Oath form to the cabinet SLPO program administrator to indicate that the oath was administered and that the application and one (1) of the County Clerk Oath forms are filed with the county clerk.

(f) The property owner shall be allowed thirty (30) days to arrange for the appointed applicant to take the oath of office and return the second County Clerk Oath form to the cabinet SLPO program administrator. If the County Clerk Oath form not returned within thirty (30) days, the commission shall be revoked in accordance with KRS 62.010 and 62.990.

(g) The commission certificate shall be kept by the property owner so long as the officer is employed or until his authority is terminated by action of the property owner, the cabinet secretary, or the cabinet secretary's designee[secretary].

(3) A SLPO Commission shall be issued for a period of two (2) years, if the officer continues to meet all statutory and regulatory criteria.

(4) After the SLPO officer has taken the constitutional oath of office, the property owner shall issue an identification card which is to be carried by the SLPO officer whenever he is acting under the authority of KRS 61.360. The identification card shall be presented as required by any duly sworn peace officer or cabinet official and is subject to control by the cabinet. If for any reason a SLPO officer is terminated or otherwise relieved of his duties as a SLPO officer by the property owner or the cabinet, he shall immediately return this identification card to the officer's property owner.

(5) A notice shall be forwarded to the property owner concerning any officer whose appointment has been suspended or revoked by the secretary or the secretary's designee. The property owner shall maintain current files and make renewal applications at least sixty (60) days prior to the commission's expiration date.

(6) The applicant shall not exercise the authority of a SLPO until the property owner has received the commission certificate from the cabinet.

(7) The SLPO commission certificate shall be held by the property owner and shall be available for inspection by the cabinet program administrator or his designee. The commission certificate remains the property of the cabinet and is to be returned upon the officer's authority being withdrawn for any reason.

Section 4. Denial of an Application.

(1) If an application for commission as a SLPO is denied, the applicant and property owner may appeal the determination in accordance with KRS Chapter 13B. An appeal shall be filed:

- (a) In writing with the secretary or the secretary's designee; and

- (b) Within thirty (30) days of the date of the written notice that the application has been denied.

(2) An applicant who is denied a commission shall not submit another SLPO application for a period of at least one (1) year.

Section 5. Renewals. A Letter of Intent Form (SLPO-3) from the property owner stating a request to renew a commission and two (2) complete signed and notarized SLPO Renewal Application Forms (SLPO-7) for each applicant involved shall be filed with the cabinet program administrator at least sixty (60) days before the expiration date of the existing commission. The applicant for renewal shall undergo a new background investigation to bring his records up-to-date.

Section 6. Records, Reports and Responsibility. Each property owner employing SLPO officers shall keep his files current as to the expiration date on each officer's commission and as follows:

(1) The property owner shall keep the individual officer's commission certificates on file, to be returned to the cabinet upon termination of the officer's employment.

(2) The property owner shall post a copy of 500 KAR Chapter 3 and a copy of KRS 61.360 and 61.990 in a conspicuous location in any office or building that is designated security headquarters for persons operating as SLPO officers.

(3) Complaints or unusual incidents involving SLPO officers shall be handled by the property owner whose private property is being protected by the SLPO officer involved. However, the property owner shall notify the cabinet SLPO program administrator by direct verbal communication within twenty-four (24) hours of any reported incident involving any act as enumerated in KRS 61.360(1)(c) by any of its SLPO officers. A written report shall be filed with the SLPO program administrator, within thirty (30) days of the original oral report, setting forth the details of the incident and listing any action taken by the property owner. If formal charges are pending, the property owner shall advise the SLPO program administrator as to all specific charges, trial dates, and the final disposition of all charges.

(4) The property owner shall mail or e-mail to the SLPO program administrator by June 30 of each year:

(a) A current list of all active SLPO personnel; and

(b) The number of arrests made or citations issued by the SLPO the previous calendar year.

(5) The property owner shall issue each SLPO officer an identification card upon the individual's appointment. The identification card shall be:

(a) Encased in plastic;

(b) Billfold size 2 1/4 in. x 3 1/2 in.; and

(c) Composed as follows:

1. One (1) side containing the following language: "The holder of this card has been commissioned as a Special Local Peace Officer (SLPO), pursuant to KRS 61.360. As a SLPO, the holder of this card is deemed to be a peace officer within the meaning of KRS 527.020 and may exercise the limited powers of a peace officer granted by KRS 61.360"; and

2. The other side containing a full-faced photograph of the officer with his or her:

a. Name;

b. Identification or notation that the officer has been commissioned a "Special Local Peace Officer";

c. Property owner employing the officer;

d. Badge number, if any; and

e. Signature of the officer's property owner.

(6) The property owner shall be responsible for obtaining and destroying the identification card from any officer whose employment is terminated.

(7) If the bond required by KRS 61.360 is cancelled or revoked, the property owner shall notify the cabinet of this fact and the reason for cancellation or revocation.

Section 7. Violations. A property owner utilizing SLPO's shall be subject to inspection and investigation by the cabinet for possible violations. Violations may result in prosecution and recommendation to the secretary or the secretary's designee that the commission affected be revoked.

Section 8. Revocation or Suspension of SLPO Commissions.

(1) If it is determined by the program administrator that KRS 61.360(1) of the SLPO Act applies to any active SLPO commissioned officer, the program administrator shall notify the secretary or the secretary's designee who shall revoke or suspend the commission of any special local peace officer, after an administrative hearing conducted in accordance with KRS Chapter 13B, if he determines:

(a) That the commission-holder does not meet, or no longer meets the requirements and conditions for the commission;

(b) That the commission-holder has knowingly falsified an application or portion thereof, or has knowingly made any false or

misleading statement of a material fact to the cabinet; or

(c) That the commission-holder has violated any of the Kentucky Revised Statutes or administrative regulations cited in Section 2(7)(a) of this administrative regulation, or order of the secretary or the secretary's designee.

(2) Upon revocation or suspension the SLPO program administrator shall notify the property owner involved to return the commission of the SLPO officer involved to the SLPO program administrator for the cabinet. The property owner responsible for the SLPO officer shall forward a letter to the SLPO officer involved stating that his commission has been revoked or suspended and that he shall immediately return the SLPO identification card to the property owner.

(3) The secretary or the secretary's designee may temporarily suspend the commission of an SLPO prior to holding a hearing pursuant to KRS Chapter 13B if he believes that the safety of the public requires that action. If a commission is temporarily suspended prior to holding a hearing pursuant to KRS Chapter 13B, the secretary or the secretary's designee shall hold a KRS Chapter 13B hearing not later than thirty (30) days from the date of the temporary suspension unless the SLPO requests an extension for a time certain. If the SLPO requests an extension for a time certain, then the commission shall remain suspended until the conclusion of the hearing.

(4) The program administrator shall notify the county clerk in the officer's county of jurisdiction if a SLPO officer's commission has been surrendered, suspended, or revoked.

Section 9. Procedures for Investigating Complaints or Unusual Incidents Involving SLPO Officers.

(1) Complaints or unusual incidents involving SLPO officers shall be handled by the property owner whose private property is being protected by the SLPO officer involved. The property owner shall be responsible for notification to the cabinet of all incidents involving their SLPO personnel as indicated in Section 6 of this administrative regulation.

(2) The cabinet program administrator or other assigned officers may investigate any complaints or unusual incidents involving a SLPO officer if there is reason to believe the provisions of KRS 61.360 or other applicable laws have been violated and an investigation is necessary.

(3) Any investigation conducted by the cabinet shall become part of the official record of the SLPO officer involved.

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "SLPO Application Candidate Information Form (SLPO-1)", July 1, 2010;

(b) "Special Local Peace Officer Recommendation of Background Investigator Form (SLPO-2)", May 8, 2008;

(c) "Letter of Intent Form (SLPO-3)", July 28, 2008;

(d) "Authority to Release Information Form (SLPO-4)", July 28, 2008;

(e) "SLPO Acknowledgment Notice Form (SLPO-5)", April 29, 2009;

(f) "County Clerk Oath" Form (SLPO-6), July 1, 2010; and

(g) "SLPO Renewal Application Form (SLPO-7)" July 1, 2010.

~~[(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

JOHN C. TILLEY, Secretary

APPROVED BY AGENCY: October 10, 2018

FILED WITH LRC: October 15, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2018, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of

the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Julie Foster, Attorney, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, email Justice.RegContact@ky.gov, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Foster

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for applying for a commission as a Special Local Peace Officer (SLPO).

(b) The necessity of this administrative regulation: Provides an administrative process to approve SLPO commission applications.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.630 allows Governor or his agent (Secretary) to approve and issue SLPO commissions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides details regarding the SLPO commission approval 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: Secretary's designee may administer the SLPO commission process.

(b) The necessity of the amendment to this administrative regulation: Secretary needs designee to administer SLPO commission approval process.

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes: Streamlines SLPO commission application and approval process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Property owners who need a SLPO on premises, SLPO applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Complete the application process set forth in the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees are established by statute (KRS 61.360) and are not imposed by the regulation. \$10 fee to apply to be SLPO

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): SLPO commission approval process improved.

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

(a) Initially: The cost is part of the budget of the Justice and Public Safety Cabinet

(b) On a continuing basis: The cost is part of the budget of the Justice and Public Safety Cabinet

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: no increase or change in funding or fees necessary

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fees are established by statute (KRS 61.360) and are not imposed by the regulation.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the 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? Justice and Public Safety Cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.360

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

(a) How much 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.

(b) How 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 fees are established by statute (KRS 61.360) and are not imposed by the regulation.

(c) How much will it cost to administer this program for the first year? Nothing additional; absorbed by Justice and Public Safety Cabinet budget.

(d) How much will it cost to administer this program for subsequent years? Nothing additional; absorbed by Justice and Public Safety Cabinet budget.

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: The fees are established by statute (KRS 61.360) and are not imposed by the regulation.

TRANSPORTATION CABINET Department of Highways Division of Planning (Amendment)

603 KAR 5:070. Motor vehicle dimension limits.

RELATES TO: KRS [486.050,] 186.655, 189.222, 23 C.F.R. Part 658, 23 U.S.C., 49 U.S.C. 31111, Pub. L. 114-94

STATUTORY AUTHORITY: KRS 189.222[(4), (9)], 23 C.F.R. Part 658

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.222[(11)] authorizes the Transportation Cabinet[Secretary of Transportation] to promulgate administrative regulations implementing the provisions of 23 C.F.R. Part 658 relating to the length, width, and weight limitations of motor vehicles travelling on the Commonwealth's state primary road system. This administrative regulation establishes the dimensions and the dimension combinations for motor vehicles travelling on all classes of highways in Kentucky. This administrative regulation also establishes the regulatory provisions relating to The Fixing America's Surface Transportation Act, or the FAST Act, Pub. L. 114-94[establish reasonable size limits for motor vehicles using the State Primary Road System, which includes the roads maintained by the Department of Highways. 23 C.F.R. 658.19 requires that vehicles with increased dimensions transporting household goods and truck tractors towing only one (1) semitrailer not exceeding

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twenty-eight (28) feet (8.53 meters) in length be provided statewide access unless a route is specifically excluded for safety reasons. This administrative regulation establishes the motor vehicle and combination vehicle dimensions for all classes of highways in Kentucky. 23 C.F.R. Part 658 sets forth the highways available for use by vehicles with increased dimensions. This administrative regulation includes these highways as well as others which have been constructed to accommodate the motor vehicles with increased dimensions. In addition, 23 C.F.R. 658.19 requires each state to allow the increased dimension vehicles to operate within one (1) driving mile (1.61 kilometers) of the designated highways. On state-maintained highways in Kentucky, the increased dimension vehicles are allowed to operate within five (5) driving miles (8.05 kilometers) of a designated highway unless the designated highway is an interstate or a parkway in which instance the increased dimension vehicles are allowed to operate within fifteen (15) miles (24.14 kilometers) of the interstate or parkway exit. The bus dimension limits are established in 603-KAR-5:0741.

Section 1. Definitions.

(1) "Enforcement tolerance" means an amount, usually expressed as a percentage of the total length, width, or weight measurement allowed in excess of the maximum to account for the differences in measuring equipment or techniques.

(2) "National Truck Network" means a network of highways on which motor vehicles with increased dimensions could operate pursuant to the Surface Transportation Assistance Act of 1982, 23 U.S.C.

(3) "Stinger-steered" means an automobile or boat transporter configured as a semitrailer combination in which the fifth wheel is located on a drop frame behind and below the rear-most axle of the power unit.

(4) "Towaway trailer transporter combination" means the combination of a trailer transporter towing unit and two (2) trailers or semitrailers, with a total weight that does not exceed 26,000 pounds and does not carry the property or constitute the inventory property of the manufacturer, distributor, or dealer of the trailers or semitrailers.

(5) "Trailer transporter towing unit" means a power unit that is not used to carry property if operating in a towaway trailer transporter combination.

(6) "Width exclusion safety device" means an addition or appurtenance located at the side of a motor vehicle, semitrailer, or trailer with a function related to the safe and efficient operation of the vehicle and not designated, designed, or used for carrying cargo.

Section 2. Width Exclusion Safety Devices.

(1) Items designated as width exclusion safety devices shall include:

- (a) Rearview mirrors;
- (b) Turn signal lamps;
- (c) Hand holds for cab entry or egress;
- (d) Splash and spray suppressant devices; and
- (e) Load induced tire bulges.

(2) The following items shall be designated as width exclusion safety devices if they do not extend beyond three (3) inches (0.0762 meter) on either side of the vehicle:

- (a) Corner caps;
- (b) Rear or side door hinges and their protective hardware;
- (c) Rain gutters;
- (d) Side marker lamps;
- (e) Lift pads for a piggyback trailer;
- (f) Hazardous materials placards;
- (g) Tarp and tarp hardware;
- (h) A tie-down assembly on a platform trailer;
- (i) Wall variation from true flat; and
- (j) Weevil pins or sockets on a low bed trailer.

Section 3. Dimensions of Vehicles.

(1) The maximum dimensions for a motor vehicle or combination motor vehicle shall be:

- (a) A height, including body and load, not to exceed thirteen

(13) feet and six (6) inches (4.115 meters);

(b) A width, including body and load, not to exceed eight (8) feet (2.44 meters), excluding a width exclusion safety device;

(c) Except as established in subsection (2) of this section, a length not exceeding forty-five (45) feet (13.716 meters) of a single unit motor vehicle, including a part of the body or load, but excluding a length exclusion safety device; and

(d) Except as established in subsection (2) of this section, a length not exceeding sixty-five (65) feet (19.812 meters) of a motor vehicle and trailer or semitrailer combination, including a part of the body or load, and excluding a length exclusion safety device.

(2) The following exceptions shall be made to the lengths established in (1)(c) and (d) of this section:

(a) A truck trailer or semitrailer unit that is configured as a motor vehicle or boat transporter shall not have a load overhang of more than three (3) feet (0.915 meters) on the front and four (4) feet (1.22 meters) on the rear, if hauling only motor vehicles or boats. The overhangs shall not be included in the sixty-five (65) feet (19.812 meters) length limit established in (1)(d) of this section.

(b) A truck tractor or semitrailer unit that is configured as a stinger-steered motor vehicle or boat transporter shall not have a load overhang of more than four (4) feet (1.22 meters) on the front and six (6) feet (1.83 meters) on the rear, if hauling only motor vehicles or boats. The overhangs shall not be included in the measurement of the eighty (80) feet (24.384 meters) overall length limit.

(c) A single unit motor vehicle transporting utility poles or pipes shall not exceed forty-five (45) feet (13.716 meters).

(d) A towaway trailer transporter combination shall not exceed eighty-two (82) feet (24.994 meters).

Section 4. Exceptions to Permit Requirement.

(1) With the exception of buses, a motor vehicle or a combination motor vehicle with dimensions greater than those established in Section 3 of this administrative regulation may be operated without an overweight or overdimensional permit on the following highways:

(a) The National Truck Network;

(b) The fifteen (15) mile (24.14 kilometers) access established in KRS 189.222(1)(f);

(c) The five (5) mile (8.05 kilometers) access established in Section 5(2) of this administrative regulation; and

(d) The one (1) mile (1.61 kilometers) access established in Section 5(3) of this administrative regulation.

(2) If operating on the National Truck Network, a motor vehicle, combination motor vehicle, or towed unit, including a part of the body and load, and excluding a length or width exclusion safety device, shall require an overdimensional permit if the width and length dimensions exceed the following:

(a) A width of 102 inches (2.59 meters);

(b) A towed unit length of fifty-three (53) feet (16.154 meters) if operated in a single semitrailer combination; or

(c) Twenty-eight (28) feet (8.53 meters) if operated in a tractor-semi-trailer-trailer combination or a tractor-semi-trailer-semi-trailer combination not exceeding two (2) towed units per combination.

(3) In a tractor-semi-trailer combination vehicle if the two (2) trailing units are connected with a rigid frame extension attached to the rear frame of the first semi-trailer allowing for a fifth wheel connection point for the second semi-trailer, the length of the extension shall be excluded from the measurement of semi-trailer length.

(4) If a second semi-trailer is not mounted to the fifth wheel of the rear frame of a semi-trailer, the length of the extension shall be included in the length measurement of the semi-trailer.

(5) The gross vehicle weight limit for a motor vehicle with the dimensions established in this subsection, and operating on a highway included in the National Truck Network, shall be 80,000 pounds (36,287.36 kilograms).

(6) The dimensions and weights established in this section shall not be subject to an enforcement tolerance.

Section 5. Increased Dimensions.

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(1) Motor vehicles with increased dimensions that do not exceed the limitations established in Section 4 of this administrative regulation may travel the highways included in the National Truck Network.

(2) A motor vehicle with an increased dimension pursuant to Section 4 of this administrative regulation may travel up to five (5) driving miles (8.05 kilometers) on a state-maintained highway from a highway segment established as part of the National Truck Network, and up to fifteen (15) miles (24.14 kilometers) from an interstate or parkway exit, to attain reasonable access to a terminal or facility for food, fuel, repairs, or rest.

(3) A motor vehicle with an increased dimension pursuant to Section 4 of this administrative regulation may travel up to one (1) driving mile (1.61 kilometers) on a nonstate maintained, public-owned and public use highway from a National Truck Network highway to attain reasonable access to a terminal or facility for food, fuel, repair, or rest.

Section 6. (1) Household Goods Transporters. A motor vehicle with an increased dimension as established in Section 4 of this administrative regulation that is certified by either the Federal Motor Carrier Safety Administration or the Kentucky Transportation Cabinet to transport household goods shall have access to any public roadway in the Commonwealth of Kentucky.

(2) Single unit semitrailers. A truck tractor and single semitrailer that do not exceed twenty-eight (28) feet excluding a length exclusion safety device shall have access to any public roadway in the Commonwealth of Kentucky.

Section 7. Nonstate Maintained Exceptions.

(1) The city of Anchorage in Jefferson County, Kentucky has adopted ordinances that exempt due to safety reasons certain locally maintained roadways from the automatic one (1) mile (1.61 kilometers) access provision of Section 5(3) of this administrative regulation.

(2) The following streets located within the corporate city limits of Anchorage and listed in the city ordinance shall not be used by a motor vehicle with an increased dimension as established in Section 4 of this administrative regulation:

- (1) Evergreen Road;
- (2) Bellewood Road;
- (3) Lucas Lane; and
- (4) Old Harrods Creek Road.

Section 8. State Maintained Exceptions.

(1) Based on safety concerns to the travelling public, specific road segments shall be exempt from the five (5) mile (8.05 kilometers) and fifteen (15) mile (24.14 kilometers) automatic access on a state maintained highway.

(2) The following road segments shall not be used by a vehicle with increased dimensions pursuant to Section 4 of this administrative regulation:

(a) Kentucky Highway 146 from the west boundary of the city of Anchorage in Jefferson County, beginning at the junction with Old Harrods Creek Road at milepoint 4.198 to the east boundary of the city of Anchorage at milepoint 5.784;

(b) Kentucky Highway 418 from milepoint 2.864 at the intersection with the Blue Sky Parkway, just southeast of the I-75 interchange in Fayette County, to milepoint 6.089 at the Fayette and Clark County line;

(c) Kentucky Highway 1973 in Fayette County from milepoint 0.000 at the intersection with U.S. 25 to milepoint 1.866 at its intersection with Kentucky 418; and

(d) U.S. 119 from its junction with Kentucky Highway 932 (Mile point 8.837) northeast of Oven Fork, to Kentucky Highway 15 (Milepoint 15.772) in Whitesburg, Letcher County, Kentucky.

(3) The list of state maintained and non state maintained exempted road segments established in subsection (2) of this section may be located on the cabinet's Web site at <https://transportation.ky.gov/planning/pages/national-truck-network.aspx>, or at the Transportation Cabinet, Division of Planning, 200 Mero Street, Frankfort, Kentucky 40622. "Length exclusion safety device" means an appurtenance:

(a) That is located at the front or rear of a motor vehicle semitrailer or trailer;

(b) Whose function is related to the safe and efficient operation of the semitrailer or trailer; and

(c) That is not designated, designed or used for carrying cargo.

(2) "National Truck Network" means the network of highways:

(a) On which vehicles authorized by the provisions of 49 U.S.C. 31111 are allowed to operate pursuant to KRS 189.222 and 23 C.F.R. 658; and

(b) Included in an official order issued by:

1. The secretary;

2. Maintained on the Transportation Cabinet Web site at www.kytc.state.ky.us/planning/index.htm; and

3. Available in hard copy upon request at the Division of Vehicle Enforcement.

(3) "Width exclusion safety device" means an appurtenance:

(a) That is located at the side of a motor vehicle semitrailer or trailer;

(b) Whose function is normally related to the safe and efficient operation of the semitrailer or trailer; and

(c) That is not designated, designed or used for carrying cargo.

Section 2. Width Exclusion Safety Devices. (1) The following items shall be designated as a width exclusion safety device:

(a) Rearview mirrors;

(b) Turn signal lamps;

(c) Hand holds for cab entry or egress;

(d) Splash and spray suppressant devices; and

(e) Load induced tire bulge.

(2) The following items shall be designated as width exclusion safety devices if they do not extend beyond three (3) inches (0.0762 meter) on either side of the vehicle:

(a) Corner cap;

(b) Rear or side door hinges and their protective hardware;

(c) Rain gutters;

(d) Side marker lamps;

(e) Lift pads for a piggyback trailer;

(f) Hazardous materials placards;

(g) Tarp and tarp hardware;

(h) Tie-down assembly on a platform trailer;

(i) Wall variation from true flat; and

(j) Weevil pins or sockets on a low bed trailer.

Section 3. Except as provided in Section 4 of this administrative regulation, the maximum dimensions for a motor vehicle or combination motor vehicle, except a bus, using a public highway in Kentucky shall be as follows:

(1) Height, including body and load, not to exceed thirteen (13) feet and six (6) inches (4.115 meters).

(2) Width, including body and load, not to exceed eight (8) feet (2.44 meters), excluding a width exclusion safety device.

(3) Length. Except as provided in subsection (4) of this section:

(a) The length of a single unit motor vehicle, including a part of the body or load, and excluding a length exclusion safety device, shall not exceed forty-five (45) feet (13.716 meters).

(b) A motor vehicle and trailer or semitrailer combination, including a part of the body or load, and excluding a length exclusion safety device, shall not exceed sixty-five (65) feet (19.812 meters).

(4) Length exceptions:

(a) If a truck tractor or semitrailer unit is exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot (0.915 meters) front and four (4) foot (1.22 meters) rear overhang shall not be included in the measurement of the sixty-five (65) feet (19.812 meters) limit established in subsection (3)(b) of this section;

(b) A single unit motor vehicle transporting utility poles or pipes in which the vehicle and load do not exceed forty-five (45) feet (13.716 meters) shall be allowed to operate on the public highways of Kentucky.

(5) Weight.

(a) The gross weight limit is established in 603 KAR 5:066.

(b) The axle weight limit and the bridge weight formula are

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established in 603 KAR 5:066.

Section 4. (1) A motor vehicle or a combination motor vehicle, except a bus, with dimensions greater than those specified in Section 3 of this administrative regulation that does not exceed the dimensions established in subsection (2) of this section may be operated without an overweight or overdimensional permit on the following highways:

(a) The National Truck Network;

(b) The fifteen (15) mile (24.14 kilometers) access authorized in KRS 189.222(1)(f);

(c) The five (5) mile (8.05 kilometers) access authorized in Section 5(2) of this administrative regulation; and

(d) The one (1) mile (1.61 kilometers) access authorized in Section 5(3) of this administrative regulation.

(2) A motor vehicle, combination motor vehicle, or towed unit, including any part of the body and load, and excluding a length or width exclusion safety device, shall not exceed, without an overdimensional permit, the following width and length dimensions if operating on the National Truck Network:

(a) Width – 102 inches (2.59 meters).

(b) Length of a towed unit.

1. Fifty-three (53) feet (16.154 meters) when operated in a single semitrailer combination.

2. Twenty-eight (28) feet (8.53 meters) if operated in a tractor-semi-trailer-trailer combination or a tractor-semi-trailer-semi-trailer combination not to exceed two (2) towed units per combination.

3. There shall not be an overall length limitation on a motor vehicle or combination motor vehicle if the requirements established in this subsection are met.

4. In a tractor-semi-trailer-semi-trailer combination vehicle in which the two (2) trailing units are connected with a rigid frame extension attached to the rear frame of the first semi-trailer which allows for a fifth wheel connection point for the second semi-trailer, the length of the extension shall be excluded from the measurement of semi-trailer length.

5. If there is not a second semi-trailer mounted to the fifth wheel of the rear frame of a semi-trailer, the length of the extension shall be included in the length measurement for the semi-trailer.

(3) The gross vehicle weight limit for a motor vehicle with the dimensions established in subsection (2) of this section while operating on a highway segment established in Section 5 of this administrative regulation shall be 80,000 pounds (36,287.36 kilograms) except the axle weight limits and bridge weight limits established in 603 KAR 5:066 shall not be exceeded.

(4) The dimensions and weights specified in this section shall not be subject to an enforcement tolerance.

Section 5. (1) Operation of motor vehicles with increased dimensions that do not exceed the limitations established in Section 4(2) of this administrative regulation shall be allowed on all highways included in the National Truck Network.

(2) Except as provided by Section 8 of this administrative regulation, a motor vehicle with an increased dimension as established in Section 4 of this administrative regulation shall be allowed five (5) driving miles (8.05 kilometers) on a state-maintained highway from a highway segment established as part of the National Truck Network and fifteen (15) miles (24.14 kilometers) from an interstate or parkway exit to attain reasonable access to a terminal or facility for food, fuel, repairs, or rest.

(3) Except as provided by Section 7 of this administrative regulation, a motor vehicle with an increased dimension as established in Section 4 of this administrative regulation shall be allowed one (1) driving mile (1.61 kilometers) on a nonstate maintained, publicly-owned, public use highway from a highway segment established as part of the National Truck Network to attain reasonable access to a terminal or facility for food, fuel, repair, or rest.

Section 6. (1) Household Goods Transporters. A motor vehicle with an increased dimension as established in Section 4 of this administrative regulation that is used to transport household goods by a motor carrier certificated by either the Federal Motor Carrier

Safety Administration or the Kentucky Transportation Cabinet to transport household goods shall have access to any public roadway in the Commonwealth of Kentucky.

(2) Single unit semi-trailers. A motor vehicle with an increased dimension as established in Section 4 of this administrative regulation that consists of a truck tractor and single semi-trailer which does not exceed twenty-eight (28) feet excluding a length exclusion safety device shall have access to any public roadway in the Commonwealth of Kentucky.

Section 7. Nonstate Maintained Exceptions to One (1) Mile (1.61 Kilometers) Automatic Access. The city of Anchorage in Jefferson County has adopted ordinances which exempt for safety reasons certain locally maintained roadways from the automatic one (1) mile (1.61 kilometers) access provision of Section 5(3) of this administrative regulation. The streets all within the corporate city limits of Anchorage listed in the city ordinance which shall not be used by a motor vehicle with an increased dimension as established in Section 4 of this administrative regulation shall be:

(1) Evergreen Road;

(2) Bellewood Road;

(3) Lucas Lane; and

(4) Old Harris Creek Road.

Section 8. State-maintained Exceptions to Automatic Five (5) Mile (8.05 Kilometers) and fifteen (15) mile (24.14 kilometers) Access. The Department of Highways has found the following road segment for safety reasons to be exempt from the five (5) mile (8.05 kilometers) and fifteen (15) mile (24.14 kilometers) automatic access on a state-maintained highway as established in Section 5(2) of this administrative regulation. These road segments shall not be used by a vehicle with an increased dimension as established in Section 4 of this administrative regulation:

(1) Kentucky 146 – from the west boundary of the city of Anchorage at milepoint 4.258 to the east boundary of the city of Anchorage at milepoint 5.878;

(2) Kentucky 418 – from milepoint 2.892 at the intersection with the Blue Sky Parkway just southeast of the I-75 interchange in Fayette County to milepoint 6.089 at the Fayette/Clark County line;

(3) Kentucky 1973 – from milepoint 0.000 at the intersection with US 25 to milepoint 1.866 at its intersection with Kentucky 418, all in Fayette County; and

(4) US 119 in Letcher County from its junction with Kentucky 932 (MP 10.065) northeast of Oven Fork to Kentucky 15 (MP 17.308) in Whitesburg.

Section 9. Adoption Without Change. (1) 23 C.F.R. 658.5, Truck size and weight, route designation, length, width and weight limitations, August, 2001, is adopted without change.

(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Transportation Cabinet, Division of Vehicle Enforcement, 1st Floor, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. The telephone number is (502) 564-3276.]

GREG THOMAS, Secretary

ANDY BARBER, PE, State Highway Engineer

D. ANN DANIELO, Office of Legal Services

APPROVED BY AGENCY: October 3, 2018

FILED WITH LRC: October 15, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2018 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be

given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann D'Angelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the motor vehicle and combination vehicle dimensions for all classes of highways in Kentucky, including the dimension limits for the National Truck Network (NTN). This administration also establishes a reference for determining current road segments included in the network, and sets the parameters for access routes in addition to the network.

(b) The necessity of this administrative regulation: The amendment is necessary to update the regulation to conform with recent federal law in The FAST Act, Pub. L. 114-94.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the length, width, and weight limitations of motor vehicles travelling on Kentucky's primary road system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide users of the NTN a resource for the appropriate routes on the NTN network and provide notice of the access routes permitted to be used outside the network.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes former provisions that prevent motor vehicles or boat transporters from hauling general freight on the back-haul route; amends to include towaway trailer transporter combinations; and includes stinger-steered motor vehicle or boat transporters with extended length and specific front and back overhangs.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update provisions of the regulation to comply with the FAST Act, Pub. L. 114-94.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 189.222 authorizes the Transportation Cabinet to promulgate administrative regulations implementing dimension combinations for motor vehicles travelling on Kentucky's highways in conformance with federal law.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify and update provisions in the current administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect drivers and owners of large dimension motor vehicles that transport goods on Kentucky's highways.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Drivers and owners will have the latest information regarding motor vehicle dimensions and the information will conform to current federal law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs or fees as a result of this

administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Drivers and owners of overdimensional motor vehicles will have the latest state information in conformance with federal law.

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

(a) Initially: There are no costs.

(b) On a continuing basis: There are no costs.

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

(7) Provide an assessment of whether an 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 necessary fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees have been established.

(9) TIERING: Is tiering applied? Yes. This administrative regulation provides usable routes for a tier of overdimensional vehicles which do not require a permit, yet exceed the normal maximum dimensions.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Transportation Cabinet's Department of Motor Carriers and the State Highway Engineers Office.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The FAST Act, Pub. L. 114-94, 49 U.S.C. 31111; 23 C.F.R. Part 658; KRS 189.222.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 should not be an effect on expenditures and revenues.

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

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

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

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

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

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

Expenditures (+/-): There are no expenditures.

Other Explanation: None.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation containing the federal mandate. 23 C.F.R. Part 658 prescribes national policies and standards that govern truck and bus size and weight.

2. State compliance standards. Motor vehicle and combination vehicle dimensions are established for all classes of highways in Kentucky, including the dimension limits for the National Truck Network.

3. Minimum or uniform standards contained in the federal mandate. 23 C.F.R. 658 sets the federal standards for vehicle dimensions on classes of highways. KRS 189.222 authorizes the

Transportation Cabinet to implement the federal provisions through an administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard or additional or different responsibilities or requirements. Not applicable.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

704 KAR 3:292. Education of migratory children[Chapter 1, ESSIA migrant education requirements].

RELATES TO: KRS 156.010, 156.035, 156.070, 20 U.S.C. 6391-6399

STATUTORY AUTHORITY: KRS 156.070, 156.035, 20 U.S.C. 6391-6399

NECESSITY, FUNCTION, AND CONFORMITY: Section 1306 of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act requires migratory education programs receiving funding under Title I, Part C to ensure the unique educational needs of migratory children are identified and addressed. This administrative regulation establishes, in accordance with Kentucky's consolidated State plan under ESEA, how the Kentucky Department of Education (department) and its local operating agencies comply with ESEA Section 1306[In accordance with Section 435 of the General Education Provisions Act and sections 1201, 1202, and 1203 of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, the Department of Education, when applying to the U.S. Department of Education for participation in programs for migrant children under Chapter 1 of the Education Consolidation and Improvement Act of 1981, must submit an approvable plan and satisfactory assurances that all requirements of the law will be met. This administrative regulation implements the State Board for Elementary and Secondary Education's duties to develop education policy, to implement acts of Congress appropriating and apportioning funds to the state and to provide for the proper apportionment and disbursement of federal migratory children funds in accordance with the state's current plan].

Section 1. Definitions.

(1) "Comprehensive needs assessment" means a systematic set of procedures that are used to determine needs, examine their nature and causes, and set priorities for future action.

(2) "Migrant staff" means any individual that is fully or partially paid using migrant funds.

(3) "Migratory child" or "migratory student" is defined in 20 U.S.C. 6399(3).

(4) "Out-of-school youth" means an individual who:

(a) Has not attained the age of twenty-one (21) years old;

(b) Has not completed high school or the equivalent thereof; and

(c) Is not currently enrolled in an elementary or secondary school.

(5) "Qualifying move" is defined in 20 U.S.C. 6399(5).

(6) "Service delivery plan" means a set of principles, standards, policies, and constraints to be used to guide the designs, development, deployment, operation, and retirement of services.

Section 2[4]. Program Development and Implementation.

(1) The department[Department of Education] shall implement services to migratory children in accordance with Kentucky's consolidated State plan under ESEA using a service delivery plan responsive to a comprehensive needs assessment[by making grants to local school districts which have concentrations of eligible

migrant children].

(2) In the planning and operation of migratory education programs not less than one (1) school year in duration, the department and its local operating agencies shall consult with parents of migratory children and shall ensure such programs:

(a) Comply with the parental involvement requirements in 20 U.S.C. 6318, unless doing so would be impractical; and

(b) Are understandable, in both format and language, to parents[Participating school districts shall submit an annual application for funds to provide services to eligible children].

(3) The department shall work closely with programs at the state, regional, and local levels to identify and meet the needs of all migratory children, including preschool migratory students and migratory children that have dropped out of school. Pursuant to 20 U.S.C. 6394(d), priority shall be given to migratory children who have made a qualifying move within the previous one (1) year period and who are failing, or most at risk of failing, or have dropped out of school[The application shall be authorized by the local board of education and be approved by the Department of Education].

(4) The department shall identify and recruit migratory children and may do so using:

(a) Statewide recruitment and training;

(b) Regionally-based recruitment and training; or

(c) Locally-based recruitment and training[Participating school districts shall perform an annual assessment of the needs of eligible migrant children].

(5) After a child is identified as migratory, the child shall be enrolled in all applicable programs and provided access to other resources that address the child's specific educational needs. The department may directly provide services to the child if the child's needs are not being met by other available programs and resources[Participating school districts shall coordinate the migrant program with other federal, state and local programs and agencies as appropriate].

(6) Migrant staff shall attend annual training as approved by the department.

Section 3[2]. Program Evaluation.

(1) The department and its local operating agencies shall establish objectives and evaluate outcomes for migratory education programs in the following areas:

(a) Reading and writing;

(b) Math;

(c) High school dropout and prevention;

(d) School readiness; and

(e) Out-of-school youth[Persons coordinating the provision of services for eligible migrant children shall be required to hold certification as a teacher, counselor or social worker].

(2) Information to be used by the department and its local operating agencies in evaluating migratory education program outcomes may include:

(a) Data on student eligibility and enrollment as well as provided services;

(b) Assessment data which may include the record of state performance targets and outcomes for statewide assessments, kindergarten readiness screener results, end of course results, graduation rates, or local assessment results;

(c) Information on attendance, grades, and teachers of records;

(d) Parent surveys;

(e) Data from regionally-based recruitment and training programs; or

(f) Annual program monitoring results[Summer extended academic services shall be required of all local migrant projects for a duration of four (4) to six (6) weeks and no less than three (3) times per week for eligible students who are the most academically in need].

Section 4[3]. Coordination of Services. (1) Pursuant to 20 U.S.C. 6394(c)(1)(B), the department and its local operating agencies shall jointly plan migratory education programs with similar programs within the state and in other states as well as with

other federal programs as appropriate [Participating school districts shall involve migrant parents in the education of their children].

(2) Pursuant to 20 U.S.C. 6394(b)(3), the department and its local operating agencies shall facilitate educational continuity through the timely transfer of student records when children move from one school to another. [Each participating school district shall be required to form a local migrant parent advisory council and to convene the council a minimum of three (3) times per year].

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, JR., Ph.D., Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 15, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 29, 2018, at 10 a.m. in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2018.

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation pertains to migratory education programs and the process the Kentucky Department of Education (KDE) will use to ensure that KDE and its local operating agencies "identify and address the unique educational needs of migratory children in accordance with a comprehensive state plan," as required by Section 1306 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act.

(b) The necessity of this administrative regulation: Section 1306 of ESEA requires KDE to ensure that KDE and its local operating agencies "identify and address the unique educational needs of migratory children in accordance with a comprehensive state plan." This administrative regulation establishes, in alignment with Kentucky's consolidated State plan under ESEA, the process KDE and its local operating agencies will follow in order to comply with ESEA Section 1306.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation establishes, in alignment with Kentucky's consolidated State plan under ESEA, the process KDE and its local operating agencies will follow in order to comply with ESEA Section 1306, which requires KDE to ensure that KDE and its local operating agencies "identify and address the unique educational needs of migratory children in accordance with a comprehensive state plan."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes, in alignment with Kentucky's consolidated State plan under ESEA, the process KDE and its local operating agencies will follow in order to comply with ESEA Section 1306, which requires KDE to ensure that KDE and its local operating agencies "identify and address the unique educational

needs of migratory children in accordance with a comprehensive state plan."

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

(a) How the amendment will change this existing administrative regulation: As revised, this administrative regulation fulfills KDE's requirement under Section 1306 to "identify and address the unique educational needs of migratory children in accordance with a comprehensive state plan." The amendment also better aligns with ESEA as well as with current program operations at KDE as well as in Kentucky's consolidated state plan under ESEA. Necessary technical amendments have also been made throughout the regulation and include: Amending the title of the regulation to better align with ESEA; correcting statutory references throughout to account for legal changes that have occurred since the regulation's effective date; and, defining terminology used throughout the regulation.

(b) The necessity of the amendment to this administrative regulation: Previously, 20 U.S.C. 6362(f), which is no longer the law, stated, "Each local educational agency...shall submit an application to the State at such time, in such manner, and containing such other information as determined necessary by the State." However, Section 1306 of ESEA, which is the current law, requires KDE to ensure that KDE and its local operating agencies "identify and address the unique educational needs of migratory children in accordance with a comprehensive state plan." As revised, this administrative regulation fulfills KDE's requirement under Section 1306 by establishing, in alignment with Kentucky's consolidated State plan under ESEA, the process KDE and its local operating agencies will follow in order to "identify and address the unique educational needs of migratory children."

(c) How the amendment conforms to the content of the authorizing statute: The amendment establishes, in alignment with Kentucky's consolidated State plan under ESEA, the process KDE and its local operating agencies will follow in order to comply with ESEA Section 1306, which requires KDE to ensure that KDE and its local operating agencies "identify and address the unique educational needs of migratory children in accordance with a comprehensive state plan."

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes, in alignment with Kentucky's consolidated State plan under ESEA, the process KDE and its local operating agencies will follow in order to comply with ESEA Section 1306, which requires KDE to ensure that KDE and its local operating agencies "identify and address the unique educational needs of migratory children in accordance with a comprehensive state plan."

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KDE and its local operating agencies will be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: KDE and its local operating agencies will be required to administer migrant education programs in compliance with the regulation, which aligns with Section 1306 of ESEA as well as Kentucky's consolidated state plan.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated budget impact related to this administrative regulation for KDE or its local operating agencies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation provides for a transparent and efficient process that KDE and its local operating agencies will follow in order to comply with ESEA Section 1306, which requires KDE to ensure that KDE and its local operating agencies "identify and address the unique educational needs of migratory children in accordance with a comprehensive state plan."

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

(a) Initially: Initial costs related to implementation of this administrative regulation are not anticipated because identifying and addressing the educational needs of migratory children was previously and continues to be required by federal law.

(b) On a continuing basis: The administrative body incurs an ongoing cost of staff and resources in administering migratory education programs. There are, though, no additional anticipated costs related to this administrative regulation for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no additional anticipated costs for the implementation and enforcement of this administrative regulation; however, ongoing costs of staff and resources for the administrative body related to this administrative regulation and its enabling statutes are paid using state and federal funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the this administrative regulation applies equally to all local education agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? KDE and its local operating agencies 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 156.070, KRS 156.035, and 20 U.S.C. 6391-6399.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Identifying and addressing the educational needs of migratory children was previously and continues to be required by federal law. As a result, this administrative regulation is not expected to impact the expenditures and revenues of any state or local government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? Identifying and addressing the educational needs of migratory children was previously and continues to be required by federal law. As a result, additional costs related to administering this program for the first year are not anticipated.

(d) How much will it cost to administer this program for subsequent years? Identifying and addressing the educational needs of migratory children was previously and continues to be required by federal law, and there is an ongoing cost of staff and resources to the administrative body related to this administrative regulation and its enabling statutes. There are, though, no additional anticipated costs related to 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 (+/-): N/A

Expenditures (+/-): NA

Other Explanation: N/A

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Amendment)

704 KAR 3:303. Required Academic Standards.

RELATES TO: KRS 156.070, 156.160, 158.6451, 158.6453, 160.290

STATUTORY AUTHORITY: KRS 156.070, 156.160, 158.6453

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645 and [for students and schools established in KRS] 158.6451. KRS 158.6453 requires the revision of academic content standards. 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. This administrative regulation incorporates by reference the required [Kentucky] academic standards, which contain the general courses of study and academic content standards for use in Kentucky's common schools unless specifically incorporated in another administrative regulation in 704 KAR Chapter 8.

Section 1. Before graduating from a Kentucky public high school, a student shall meet the minimum content requirements established in the Kentucky academic standards.

Section 2. Incorporation by Reference. (1) The "Kentucky Academic Standards", October 2018 [June 2015], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Program Standards, Department of Education, 300 Sower Boulevard, 5th Floor, [18th Floor, Capital Plaza Tower] Frankfort, Monday through Friday, 8 a.m. through 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

HAL HEINER, Chairperson

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 15, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2018, at 10:00 am, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

VOLUME 45, NUMBER 5 – NOVEMBER 1, 2018

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation will amend the document incorporated by reference in 704 KAR 3:303 to remove the standards incorporated by reference in other regulations.

(b) The necessity of this administrative regulation: This regulation will amend the document incorporated by reference in 704 KAR 3:303 to remove the standards incorporated by reference in other regulations and to increase the efficiency of amending regulations as new standards are adopted by the Kentucky Board of Education.

(c) How this administrative regulation conforms to the content of the authorizing statute: What this administrative regulation does: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451 and 158.6453. KRS 156.070(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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451 and 158.6453. KRS 156.070(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.

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

(a) How the amendment will change this existing administrative regulation: This regulation will amend the document incorporated by reference in 704 KAR 3:303 to remove the standards incorporated by reference in other regulations.

(b) The necessity of the amendment to this administrative regulation: This regulation will amend the document incorporated by reference in 704 KAR 3:303 to remove the standards incorporated by reference in other regulations.

(c) How the amendment conforms to the content of the authorizing statute: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451 and 158.6453. KRS 156.070(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.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will amend the document incorporated by reference in 704 KAR 3:303 to remove the standards incorporated by reference in other regulations. This will increase the efficiency of the review and revision process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this regulation include: The Kentucky Department of Education will need to modify the

document incorporated by reference in 704 KAR 3:303. This amendment will require local districts to conform to the contents of the academic standards incorporated by reference in this and other regulations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any action by local districts. The Kentucky Department of Education will need to modify the document incorporated by reference in 704 KAR 3:303.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Kentucky Department of Education staff time will be impacted to revise the document incorporated by reference.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will increase the efficiency once standards are revised by having them in their own regulation.

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

(a) Initially: Minimal staff time at KDE will be required to implement this amendment.

(b) On a continuing basis: Minimal staff time at the Kentucky Department of Education will be required to implement this amendment.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and local education agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Education staff time will be impacted to revise the document incorporated by reference.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451 and 158.6453. KRS 156.070(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.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will not have any impact on expenditure or revenue.

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

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

(c) How much will it cost to administer this program for the first year? Minimal staff time at the Kentucky Department of Education will be required to implement this amendment.

(d) How much will it cost to administer this program for subsequent years? Minimal staff time at the Kentucky Department of Education will be required to implement this amendment.

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

Revenues (+/-): N/A

Expenditures (+/-): NA

Other Explanation: N/A

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

704 KAR 3:305. Minimum requirements for high school graduation.

RELATES TO: KRS 156.160(1) (a), (d), 158.142, 158.645, 158.6451

STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), (d), 158.142

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. KRS 158.142(3) (b) requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. The content standards for the courses of study are established in the Kentucky[~~core~~] academic standards ~~set forth at [incorporated by reference in] 704 KAR 3:303 and 704 KAR Chapter 8.~~ This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

Section 1. Definitions. (1) "Academic readiness" and "career readiness" shall have the same meaning as described in 703 KAR 5:270.

(2)[(4)] "Early graduation" means meeting the competency-based criteria outlined in this administrative regulation and doing so in three (3) academic years or less.

(3)[(2)] "Early Graduation Certificate" means a certificate, awarded by the district and signed by the principal and superintendent, that shall make the recipient eligible for a scholarship award equal to one-half (1/2) of the state portion of the average statewide per pupil guaranteed base funding level, to be used at a Kentucky public two (2) year community and technical college or a Kentucky four (4) year public or non-profit independent institution accredited by the Southern Association of Colleges and schools.

(4) "Essential workplace skills" as described in KRS 158.1413.

(5) "Individual Education Program" or "IEP" shall have the same meaning as set forth in 707 KAR 1:002.

(6) "Individual Learning Plan" or "ILP" shall have the same meaning as set forth in 704 KAR 19:002.

Section 2[4]. (1) A district shall implement an advising and guidance process throughout the middle and high schools to provide support for the development and implementation of an individual learning plan for each student.

(a) The plan shall include career development and awareness.

(b) The individual learning plan shall not be a substitute for the statement of transition service needs for students with disabilities outlined 707 KAR 1:320.

(2) A district shall develop a method to evaluate the

effectiveness and results of the individual learning plan process. The evaluation method shall include input from students, parents, and school staff. As part of the evaluation criteria, the district shall include indicators related to the status of the student in the twelve (12) months following the date of graduation.

(3) A middle school and a high school shall work cooperatively to ensure that each student and parent receives information and advising regarding the relationship between education and career opportunities. Advising and guidance shall include information about financial planning for postsecondary education.

(4) A school shall maintain each student's individual learning plan. The individual learning plan shall be readily available to the student and parent and reviewed and approved at least annually by the student, parents, and school officials.

(5)[(6)] The development of the individual learning plan for each student shall begin by the end of student's sixth grade year and shall be focused on career exploration, related postsecondary education and training needs, essential workplace skills and career studies content.

(6)[(5)] Beginning with a student's eighth grade year, the individual learning plan shall set learning goals for the student based on academic and career interests and shall identify required academic courses, electives, and extracurricular opportunities aligned to the student's postsecondary goals. The school shall use information from individual learning plans to plan academic and elective offerings based on student need.

Section 3[2]. (1) For students entering grade nine (9) on or before the first day of the 2018-2019 academic year, each student in a ~~public[common]~~ school shall have a total of at least twenty-two (22) credits for high school graduation.

(2) Those credits shall include the content standards as provided in the Kentucky[~~core~~] academic standards, set forth at [incorporated by reference in] 704 KAR 3:303 and KAR Chapter 8.

(3) Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content.

(4) The required credits and demonstrated competencies shall include the following minimum requirements:

(a)[(4)] Language arts - four (4) credits (English I, II, III, and IV) to include the content contained in the Kentucky[~~core~~] academic standards for this content area [English and language arts] and comply with the following:

1.[(a)] Language arts shall be taken each year of high school; and

2.[(b)] If a student does not meet the college readiness benchmarks for English and language arts as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take an English and language arts transitional course or intervention, which is monitored to address remediation needs, before exiting high school;

(b)[(2)] Social studies - three (3) credits to include the content contained in the Kentucky[~~core~~] academic standards for this content area [social studies];

(c)[(3)] Mathematics - three (3) credits to include the content contained in the Kentucky core academic standards for this content area [mathematics] and include the following minimum requirements:

1.[(a)] Algebra I, Geometry, and Algebra II. An integrated, applied, interdisciplinary, occupational, or technical course that prepares a student for a career path based on the student's individual learning plan may be substituted for a traditional Algebra I, Geometry, or Algebra II course on an individual student basis if the course meets the content standards in the Kentucky[~~core~~] academic standards, set forth at [incorporated by reference in] 704 KAR 3:303 and 704 Chapter 8;

2.[(b)] A mathematics course or its equivalent as determined by the district shall be taken each year of high school to ensure readiness for postsecondary education or the workforce;

3.[(c)] Any mathematics course other than Algebra I, Geometry, or Algebra II shall be counted as an elective; and

4.[(d)] If a student does not meet the college readiness

benchmarks for mathematics as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take a mathematics transitional course or intervention, which is monitored to address remediation needs, before exiting high school;

(d)(4) Science - three (3) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky academic standards for this content area[science];

(e)(5) Health - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area[health];

(f)(6) Physical education - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area[physical education];

(g)(7) [History and appreciation of] Visual and performing arts [or another arts course which incorporates this content] - one (1) credit to include the content contained in the Kentucky academic standards for this content area[arts and humanities] or a standards-based specialized arts course based on the student's individual learning plan;

(h)(8) Academic and career interest standards-based learning experiences - seven (7) credits including four (4) standards-based learning experiences in an academic or career interest based on the student's individual learning plan; and

(i)(9) Demonstrated performance-based competency in technology.

Section 4. (1) Beginning with students who enter grade nine (9) on or after the first day of the 2019-2020 academic year, in order to receive a high school diploma, each student in a public school shall:

(a) Demonstrate academic readiness or career readiness; and

(b) Earn a total of at least twenty-two (22) credits for high school graduation.

(2) Beginning with students who enter grade nine (9) on or after the first day of the 2020-2021 academic year, in order to receive a high school diploma, each student in a public school shall:

(a) Demonstrate academic readiness or career readiness;

(b) Meet minimum criteria on the reading and mathematics assessments, which will approximate basic competence in reading and mathematics;

1. The minimum criteria shall include earning a scale score approved by the Kentucky Board of Education as passing.

2. Students who do not meet the minimum criteria on one or both assessments may retake the reading and/or mathematics assessments twice annually in the third and fourth years of high school enrollment.

3. The student's first completion of the assessments in grade ten (10) shall contribute to the school's accountability rating; and

(c) Earn a total of at least twenty-two (22) credits for high school graduation.

(3) The required credits shall include the content standards as provided in the Kentucky academic standards, set forth at 704 KAR 3:303 and 704 KAR Chapter 8.

(4) Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content.

(5) Each student shall be required to complete the following foundational credits and demonstrated competencies, consisting of ten (10) credits:

(a) English/language arts – two (2) credits (English I and II) to include the content contained in the Kentucky academic standards for this content area;

(b) Social studies – two (2) credits to include the content contained in the Kentucky academic standards for this content area;

(c) Mathematics - two (2) credits (Algebra I and Geometry) to include the content contained in the Kentucky academic standards for this content area;

(d) Science - two (2) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky academic standards for this content

area;

(e) Health - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area;

(f) Physical education - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area; and

(g) Visual and performing arts - one (1) credit to include the content contained in the Kentucky academic standards for this content area or a standards-based specialized arts course based on the student's individual learning plan.

(6) In addition to the foundational requirements outlined in Section 4 (5) of this administrative regulation, every student shall earn a minimum of twelve (12) personalized credits in order to receive a high school diploma. These twelve (12) personalized credits shall include:

(a) Two (2) additional English/Language Arts credits that include the content contained in the Kentucky academic standards for this content area and are aligned to the student's individual learning plan;

(b) Two (2) additional mathematics credits that include the content contained in the Kentucky academic standards for this content area and are aligned to the student's individual learning plan;

(c) One (1) additional science credit that includes the content contained in the Kentucky academic standards for this content area and is aligned to the student's individual learning plan;

(d) One (1) additional social studies credit that includes the content contained in the Kentucky academic standards for this content area and is aligned to the student's individual learning plan;

(e) Academic and career interest standards-based learning experiences - six (6) credits including four (4) standards-based learning experiences based on the student's individual learning plan;

(f) Demonstrate performance-based competency in technology using the process for awarding performance-based credit outlined in Section 7 of this administrative regulation;

(g) Pass a civics test as required by KRS 158.141; and

(h) Beginning with students entering grade nine (9) on or after the first day of the 2020-2021, successfully complete one (1) or more courses or programs that meet the financial literacy standards as established by the Kentucky Board of Education.

(7)(a) Districts shall develop an appeals process for students who are on track to meet all graduation requirements except the minimum criteria on the reading and mathematics assessments.

(b) The appeals process shall be available to students who have at least one (1) unsuccessful attempt to meet the minimum criteria on the reading and/or mathematics assessments.

(c) The appeals process shall consist of two (2) options.

1. A student portfolio to include evidence of the following:

a. The student's ILP that includes student transcript;

b. If applicable, the student's IEP, that includes evidence that the student has received specially designed instruction and related services in reading and mathematics;

c. Performance on the required state assessments;

d. Appropriate interventions, targeted to the student's needs, provided to the student to ensure support was provided toward meeting the requirements outlined in this administrative regulation;

e. Student work demonstrating the students' competency in reading and mathematics; and

f. The student's college or career plans; or

2. The student's eighth grade assessment rating of proficient or higher for reading or mathematics or both reading and mathematics, if applicable.

(d) Results of the appeals process will not impact the school or district's accountability rating.

(e) The appeals process shall require the principal to submit the appeal and evidence to the superintendent or designee for review and approval.

(8) The provisions of Section 4 (3) through (6) shall apply to all students referenced in Section 4 (1) and (2).

Section 5[9]. (1)[Beginning in the 2014—2015 academic year.] Only students who meet the criteria outlined in this section shall be eligible for early graduation.

(a) Those students who meet the criteria for early graduation shall receive from the school district a diploma and an Early Graduation Certificate.

(b) Students wishing to graduate early shall indicate that intent to the school principal at the beginning of grade nine (9) or as soon as the intent is known, but within the first thirty (30) school days of the academic year in which they wish to graduate.

(c)[(a)] A student's intent to graduate early shall be entered into the student information system by the school district by October 1 of the year in which the student makes the declaration.

(d)[(b)] Students working toward early graduation and receipt of a corresponding Early Graduation Certificate shall be supported by development and monitoring of an individual learning plan to support their efforts.

(e)[(3)] A student who has indicated an intent to graduate early may participate in the student's state administration of the college readiness exam prior to the junior year, if needed.

(2) For students who enter grade nine (9) on or before the first day of the 2018-2019 academic year, to graduate early and earn an Early Graduation Certificate, a student shall:

(a) Score proficient on all required content summative assessments as designated by the Kentucky Department of Education; and

(b) Meet the requirement set forth in KRS 158.142 (c).

(3) Beginning with students entering grade nine (9) in fall 2019, to graduate early and earn an Early Graduation Certificate, a student shall:

(a) Score proficient or higher on all high school assessments required for high school accountability; and

(b) Meet the requirement set forth in KRS 158.142.

Section 6[3]. (1) A local board of education may substitute an integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content[and addresses the same applicable components of 703 KAR 4:060].

(2) For students with disabilities, a local board of education may substitute a functional, integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content[and addresses the same applicable components of 703 KAR 4:060]. These shall be based on grade-level content standards and may be modified to allow for a narrower breadth, depth, or complexity of the general grade-level content standards.

Section 7[5]. (1) A local board of education may award credit toward high school graduation for satisfactory demonstration of learning based on content standards described in the Kentucky[core] academic standards, set forth at[incorporated by reference in] 704 KAR 3:303 and 704 KAR Chapter 8, and a rigorous performance standards policy established by the local board of education. A school shall establish performance descriptors and evaluation procedures to determine if the content and performance standards have been met.

(2) A local board of education shall award credit toward high school graduation based on:

(a) A standards-based Carnegie unit credit that shall consist of at least 120 hours of instructional time in one (1) subject; or

(b) A[standards-based] performance-based credit based on standards, regardless of the number of instructional hours in one (1) subject.

(3) A local board of education which has chosen to award[standards-based] performance-based credit shall award a standards-based credit earned by a student enrolled in grade 5, 6, 7, or 8 if: (a) The content of the course is the same that is established in the Kentucky[core] academic standards, set forth in[incorporated by reference in] 704 KAR 3:303 and 704 KAR Chapter 8; and

(b) The district has criteria in place to make a reasonable determination that the middle level student is capable of success in

the high school course.

(4) A local board of education which has chosen to award[standards-based] performance-based credit shall establish a policy for a performance-based credit system that includes:

(a) The procedures for developing performance-based credit systems and for amending the system;

(b) The conditions under which each high school may grant performance-based credits and the related performance descriptors and assessments;

(c) Objective grading and reporting procedures;

(d) Content standards set forth at[as addressed in] 704 KAR 3:303 and 704 KAR Chapter 8[Required core academic standards and 703 KAR 4:060, Academic expectations];

(e) The extent to which state-provided assessments will be used in the local performance-based credit system;

(f) The ability for students to demonstrate proficiency and earn credit for learning acquired outside of school or in prior learning; and

(g) Criteria to ensure that internships, cooperative learning experiences, and other learning experiences in the school and community are:

1. Designed to further student progress towards the individual learning plan;

2. Supervised by qualified instructors; and

3. Aligned with state and local content and performance standards.

(5) A board of education may award standards-based, performance-based credit toward high school graduation for:

(a) Standards-based course work that constitutes satisfactory demonstration of learning in any high school course, consistent with Sections 3 and 4[4] of this administrative regulation;

(b) Standards-based course work that constitutes satisfactory demonstration of learning in a course for which the student failed to earn credit when the course was taken previously;

(c) Standards-based portfolios, senior year, or capstone projects;

(d) Standards-based online or other technology mediated courses;

(e) Standards-based dual credit or other equivalency courses; or

(f) Standards-based internship, cooperative learning experience, or other supervised experience in the school or the community.

(6) Each local board of education shall maintain a copy of its policy on high school graduation requirements. This policy shall include a description of how the requirements address KRS 158.6451(1)(b) and 703 KAR 4:060.

(7) Beginning with the first day of the 2019-2020 academic year, all local boards of education shall implement the requirements outlined section 7 (3) (4), and (5) of this administrative regulation to allow students to demonstrate competency in technology as required in Section 4 (5) (f) of this administrative regulation.

Section 8[6]. (1) A student who satisfactorily completes the requirements of this administrative regulation and additional requirements as may be imposed by a local board of education or meets the requirements for early graduation as outlined in Section 5[9] of this administrative regulation shall be awarded a graduation diploma.

(2) The local board of education shall award the diploma.

Section 9[7]. This administrative regulation shall not be interpreted as prohibiting a local governing board, superintendent, principal, or teacher from awarding special recognition to a student.

Section 10[8].[Beginning with the graduating class of 2013,] (1) If the severity of an exceptional student's disability precludes a course of study that meets the high school graduation requirements established in Sections 3 and 4[Section 4] of this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be offered.

(2)[(4)] This course of study shall be based upon student

needs and the provisions specified in 704 KAR 3:303 and 704 KAR Chapter 8.~~[Required core academic standards,]~~ and shall be reviewed at least annually.

(3)(2) A student who completes this course of study shall receive an alternative high school diploma to be awarded by the local board of education consistent with the graduation practices for all students.

(4)(3) A local board of education may establish policies to award an alternative high school diploma to a former student who has received a certificate or certificate of attainment.

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).

DR. WAYNE LEWIS, Commissioner
HAL HINER, Chairperson

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 15, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2018 at 10 am, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON Deanna Durrett, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

(b) The necessity of this administrative regulation: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. KRS 158.142(3)(b) requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. The content standards for the courses of study are established in the Kentucky core academic standards incorporated by reference in 704 KAR 3:303 and 704 KAR Chapter 8. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. KRS 158.142(3)(b) requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. The content standards for the courses of study are established in the Kentucky core academic standards incorporated by reference in 704 KAR 3:303 and 704 KAR Chapter 8. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this regulation change the minimum high school graduation requirements for students entering ninth grade in the fall of 2019.

(b) The necessity of the amendment to this administrative regulation: The amendments to this regulation give districts more flexibility to meet the college and/or career readiness needs of their students.

(c) How the amendment conforms to the content of the authorizing statute: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation.

(d) How the amendment will assist in the effective administration of the statutes: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this regulation include: all public schools, school districts, and the KDE as it is tasked with providing guidance, support, and technical assistance, and monitoring of the implementation of new minimum high school graduation 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: Local schools and districts and schools may need to revise their course offerings and available educational opportunities to ensure students have access to content. KDE will need to provide implementation guidance to districts and schools.

(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 the districts to implement this regulation. Staffing patterns may need to be adjusted in light of new requirements. KDE will be impacted by staff time to answer questions and provide guidance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation provides flexibility to districts to meet the needs of students to become transition-ready.

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

(a) Initially: Staffing patterns at the local district may need to be adjusted in light of new requirements and student needs. Local district and school staff time will be impacted through the appeals portfolio review process. Local district budgets will be impacted by the need for resources to support interventions for students who need them. KDE staff time will be impacted creating guidance for implementation and answering questions from the field. Assessment cost may increase due to the opportunity for students to repeat reading and mathematics assessments several times.

(b) On a continuing basis: Staffing patterns at the local district may need to be adjusted in light of new requirements and student needs. Local district and school staff time will be impacted through the appeals portfolio review process. Local district budgets will be impacted by the need for resources to support interventions for students who need them. KDE staff time will be impacted creating guidance for implementation and answering questions from the field. That impact will decrease each year of implementation. Assessment cost may increase due to the opportunity for students to repeat reading and mathematics assessments several times.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: State funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and local education agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies and KDE.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. KRS 158.142(3) (b) requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. The content standards for the courses of study are established in the Kentucky core academic standards incorporated by reference in 704 KAR 3:303 and 704 KAR Chapter 8. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

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

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

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

(c) How much will it cost to administer this program for the first year? Staffing patterns at the local district may need to be adjusted in light of new requirements and student needs. Local district and school staff time will be impacted through the appeals portfolio review process. Local district budgets will be impacted by the need for resources to support interventions for students who need them. KDE staff time will be impacted creating guidance for implementation and answering questions from the field. Assessment cost may increase due to the opportunity for students to repeat reading and mathematics assessments several times.

(d) How much will it cost to administer this program for subsequent years? Staffing patterns at the local district may need to be adjusted in light of new requirements and student needs. Local district and school staff time will be impacted through the appeals portfolio review process. Local district budgets will be impacted by the need for resources to support interventions for students who need them. KDE staff time will be impacted creating guidance for implementation and answering questions from the field. That impact will decrease each year of implementation. Assessment cost may increase due to the opportunity for students to repeat reading and mathematics assessments several times.

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

Revenues (+/-): N/A
Expenditures (+/-): NA
Other Explanation: N/A

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Amendment)

704 KAR 3:365. Complaint procedures for programs under the Elementary and Secondary Education Act of 1965[Chapter 1-complaint procedures].

RELATES TO: KRS 156.010,[156.031,] 156.035,[34 C.F.R. 200.73, 201.47,] 20 U.S.C. 6320, 20 U.S.C. 7844, 20 U.S.C. 7883

STATUTORY AUTHORITY: KRS[156.031,] 156.035, 156.070, 20 U.S.C. 6320, 7844, 7883

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes complaint procedures pursuant to Sections 1117, 8304, and 8503 of Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act. Section 8304 of ESEA requires the Kentucky Department of Education (department) to adopt written procedures for the receipt and resolution of complaints alleging violations of law in the administration of programs under ESEA. Further, Sections 1117 and 8503 of ESEA require the department to resolve complaints related to equitable services to nonpublic school children[KRS 156.031 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990; and KRS 156.010, 156.031, and 156.035 provide the state statutory framework for complying with federal funding programs and for receiving and allocating federal education funds; and 34 C.F.R. 200.73 and 34 C.F.R. 201.47 require the Department of Education, when applying for participation in programs for disadvantaged children under Chapter 1 of Public Law 100-297 (the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, 20 U.S.C. 2701 to 2901), to show written evidence of complaint procedures particular to disadvantaged and migrant children under Chapter 1. This administrative regulation establishes such complaint procedures].

Section 1. Complaints Against a Local Education Agency[LEA Procedures].

(1) Complaints related to equitable services to nonpublic school children shall be governed by Section 3 of this administrative regulation.

(2) Complaints originating at the local level alleging a violation by a local education agency (LEA) of a federal statute or regulation that applies to a program under ESEA[relative to disadvantaged and migrant children under federal Chapter 1 programs] shall be decided [entertained] by the department[Department of Education] only after such complaints have been filed and heard at the local level in accordance with local education agency policy.[Such complaints shall be in written form. Persons making written complaints shall register such complaints with the Director, Division of Compensatory Education, Kentucky Department of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

(2) Written complaints requiring a formal hearing shall be referred to a complaint committee. Members of this committee shall include, as a minimum, the chief state school officer (or designee); Director, Division of Compensatory Education; unit director; and the program consultant serving the affected LEA. The committee shall conduct a hearing within thirty (30) days following the receipt of complaints requesting a formal hearing.]

(3) A complaint not resolved at the local level may be submitted to the department by mail at the following address: Kentucky Department of Education, c/o ESEA Complaints, 300 Sower Boulevard – 5th Floor, Frankfort, Kentucky 40601.

(4) Complaints mailed to the department shall be in the form of a written, signed statement that includes:

(a) A statement that a requirement that applies to an ESEA program has been violated by the LEA;

(b) The facts on which the statement is based, a description of the nature of the problem, and the specific requirement(s) allegedly

violated by the LEA:

(c) A signature and contact information for the complainant; and

(d) A potential resolution of the problem to the extent it is known and available to the complainant at the time of the filing.

(5) Upon receipt of a complaint, the department shall carry out an investigation, if necessary. During the investigation period:

(a) The complainant and the LEA shall each have an opportunity to submit additional information about any allegation in the complaint;

(b) The LEA shall have an opportunity to respond to the complaint, including making a proposal to resolve such amicably; and

(c) Any on-site investigation, if deemed necessary by the department, shall be made following adequate advance notice to the parties involved and may include the gathering of information through:

1. Direct observation;
2. Interviews; or
3. Examination of records.

(6) Within forty-five (45) days of receiving a complaint, the department shall issue a written decision for each allegation in the complaint. If exceptional circumstances exist with respect to a particular complaint, an extension of the time limit may be granted by the department.

(7) The complainant or LEA shall have a right to request the Commissioner, or his designee, reconsider the written decision in subsection (6). To initiate reconsideration, the complainant or LEA shall send, by certified mail to the department, a written request within fifteen (15) days of the issuance of the department's decision in subsection (6).

(8) Following the receipt of a request pursuant to subsection (7), the Commissioner, or his designee, shall reconsider the department's decision in subsection (6) and shall issue a final written decision for each allegation in the complaint within thirty (30) days.

(9) Following the final determination on a complaint, the LEA shall take any required corrective action. To ensure compliance, the department may use one (1) or more of the following methods:

(a) A corrective action plan for the LEA;

(b) Follow-up visits by department staff to determine whether the LEA is taking the required corrective action;

(c) Repayment of previously dispersed funds or withholding of future funds; or

(d) To the extent permissible under ESEA and other applicable laws and regulations, any corrective action necessary to ensure compliance.

Section 2. Complaints Against the State Education Agency.

(1) Appeals relating to the department's accountability classification of a school or district shall be governed by 703 KAR 5:240 and not by this administrative regulation.

(2) Complaints related to equitable services to nonpublic school children shall be governed by Section 3 of this administrative regulation.

(3) All other complaints originating at the state level alleging a violation by the state education agency (SEA) of a federal statute or regulation that applies to a program under ESEA shall be submitted to the department by mail at the following address: Kentucky Department of Education, c/o ESEA Complaints, 300 Sower Boulevard – 5th Floor, Frankfort, Kentucky 40601.

(4) Complaints mailed to the department shall be in the form of a written, signed statement that includes:

(a) A statement that a requirement that applies to an ESEA program has been violated by the SEA;

(b) The facts on which the statement is based, a description of the nature of the problem, and the specific requirement allegedly violated by the department;

(c) A signature and contact information for the complainant; and

(d) A potential resolution of the problem to the extent it is known and available to the complainant at the time of the filing.

(5) Upon receipt of a complaint, the department shall follow the

same procedures outlined in Section 1 of this administrative regulation to the extent practicable. Upon receipt of the request for a formal hearing, the Department of Education shall make the necessary on-site investigation of the complaint. Such on-site investigation shall:

(1) Be made following adequate advance notice to the parties involved;

(2) Include the gathering of information through interviews and examination of records, considering each allegation of the complaint; and

(3) Provide appropriate opportunities for the complainant(s) and the LEA to present evidence concerning the allegations].

Section 3. Complaints Related to Equitable Services to Nonpublic School Children.

(1) Complaints related to equitable services to nonpublic school children shall be submitted to the nonpublic school ombudsman by mail at the following address: Kentucky Department of Education, c/o Nonpublic School Ombudsman, 300 Sower Boulevard – 5th Floor, Frankfort, Kentucky 40601.

(2) Complaints mailed to the nonpublic school ombudsman shall be in the form of a written, signed statement that includes:

(a) A statement that 20 U.S.C. 7881 has been violated by the SEA, an LEA, an education service agency, a consortium of those agencies, or entity;

(b) The facts on which the statement is based and a description of the nature of the problem;

(c) A signature and contact information for the complainant; and

(d) A potential resolution of the problem to the extent it is known and available to the complainant at the time of the filing.

(3) Upon receipt of a complaint, the nonpublic school ombudsman shall carry out an investigation, if necessary. During the investigation period:

(a) The complainant and the SEA, LEA, education service agency, consortium of those agencies, or entity shall each have an opportunity to submit additional information about any allegation in the complaint;

(b) The SEA, LEA, education service agency, consortium of agencies, or other entity shall have an opportunity to respond to the complaint, including making a proposal to resolve such amicably; and

(c) Any on-site investigation, if deemed necessary by the department, shall be made following adequate advance notice to the parties involved and may include the gathering of information through:

1. Direct observation;
2. Interviews; or
3. Examination of records.

(4) Within forty-five (45) days of receiving a complaint, the nonpublic school ombudsman shall issue a final written decision for each allegation in the complaint. [Opportunity shall be provided for the complainant or the complainant's representative, or both, and the LEA involved to submit evidence, including the opportunity to question parties to the dispute or any of their witnesses. All investigations and the solutions of complaints shall be completed within sixty (60) days unless the complainant(s) is notified, in writing, to the contrary. If exceptional circumstances exist with respect to a particular complaint, an extension of the time limit shall be granted by the Department of Education].

Section 4. Appeals to the United States Secretary of Education. An involved party may appeal the final written decision of the department under Sections 1, 2 or 3 of this administrative regulation to the United States Secretary of Education (Secretary) to the extent permissible under ESEA and in accordance with written procedures developed and implemented by the Secretary. [An involved party may appeal the final Department of Education resolution to the United States Secretary of Education if notice of such appeal is filed with the secretary within thirty (30) days of the receipt of the Department of Education's written decision.

Section 5. If the LEA fails to take corrective action following a final

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determination of a formal complaint, the Department of Education shall use one (1) or more of the following methods to assure such action:

- (1) Follow-up visits by Department of Education staff to determine whether the agency is taking the required corrective action;
- (2) Compliance agreement; and
- (3) Withholding of funds.

~~Section 6. SEA Procedures. Complaints by an outside organization or individual may be filed through a written signed complaint concerning any alleged state (SEA) violation of a federal statute or regulation that applies to Chapter 1 LEA programs. The complaint shall include the facts on which the statement is based. Complainants shall register such complaints with the chief state school officer. The same procedures outlined in Sections 1, 2, 3, and 4 of this administrative regulation shall be followed insofar as practicable.~~

~~Section 7. Dissemination, free of charge, of information concerning these procedures shall be made to all interested parties including district and school advisory councils].~~

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, JR., Ph.D., Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 15, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 29, 2018, at 10 a.m. in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2018.

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the written procedures for the receipt and resolution of complaints alleging violations of law in the administration of all programs under the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act. This regulation also provides a clear process for the Kentucky Department of Education (KDE) to fulfill its obligations related to equitable service complaints.

(b) The necessity of this administrative regulation: Section 8304 of ESEA requires KDE to adopt written procedures for the receipt and resolution of complaints alleging violations of law in the administration of all ESEA programs. ESEA also provides the right, in Section 1117, for complaints related to equitable services to nonpublic school children to be filed with KDE and requires, in Section 8503, KDE to resolve such equitable service complaints within 45 days of receipt.

- (c) How this administrative regulation conforms to the content

of the authorizing statute: This regulation establishes, as required by Section 8304 of ESEA, the written procedures for the receipt and resolution of complaints alleging violations of law in the administration of all ESEA programs and provides a clear process for KDE to fulfill its obligations related to equitable service complaints pursuant to Sections 1117 and 8503 of ESEA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes, as required by Section 8304 of ESEA, the written procedures for the receipt and resolution of complaints alleging violations of law in the administration of all ESEA programs and provides, pursuant to Sections 1117 and 8503 of ESEA, a clear process for KDE to fulfill its obligations related to equitable service complaints.

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

(a) How the amendment will change this existing administrative regulation: As revised, this administrative regulation fulfills KDE's requirement under Section 8304 by creating complaint procedures for all programs administered under ESEA, not just Title I. This regulation, as amended, also provides a clear process for KDE to fulfill its obligations related to equitable service complaints. Necessary technical amendments have also been made throughout the regulation and include: Amending the title of the regulation to broaden the applicability of the regulation to include all complaints arising under ESEA; correcting statutory references throughout to account for legal changes that have occurred since the regulation's effective date; updating the agency's official mailing address within the regulation; and, removing outdated regulatory language.

(b) The necessity of the amendment to this administrative regulation: When this administrative regulation was initially adopted, ESEA only required written complaint procedures related to programs serving disadvantaged and migrant children under Title 1, which was previously referred to as "Chapter 1." Currently, Section 8304 of ESEA requires KDE to adopt written procedures for the receipt and resolution of complaints alleging violations of law in the administration of all ESEA programs. As revised, this administrative regulation fulfills KDE's requirement under Section 8304 by creating complaint procedures for all programs administered under ESEA, not just Title I. As revised, this administrative regulation also provides a clear process for KDE to fulfill its obligations related to equitable service complaints pursuant to Sections 1117 and 8503 of ESEA.

(c) How the amendment conforms to the content of the authorizing statute: The amendment establishes, as required by Section 8304 of ESEA, the written procedures for the receipt and resolution of complaints alleging violations of law in the administration of all ESEA programs and provides a clear process for KDE to fulfill its obligations related to equitable service complaints pursuant to Sections 1117 and 8503 of ESEA.

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes, as required by Section 8304 of ESEA, the written procedures for the receipt and resolution of complaints alleging violations of law in the administration of all ESEA programs and provides, pursuant to Sections 1117 and 8503 of ESEA, a clear process for KDE to fulfill its obligations related to equitable service complaints.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local education agencies (LEAs), KDE, and any entity or person alleging an LEA or KDE violated the law in administering one or more programs under ESEA will be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: KDE is required to follow the procedures and timelines that are set forth in the regulation when resolving complaints alleging an LEA or KDE violated the law in

administering one or more programs under ESEA. KDE is also required to follow the procedures and timelines that are set forth in the regulation for complaints related to equitable services to nonpublic school children. Any entity or person alleging an LEA or KDE violated the law in administering one or more programs under ESEA is required to follow the procedures and timelines that are set forth in the regulation as well as all other mandates within the regulation, including the requirement that complainants alleging an LEA violated the law in administering one or more programs under ESEA are required to seek a resolution at the local level before filing such allegations with KDE.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated budget impact related to this administrative regulation for LEAs, KDE, or any entity or person alleging an LEA or KDE violated the law in administering one or more programs under ESEA.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation provides streamlined, efficient procedures for receiving and resolving complaints alleging violations of law in the administration of all ESEA programs as well as complaints related to equitable services to nonpublic school children. This administrative regulation also provides clarity and transparency regarding the processes KDE will implement in receiving and resolving complaints alleging violations of law in the administration of all ESEA programs as well as complaints related to equitable services to nonpublic school children.

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

(a) Initially: Initial costs related to implementation of this administrative regulation are not anticipated as this regulation clarifies existing procedures KDE has related to complaints alleging violations of law in the administration of federal programs and aligns such to ESEA.

(b) On a continuing basis: The administrative body incurs an ongoing cost of staff and resources in receiving and resolving complaints alleging violations of law in the administration of all ESEA programs as well as complaints related to equitable services to nonpublic school children. There are, though, no additional anticipated costs related to this administrative regulation for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no additional anticipated costs for the implementation and enforcement of this administrative regulation. This regulation does not create additional responsibilities on the part of KDE but, instead, clarifies existing procedures KDE has related to complaints alleging violations of law in the administration of federal programs and aligns such to ESEA.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies equally to local education agencies (LEAs), KDE, and entities or persons alleging an LEA or KDE violated the law in administering one or more programs under ESEA.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Deanna Durrett

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies (LEAs), the Kentucky Department of Education (KDE), and any entity or person alleging an LEA or KDE violated the law in

administering one or more programs under ESEA.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.035, KRS 156.070, 20 U.S.C. 6320, 20 U.S.C. 7844, and 20 U.S.C. 7883.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation does not create additional responsibilities on the part of LEAs, KDE, or any entity or person alleging an LEA or KDE violated the law in administering one or more programs under ESEA. Instead, this regulation clarifies existing procedures KDE has related to complaints alleging violations of law in the administration of federal programs and aligns such to the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act. As a result, this administrative regulation is not expected to impact the expenditures and revenues of any state or local government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? Initial costs related to implementation of this administrative regulation are not anticipated as this regulation clarifies existing procedures KDE has related to complaints alleging violations of law in the administration of federal programs and aligns such to ESEA.

(d) How much will it cost to administer this program for subsequent years? The administrative body incurs an ongoing cost of staff and resources in receiving and resolving complaints alleging violations of law in the administration of all ESEA programs as well as complaints related to equitable services to nonpublic school children. There are, though, no additional anticipated costs related to this administrative regulation for 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 (+/-): N/A

Expenditures (+/-): NA

Other Explanation: N/A

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Safety (Amendment)

805 KAR 3:100. Equipment use and operation.

RELATES TO: KRS 351.070

STATUTORY AUTHORITY: KRS 351.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070 authorizes the Secretary of the Energy and Environment Cabinet to promulgate, amend, or rescind any administrative regulations as necessary and suitable for the proper administration of KRS Chapter 351. This administrative regulation establishes safety standards controlling the use and operation of equipment in the Commonwealth's surface type coal and clay mines, which include strip and auger mining operations.

Section 1. (1) The following items shall be guarded to prevent injury:

(a) Gears;

(b) Sprockets;

(c) Chains;
(d) Drive, head, tail, and take-up pulleys;
(e) Flywheels;
(f) Couplings;
(g) Shafts;
(h) Sawblades;
(i) Fan inlets; and
(j) Similar exposed moving machine parts that may cause injury to persons.

(2) An overhead belt shall be guarded if the whipping action from a broken belt may be hazardous to a person below.

(3) A guard at conveyor drive, head and tail pulleys shall be sufficient to prevent a person from reaching behind the guard and becoming caught between the belt and the pulley.

(4) A protruding set screw on revolving parts shall be guarded.

(5) Except while testing the machinery, a guard shall be securely in place while machinery is being operated.

(6) A guard shall be sufficiently strong and maintained to provide the required protection.

(7) A stationary grinding machine other than special bit grinder shall be equipped with:

(a) Peripheral hoods (less than ninety (90) degree throat openings) capable of withstanding the force of a bursting wheel;

(b) Adjustable tool rests set as close as practical to the wheel; and

(c) Safety washers.

(8) A face shield or goggles, in good condition, shall be worn while operating a grinding wheel.

(9) A hand-held power tool, other than rock drill, shall be equipped with controls requiring constant hand or finger pressure to operate the tools or shall be equipped with friction or other equivalent safety devices.

(10) A guard or shield shall be provided in areas where flying or falling materials present a hazard.

(11) (a) A vehicle such as a fork lift, truck, front-end loader, and bulldozer shall be provided with rollover protection if necessary to protect the operator.

(b) 1. Beginning January 1, 2016:

a. An excavator newly placed in service at a licensed facility shall be equipped with rollover protection that shall meet, at a minimum, the International Organization for Standardization (ISO) 12117-2:2008 standard or the equivalent ISO standard; and

b. A person operating an excavator that is not equipped with certified rollover protection shall be trained by the Division of Mine Safety as having successfully completed an excavator operation safety course.

2. Beginning January 1, 2020[2049], any excavator in operation at a licensed facility shall be equipped with rollover protection meeting the current International Organization for Standardization (ISO) standards in place.

(12) (a) A vehicle such as a fork lift, truck, front-end loader, and bulldozer, shall be provided with falling object protection if necessary to protect the operator against falling material.

(b) 1. An excavator manufactured after January 1, 2011 shall be provided with falling object protection. The falling object protection shall meet ISO standards in place when the machine was manufactured.

2. Effective January 1, 2016, an excavator that operates in an application with the risk of falling objects shall be equipped with falling object protection that shall meet, at a minimum, the ISO 10262:1998 Level II standard or the equivalent ISO standard.

(13) Unsafe equipment or machinery shall be removed from service immediately.

(14) Machinery and equipment shall be operated only by an authorized and experienced person.

(15) A repair or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except if machinery motion is necessary to make an adjustment or if nonenergized components of large machinery can be safely repaired while the machine is operating.

(16) A person shall not work on mobile equipment in a raised position until it has been blocked in place securely. This shall not preclude the use of equipment specifically designed, such as

elevated mobile work platforms.

(17) A drive belt shall not be shifted while in motion unless the machine is provided with mechanical a shifter.

(18) A belt, chain, or rope shall not be guided onto a power driven moving pulley, sprocket, or drum with the hands except on slow moving equipment especially designed for hand feeding.

(19) A pulley or conveyor shall not be cleaned manually while the conveyor is in motion.

(20) A belt dressing shall not be applied manually while the belt is in motion unless an aerosol-type dressing is used.

(21) Machinery shall not be lubricated while in motion if a hazard exists unless equipped with extended fittings or cups.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 15, 2018

FILED WITH LRC: October 15, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes safety standards controlling the use and operation of equipment in the Commonwealth's surface type coal and clay mines, which include strip and auger mining operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to require safety standards for equipment used on surface coal mines and clay mines within the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 351.070(12) provides that the Commissioner may "prescribe reasonable safety standards governing the use of explosives, and electrical and mechanical equipment in the operation of open-pit or surface mines." This administrative regulation provides safety standards for equipment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides details concerning safety requirements for equipment used at surface type coal and clay mines which include strip and auger mining operations.

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

(a) How the amendment will change this existing administrative regulation: This amendment will simply extends the date excavators are to comply with International Organization for Standardization (ISO) rollover protection standards.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to extend the deadline for meeting ISO standards for rollover protection of excavators.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing

statutes by extending the deadline for meeting standards required for rollover protection on excavators.

(d) How the amendment will assist in the effective administration of the statutes: KRS 351.070(12) provides that the Commissioner may "prescribe reasonable safety standards governing...mechanical equipment in the operation of open-pit or surface mines." This amendment will extend the deadline that requires entities to meet the ISO standard for rollover protection.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All surface mines in the Commonwealth and a few underground mines, depending on if they are using excavators in areas where there are dangers of rollover, could 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: The entities listed in question (3) above will be required to install rollover protection, that meets the applicable ISO standard, for excavators by January 1, 2020.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not result in a cost to the entities described in (3). This amendment simply extends the deadline for compliance with the rollover protection standard for excavators.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These entities will an additional year to comply with the ISO standard for rollover protection on excavators.

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

(a) Initially: There will be no costs to the administrative body with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the administrative body with implementation of this amendment.

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

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

(9) TIERING: Is tiering applied? No. All entities that use excavators will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Safety.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 351.070.

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

PUBLIC PROTECTION CABINET Department of Insurance (Amendment)

806 KAR 2:092. Disclosure of local government taxes and collection fee.

RELATES TO: KRS 91A.080, 91A.0804, 91A.0810, 304.3-150[304.3]

STATUTORY AUTHORITY: KRS 91A.0810[91A.0810(2)]

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance.] KRS 91A.0810[(2)] requires an insurance company to disclose the amount[notify each current policyholder] of [their rights regarding payment of] local government premium taxes charged[and further requires the Kentucky Office of Insurance] to [promulgate] an insured [administrative regulation setting forth the text of that notice. This administrative regulation prescribes the text to be used by insurance companies when notifying their current policyholders of the payment for local government taxes] and identify the taxing jurisdiction[process for appealing a payment.] This administrative regulation [also] sets minimum standards for the [future] disclosure of local government taxes and collection fees to policyholders.

Section 1. Definitions.

(1) "Collection fee" means the fee established in KRS 91A.080(4).

(2) "Insurance company" means:

(a) ~~An~~[means an] entity holding a certificate of authority in accordance with KRS 304.3-150; and

(b) A surplus lines broker licensed in accordance with KRS 304.10-120,[304.3-]

(3) "Local government tax" or "tax" means the license fee or tax imposed by a local government in accordance with KRS 91A.080, except the collection fee.

Section 2. ~~Notice to Current Policyholders.~~ (1) ~~Before December 31, 2008, an insurance company shall provide each policyholder who has a policy in effect on July 15, 2008, with a one (1) time notice that states, "Your insurance premium may be subject to a license fee or tax imposed by your local government. The amount of the fee or tax is determined by the local government where the insured risk is located. The tax and any collection fee, if included in the charges to you, will be shown on all future renewal certificates or premium billings for your policy. If you believe that you have been erroneously charged or have been overcharged the tax, you may contact us for information on how to request a refund or credit for the tax paid."~~

(2) ~~An insurance company may include specific contact information in the notice sent to policyholders pursuant to subsection (1) of this section.~~

(3) ~~If a policyholder is insured under more than one (1) policy~~

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~~with an insurance company, the insurance company may send one (1) notice to the policyholder to satisfy the requirements of subsection one (1) of this section.~~

Section 3.] Disclosure of Local Government Tax.

~~(1) An[On and after December 31, 2008, an] insurance company shall disclose to the policyholder the amount of local government tax being charged to the policyholder and the taxing jurisdiction to which the tax is due.~~

(2) Disclosure of a local government tax shall not be required if the insurance company does not charge the tax to the policyholder.

(3) The disclosure shall:

(a) Itemize:

1. The amount of tax and any collection fee charged to the policyholder for each taxing jurisdiction; and

2. The name or abbreviation clearly identifying each corresponding taxing jurisdiction to which the tax is due; and

(b) Be provided to the policyholder:

1. For newly issued policies, on the:

a. Policy;

b. Declaration sheet; or

c. Initial billing; and

2. For renewed policies, on the:

a. Renewal certificate upon renewal of the policy; or

b. Billing for each period for which premium or additional premium is charged to a policyholder by the insurance company.

(4)(a) If local government tax is owed to multiple taxing jurisdictions, the disclosure required in subsection (3) of this section shall list separately each taxing jurisdiction to which tax is owed.

(b) If a credit of a city tax is applied to a county tax pursuant to KRS 91A.080(12), and the result is that no tax is owed to the county, the disclosure may include the county in the itemization of taxing jurisdictions required in subsection (3) of this section.

(5) If a collection fee is included in the amount charged to the policyholder, the disclosure shall state that the amount includes the tax and a collection fee.

(6)(a) An insurance company may provide the disclosure on a notice separate from either the renewal certificate or billing if providing the disclosure on the renewal certificate or billing would cause the disclosure to be illegible due to type size or other space considerations.

(b) If the disclosure is provided on a separate notice, the insurance company shall provide the disclosure to the policyholder at the same time and in the same manner as the insurance company provides the renewal certificate or billing.

Section 3. Collection Fee.

(1) An insurance company may charge to and collect from an insured a collection fee in addition to a local government tax.

(2) An insurer may charge up to the maximum collection fee established in KRS 91A.080(4).

(3) If an insurance company is owed a refund or credit on the local government premium tax charged to a policyholder, any collection fee received by the insurance company shall be returned to the policyholder on a pro rata basis.

NANCY G. ATKINS, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: October 12, 2018

FILED WITH LRC: October 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2018 at 215 W. Main Street, Frankfort, Kentucky 40602 at 9:30 a.m. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you

may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, 215 W. Main Street, Frankfort, Kentucky 40602, phone 502-564-6026, email patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patrick O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes specific disclosure requirements for local government premium taxes collected by insurers and charged to policyholders. Insurers are required to itemize the amount charged in taxes, the applicable collection fee, and identify the taxing jurisdiction. The disclosure ensures policyholders are notified of the taxes they pay, and provided a meaningful opportunity to challenge any discrepancies. Additionally, insurers are permitted to charge a collection fee to the policyholder, but the fee must be refunded pro rata to the policyholder when a refund or credit is due for the taxes collected.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 91A.0810, and clarifies other provisions included in KRS 91A.080 and 91A.0804.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the disclosure requirements for the local government premium tax as mandated by KRS 91A.0810. It also clarifies the refund and credit provisions for the collection fee pursuant to KRS 91A.0804(7).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies the disclosure requirements for local government premium tax charged to policyholders and the applicable refunds. The clarified disclosure requirements ensure policyholders remain informed of the amount and basis of the taxes paid, as well as the collection fee. Lastly, this administrative regulation clarifies the refund provision for the collection fee to ensure policyholders receive the proper amounts owed when a refund or credit is owed on the taxes paid.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes obsolete provisions of the administrative regulation referring to a one time notification for policies in effect before December 31, 2008. The removal of the language clarifies the current disclosure requirements. Additionally, this amendment includes provisions concerning the collection fee. The collection fee is inextricably linked to the local government premium tax, and is currently included within a separate regulation. The amendment unites the regulatory provisions for these two fees, and eases any compliance burdens by reducing duplicative provisions.

(b) The necessity of the amendment to this administrative regulation: This amendment reduces obsolete regulatory provisions that may serve to confuse entities looking to expand into the Kentucky market. Additionally, the consolidation of the collection fee provision creates one administrative regulation for both charges linked together. This will promote regulatory clarity for entities by reducing duplicative provisions and clarifying language.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment includes the disclosure requirements necessary under KRS 91A.0810, and ensures policyholders are adequately informed of the basis of taxes and collection fees they pay. This amendment does not broaden or expand the tax and fee requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment eliminates obsolete sections, as well as, duplicative provisions and consolidates the administrative regulations concerning the collection of local

government premium tax to reduce confusion and ease regulatory compliance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All insurers and surplus lines brokers charging local government premium taxes and a collection fee will be required to comply with the amended administrative regulation.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: All regulated entities will need to ensure their policies and billing statements disclose the premium tax charged to policyholders as required by the administrative regulation. Additionally, the processing of a collection fee refund is simplified to conform to the industry standard. Some insurers or surplus lines brokers may need to review their systems to ensure refunds are made in compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The Department does not anticipate any cost to comply with the administrative regulation because the changes conform to industry practice.

(c) As a result of compliance, what benefits will accrue to the entities: Regulatory compliance will be easier due to the elimination of obsolete provisions, duplicative sections, and the consolidation of requirements for two linked fees and taxes.

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

(a) Initially: The Department does not anticipate any cost to implement this administrative regulation.

(b) On a continuing basis: The Department does not anticipate any cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is not 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: An increase in fees is not necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. The administrative regulation applies to all regulated entities subject to the collection of local government premium tax under KRS 91A.080.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Insurance will be impacted due to the regulation and oversight of the collection of local government premium tax. Although this administrative regulation concerns local government premium tax, these entities will not be impacted by these provisions.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 91A.0810 and 91A.080 authorize the actions taken by the 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. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the 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? This administrative regulation will not generate any revenue.

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not have any costs to administer.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not have any costs to administer.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET Department Of Insurance (Amendment)

806 KAR 2:100. Disclosure of insurance premium[KRS 136.392] surcharge.

RELATES TO: KRS 136.392

STATUTORY AUTHORITY: KRS[Chapter 13A,] 136.392

NECESSITY, FUNCTION, AND CONFORMITY: KRS 136.392 ~~requires~~[provides] that the premium surcharge collected[required] by an insurer[that section] shall be disclosed to policyholders pursuant to administrative regulations[which shall be] promulgated by the commissioner[Executive Director] of the Department of Insurance. This administrative regulation prescribes the manner in which the surcharge required by KRS 136.392 is to be disclosed to policyholders.

Section 1. (1) Each policy subject to KRS 136.392 issued to an insured for the first time shall include a notice, conspicuously placed on the declarations page, renewal certificate, or billing instrument, indicating that the premium includes the surcharge required by KRS 136.392.[Such notice shall be placed on the declarations page of the policy by use of a typewriter, stamp, sticker, or any other reasonable means approved by the Executive Director.]

(2) ~~The~~[At the option of the insurer, such notice may be placed on renewal certificates and billings issued subsequent to the original policy.]

(3) ~~At the option of the insurer, the~~ amount of[the] surcharge shall[may] be separately itemized[shown] on the declarations page[of the policy, on renewal certificates] or billing instrument used by the insurer for newly issued policies and renewals subject to KRS 136.392[subsequent billings, or both.]

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: October 12, 2018

FILED WITH LRC: October 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2018 at 215 W. Main Street, Frankfort, Kentucky 40602 at 9:30am. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative

regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, 215 W. Main Street, Frankfort, Kentucky 40602, phone 502-564-6026, email patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patrick O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the disclosure requirements for the insurance premium surcharge mandated by KRS 136.392. This administrative regulation requires a conspicuous disclosure on the declarations page notifying insureds of the basis of the surcharge. Insurers must also separately itemize the amount of surcharge collected. The notice and amount disclosure requirements apply to newly issued policies and renewals. The requirements included in this regulation will ensure policyholders are informed of the basis of charges and the amount of taxes paid.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 136.392. It provides the disclosure requirements for the notice and amount of surcharge collected by KRS 136.392. The requirement for separate itemization and inclusion on all policies, newly issued or renewals, ensures that consumers are adequately informed of the charges paid for insurance. This promotes consumer awareness of the amounts paid in taxes and assessments, and allows for consumers to challenge any discrepancies or errors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 136.392 completely delegates to the commissioner the manner in which the disclosure is made. This administrative regulation provides the mechanism on how the statutorily mandated disclosure of the surcharge is made to policyholders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clearly establishes the statutorily mandated procedure for the disclosure of the insurance premium surcharge under KRS 136.392. It provides a clear, standard identification of the acceptable procedures to eliminate confusion of policyholders when they change insurers. It also will establish a clear guideline for insurers to satisfy, and the department to enforce.

(2) If 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 requirements including the reference to a "typewriter" to account for technological advances since the promulgation of the administrative regulation. Instead, the insurer is required to provide a conspicuous notice to the policyholder, but the exact manner (i.e., font, placement) in which it is done is left to the insurer. It also removes the option to place the notice on renewals, and the option to place the amount on various locations. Instead, these options are replaced with a clear, standard guideline requiring the notice on all policy issuances, newly and renewals. Additionally, the amount must be separately itemized to inform the policyholders of the taxes included with the premium charge.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the disclosure requirements, remove reference to outdated technology, permit discretion in the manner in which the disclosure is made, and provide a clear, standard guideline for the notice and amount disclosure.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes the requirements for the disclosure as mandated by KRS 136.392.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies the statutory disclosure requirement by mandating a conspicuous

placement of the surcharge on the declarations page. The insurer is left to determine how this is best implemented for their specific declarations page and billing instruments. Further, this amendment requires the insurer to separately itemize the amount of surcharge included within the policy charge. Thus, this amendment provides discretion for insurers while ensuring consumers remain notified about taxes included with their insurance purchase. The reference to obsolete technology is removed to further clarify regulatory requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will impact all domestic, foreign, and alien insurers required to collect the insurance premium surcharge, as well as, all individuals purchasing an eligible insurance policy. KRS 136.392 only exempts life and health policies from collection of this surcharge.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The regulated entities will need to review their current operation to ensure the premium surcharge is conspicuously stated on the declarations page. Most regulated entities already disclose the surcharge in this manner, so further action is likely unnecessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The regulated entities are not expected to incur any additional costs to update their declarations page, if necessary, to conform to the amendment.

(c) As a result of compliance, what benefits will accrue to the entities: The regulated entities will no longer have to obtain Department approval for the use of a "typewriter" or "stamp", but can instead use any feasible manner to include the surcharge on the declarations page. This will provide the regulated entities more discretion in the future to adapt to technological advances. Individual policyholders will be aware of the surcharge and taxes paid as part of the premium charge.

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

(a) Initially: This administrative regulation will not have any initial costs to implement.

(b) On a continuing basis: This administrative regulation will not have any continuing costs to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will not require any funding to implement and enforce.

(7) Provide an assessment of whether an 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 does not require an increase in fees.

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

(9) TIERING: Is tiering applied? Tiering is not applied because the requirements apply to all insurers selling policies subject to the premium surcharge requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Insurance 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 136.392 mandates the promulgation of administrative regulations establishing the disclosure requirements for premium surcharge.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the 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? This administrative regulation will not generate any revenue.

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in any administration costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in any administration costs.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Amendment)

900 KAR 6:075. Certificate of need nonsubstantive review.

RELATES TO: KRS 216B.010, 216B.015, 216B.090, 216B.455, 216B.990, 311A.030(1)(b)

STATUTORY AUTHORITY: KRS 216B.040(2)(a)1, 216B.095, EO 2018-325

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.095 authorizes the review of certificate of need applications that are granted nonsubstantive status. EO 2018-325 abolished the Office of Health Policy and created the Division of Certificate of Need within the Office of Inspector General. This administrative regulation establishes the requirements necessary for consideration for nonsubstantive review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015(4).

(2) "Cabinet" is defined by KRS 216B.015(6).

(3) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx> [<http://chfs.ky.gov/ohp/con>].

(4) "Days" means calendar days, unless otherwise specified.

(5) "Formal review" means the review of an application for certificate of need that is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and that is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(6) "Nonsubstantive review" is defined by KRS 216B.015(18).

(7) "Public notice" means notice given through the cabinet's Certificate of Need Newsletter.

Section 2. Nonsubstantive Review. (1) The cabinet shall grant nonsubstantive review status to an application to change the location of a proposed health facility or to relocate a licensed

health facility only if:

(a) There is no substantial change in health services or bed capacity; and

(b)1. The change of location or relocation is within the same county; or

2. The change of location or relocation is for a psychiatric residential treatment facility.

(2) The cabinet shall grant nonsubstantive review status to an application that proposes to establish an ambulatory surgical center pursuant to the conditions specified in KRS 216B.095(7).

(3) In addition to the projects specified in KRS 216B.095(3)(a) through (e), pursuant to KRS 216B.095(3)(f), the Office of Inspector General[Health Policy] shall grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b)~~[The proposal involves an application to relocate or transfer licensed acute care beds, not including neonatal Level III or Level IV beds, from one (1) existing licensed hospital to another existing licensed hospital within the same area development district and the requirements established in this paragraph are met.~~

~~1.a. There shall not be an increase in the total number of licensed acute care beds in that area development district; and~~

~~b. The hospital from which the licensed beds are relocated delicenss those beds.~~

~~2. If neonatal Level II beds are relocated or transferred pursuant to this paragraph:~~

~~a. The receiving hospital shall have an existing licensed Level II, Level III, or Level IV neonatal unit;~~

~~b. A minimum of four (4) beds shall be relocated; and~~

~~c. The relocation shall not leave the transferring hospital with less than four (4) neonatal Level II beds unless the relocated beds represent all of its neonatal Level II beds;~~

~~(c) The proposal involves an application by an existing licensed acute care hospital to:~~

~~1. Convert licensed psychiatric or chemical dependency beds to acute care beds, not including special purpose acute care beds such as neonatal Level II beds, Level III beds, or Level IV beds;~~

~~2. Convert and implement the beds on-site at the hospital's existing licensed facility; and~~

~~3. Delicense the same number of psychiatric or chemical dependency beds that are converted;~~

~~(d) The proposal involves an application by an existing licensed hospital providing inpatient psychiatric treatment to:~~

~~1. Convert psychiatric beds licensed for use with geriatric patients to acute care beds, not including special purpose acute care beds such as neonatal Level II beds, Level III beds, or Level IV beds;~~

~~2. Convert and implement the beds on-site at the existing licensed hospital; and~~

~~3. Delicense the same number of converted beds;~~

~~(e) The proposal involves an application to re-establish a licensed healthcare facility or service that was provided at a hospital and was voluntarily discontinued by the applicant under the following circumstances:~~

~~1. The termination or voluntary closure of the hospital:~~

~~a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;~~

~~b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;~~

~~c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for re-licensure; and~~

~~d. Was not an express condition of any subsequent certificate of need approval;~~

~~2. The application to re-establish the healthcare facility or service that was voluntarily discontinued is filed no more than one (1) year from the date the hospital last provided the service that[which] the applicant is seeking to re-establish;~~

~~3. A proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and~~

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours;

(c)[or (f)]1. The proposal involves an application to establish an ambulatory surgical center that does not charge its patients and does not seek or accept commercial insurance, Medicare, Medicaid, or other financial support from the federal government; and

2. The proposed ambulatory surgical center shall utilize the surgical facilities of an existing licensed ambulatory surgical center during times the host ambulatory surgical center is not in operation; or

(d)1. The proposal involves an application to establish a Class I ground ambulance service;

2. The applicant's proposed service area is limited to a county with a population of 50,000 or more;

3. There is no more than one (1) licensed Class I ground ambulance service in the county that the applicant is proposing to serve; and

4. The current Class I ground ambulance service provider serving the county is not owned or operated by a public organization.

(4) A certificate of need approved for an application submitted under subsection (3)(c)[(f)] of this section shall state the limitations specified under subsection (3)(c)[(f)]1. and 2. of this section.

(5) If an application is denied nonsubstantive review status by the Office of Inspector General[Health Policy], the application shall automatically be placed in the formal review process.

(6) If an application is granted nonsubstantive review status by the Office of Inspector General[Health Policy], notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(7)(a) If an application is granted nonsubstantive review status by the Office of Inspector General[Health Policy], any affected person who believes that the application is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review.

(b) The provisions of 900 KAR 6:090 shall govern the conduct of all nonsubstantive review hearings.

(c)1. Except as provided in subparagraph 2, of this paragraph, nonsubstantive review applications shall not be comparatively reviewed.

2. If the capital expenditure proposed involves the establishment or expansion of a health facility or health service for which there is a component in the State Health Plan, the nonsubstantive review applications shall be comparatively reviewed.

(d) Nonsubstantive review applications may be consolidated for hearing purposes.

(8) If an application for certificate of need is granted nonsubstantive review status by the Office of Inspector General[Health Policy], there shall be a presumption that the facility or service is needed and a presumption that the facility or service is consistent with the State Health Plan.

(9) If each applicable review criterion in the State Health Plan has been met, there shall be a presumption that the facility or service is needed unless the presumption of need has been rebutted by clear and convincing evidence by an affected party.

(10) Unless a hearing is requested pursuant to 900 KAR 6:090, the Office of Inspector General[Health Policy] shall approve each application for a certificate of need that has been granted nonsubstantive review status if the exception established in subsection (11)(a) of this section does not apply.

(11) The cabinet shall disapprove an application for a certificate of need that has been granted nonsubstantive review if the cabinet finds that the:

(a) Application is not entitled to nonsubstantive review status; or

(b) Presumption of need or presumption that the facility or service is consistent with the State Health Plan provided for in subsection (8) of this section has been rebutted by clear and

convincing evidence by an affected party.

(12) In determining whether an application is consistent with the State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application.

(13) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing that[which] is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision or decision following a court ruling.

(14) A decision to approve or disapprove an application that[which] has been granted nonsubstantive review status shall be rendered within thirty-five (35) days of the date that nonsubstantive review status has been granted.

(15) If a certificate of need is disapproved following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and 900 KAR 6:065;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

STEVE DAVIS, Inspector General

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: September 25, 2018

FILED WITH LRC: September 25, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 26, 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 November 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 November 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, Phone 502-564-6746, Fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Molly Lewis, molly.lewis@ky.gov, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation addresses the nonsubstantive review of certificate of need applications. Nonsubstantive review is an expedited review process granted to certain applications pursuant to KRS 216B.095. 900 KAR 6:075 expands upon the types of applications qualified for nonsubstantive review per the statute.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.010, 216B.015(18), and 216B.095.

(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 adding types of

certificate of need applications qualified for nonsubstantive review status and setting forth the procedure for granting nonsubstantive review status and performing the expedited review as well as the procedure for affected parties to request a hearing to dispute the review status or application.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administrative of the statutes by adding types of certificate of need applications qualified for nonsubstantive review status and setting forth the procedure for granting nonsubstantive review status and performing the expedited review as well as the procedure for affected parties to request a hearing to dispute the review status and/or application.

(2) If 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 revising the identity of the regulating agency to reflect the dissolution of the Office of Health Policy and the Office of Inspector General's adoption of the certificate of need program and by adding a type of ambulance application to the list of type of applications qualified for nonsubstantive review status. Additionally, three (3) categories of nonsubstantive review have been deleted in accordance with 2018 Ky. Acts ch. 143 (House Bill 444), which amended KRS 216B.020 to exempt those categories from certificate of need requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to address a public health emergency created by lack of access of Class I ambulances in Kentucky's larger counties. According to a recent (July 2018) report published by the Pegasus Institute, "Certificate of Need: Kentucky's CON Regulations and Their Impact on Ambulance Care," counties above 50,000 residents have 25.65% fewer ambulance providers (all classes) compared to six (6) other states that either border the Commonwealth or are in the same region. Further, the largest discrepancies between Kentucky and the sample were in high population counties. Two (2) Kentucky counties were notable outliers compared to others in the same sample population. Jefferson County has only thirteen (13) providers (all classes) as compared to 26.76 providers from similar sized counties in the sample; and Warren County has only one (1) provider compared to the sample size average of 6.93 licenses in similar sized counties. Relatedly, in Louisville, ambulance response times (10 minutes, 19 seconds) are significantly above national average (8 minutes), and well above Nashville (7 minutes, 12 seconds) and Indianapolis (5 minutes, 44 seconds); and in Bowling Green, Medicare data demonstrates that for emergency services at The Medical Center in Bowling Green (the owner, operator of the sole provider for the county), wait times for emergency services are 55 minutes versus TriStar Greenview (8 minutes) (the county's other hospital). At the Medical Center in Bowling Green, wait times are even longer for STEMI (ST-Elevation Myocardial Infarction, a very serious type of heart attack) patients and pain related to broken bones and patients are six (6) times more likely to leave The Medical Center without seeing a healthcare professional than at TriStar Greenview. As a result of these findings, the Pegasus Institute's top recommendation to the Commonwealth, which is one (1) of only four (4) states with certificate of need requirements for ambulance providers, is that Kentucky immediately suspend its CON requirements for ground ambulances in counties above 50,000 residents and begin phasing out CON laws in rural counties. This administrative regulation is a more conservative response than the recommendation, as it preserves the certificate of need requirement but provides for nonsubstantive review, which is an expedited review process that gives the applicant proposing the service the presumption that the service is needed and transfers the burden of proof to the affected party opposing the application's proposal. The additional changes to delete the three (3) categories of nonsubstantive review are necessary to comply with 2018 Ky. Acts ch. 143 (House Bill 444), which amended KRS 216B.020 to exempt those categories from certificate of need requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by promulgating an administrative regulation conveying nonsubstantive review status to a specific type of certificate of need application that is necessary to improve access to quality health care in Kentucky and by deleting three (3) categories that are now exempt from certificate of need requirements.

(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 revising the identity of the regulating agency to reflect the dissolution of the Office of Health Policy and the Office of Inspector General's adoption of the certificate of need program and by adding a type of ambulance application to the list of type of applications qualified for nonsubstantive review status. The additional changes to delete the three (3) categories of nonsubstantive review are necessary to comply with 2018 Ky. Acts ch. 143 (House Bill 444), which amended KRS 216B.020 to exempt those categories from certificate of need requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certificate of need applicants proposing Class I ambulance services and affected parties. In 2018 to date, seven (7) applications proposing Class I ambulance services have been filed. Nineteen (19) of Kentucky's 120 counties have more than 50,000 residents. Of these counties, eleven (11) counties have only one (1) Class I ambulance and six (6) counties (Bullitt, Jessamine, Laurel, McCracken, Pike, and Warren) only have one (1) Class I ambulance that is not owned or operated by a public organization.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certificate of need applications proposing to establish a Class I ambulance provider serving a county with at least 50,000 residents and only one (1) existing ambulance provider that is not owned or operated by a public organization may be submitted during any batching cycle and request nonsubstantive review status.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to entities to comply with this amendment other than the certificate of need application filing fee, which is determined using a methodology calculated using the capital expenditure of the proposed service. The certificate of need application filing fee is the same for nonsubstantive review and formal review and is established in a separate administrative regulation, 900 KAR 6:020.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If an applicant proposes to establish a Class I ambulance service in a county with a population of at least 50,000 and only one (1) other Class I ambulance provider that is not owned or operated by a public organization, then that applicant will benefit from nonsubstantive review, be relieved of the formal application batching cycle, have the presumption of need, and have an expedited review process.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new funding will be needed to implement the provision of the amended administrative regulation.

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

regulation.

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

(9) TIERING: Is tiering applied? Tiering is used as the CON review criteria for applications proposing a Class I ground ambulance service in a county with a population of at least 50,000 and only one (1) existing ambulance provider that is not owned or operated by a public organization will be expedited and less rigorous than the review criteria for applications proposing other ambulance services.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Office of Inspector General and may impact any government owned or operated ambulance providers if the public organization is in a county with a population of at least 50,000 and only one (1) other Class I ambulance provider, which is not owned or operated by a public organization.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.015(18), and 216B.095.

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

(a) How much 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 local government only if the government applies to establish a Class I ambulance for a county with a population over 50,000 and with only one (1) Class I provider that is not owned or operated by a public organization. The revenue could be generated from fees for ambulance runs as well as a public necessity tax on residents.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? If a local government in a county with a population over 50,000 and with only one (1) Class I provider that is not owned or operated by a public organization applies for certificate of need authority to establish its own Class I ambulance service and the application is approved, that government owned service may generate revenue from fees for ambulance runs as well as a public necessity tax on residents. The amount of revenue will depend on volume, rate of reimbursement, operational costs, and tax if imposed.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Administration and Financial Management (Amendment)

902 KAR 8:165. Local health department accounting and/[auditing requirements.

RELATES TO: 211.180, 212.230, 212.240, 212.245, 212.890,

2 C.F.R. Part 200

STATUTORY AUTHORITY: KRS 194A.050(1), 211.170(1), (3), (6), 211.480]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to qualify for federal funds. KRS 211.170(1), [and] (3), and (6) require the cabinet[Department for Public Health] to establish policies and standards of operation for Kentucky's local public health departments. This administrative regulation establishes minimum accounting and auditing requirements for Kentucky's local public health departments.

Section 1. Definitions. (1) "Auditee" is defined by 2 C.F.R. 200.6.

(2) "GAAP" means generally-accepted accounting principles. [(2) "OMB" means the U.S. Office of Management and Budget.]

(3) "Government auditing standards" means the standards and guidance for auditors and audit organizations who audit federal, state, and local government programs, outlining the requirements for audit reports, professional qualifications for auditors, and audit organization quality control.

Section 2. Accounting and Auditing Requirements. (1)(a) All recording by health departments in the books of account and all financial reporting shall be performed in accordance with:

1. This administrative regulation;
2. Cash or modified accrual accounting procedures as approved by the Department for Public Health;
3. 2 C.F.R. Part 200[OMB Circular A-87, incorporated by reference]; and
4. GAAP.

(b) If GAAP conflicts with policies established in this administrative regulation, the local health department shall follow policies established in this administrative regulation.

(2) Each local health department shall be audited by a certified public accountant after the close of every fiscal year. ~~The nature of audit services required is as follows:~~

~~(a) The objectives of the audit is] to assure[that] receipts and expenditures have been properly authorized, recorded, and reported.~~

~~(a)[(b)] The following items shall be audited:~~

1. Federal, state, and local funds and fees received and expended; and
2. Books, accounts, and other financial documentation, by cost center.

~~(b)[(c) An OMB Circular A-133, incorporated by reference, audit shall be performed to determine whether the financial statements present fairly the financial position and results of operations in accordance with the appropriate basis of accounting and in compliance with federal and state laws and administrative regulations:~~

~~(d)] An audit shall be conducted in accordance with:~~

1. GAAP; and
2. [" Government auditing standards[" and the provisions of OMB Circular A-133; and
3. A-133 Compliance Supplement].

(c) The audit of a local health department expending \$750,000 or more in federal funds shall be conducted in accordance with:

1. Paragraph (b) of this subsection; and
2. The provisions of 2 C.F.R. 200.500-520.

(d)[(e)] The following reports[, if applicable,] shall be provided to the local health department and the Department for Public Health:

1. Auditor's opinion on the financial statements and on the schedule of expenditures of federal awards, as required by 2 C.F.R. 200.515(a);
2. Statement of assets, liabilities, and fund balance;
3. Statement of revenues and expenditures by cost center;
4. Statement of changes in fund balance;
5. Comparative schedule of budgeted to actual operating revenues and expenditures by cost center;

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6. Audit adjustments, or a statement that an adjustment is not required;

7. Schedule of expenditures of federal awards, as required by 2 C.F.R. 200.510(b)[OMB Circular A-133];

8. Report on compliance and on internal control over financial reporting based on an audit of financial statements performed in accordance with ["government auditing standards"];

9. Single audit report on compliance with requirements applicable to each major program and on internal control over compliance in accordance with 2 C.F.R. 200.515(b)[OMB Circular A-133];

10. Schedule of findings and questioned costs, in accordance with 2 C.F.R. 200.515(d)[OMB Circular A-133], including the status of an uncorrected finding from a prior audit;

11. A summary of the auditor's results, in accordance with 2 C.F.R. 200.516[OMB Circular A-133];

12. Auditee's[Management's] corrective action plan; and

13. Auditee[Management] letter:

a. Describing an internal control or compliance deficiency not a reportable condition; and

b. Referenced in the auditor's report on internal control and compliance.

(3) The reports described in subsection (2)(d)[(e)] of this section shall be presented as prescribed by the American Institute of Certified Public Accountants Statement of Position 98-3, Audits of States, Local Governments, and Not-for-Profit Organizations Receiving Federal Awards, and subsequent amendments, except that a written auditee[management] letter is required when internal control and compliance deficiencies are determined not to be reportable conditions.

(4) A report shall contain all reportable conditions, with those reportable conditions that[which] are considered material weaknesses being appropriately segregated and identified. Any other matters conveyed to the auditee[management] shall be in writing in the auditee[management] letter, and shall be discussed during the exit conference. Reportable conditions presented as part of the reports shall be well developed and shall consist of the following components, to the extent practicable:

(a) A statement of condition;

(b) The criteria for the reportable condition;

(c) The cause of the condition;

(d) The effect of the condition;

(e) A recommendation for correction; and

(f) Auditee's[Management's] response and corrective action plan.

(5) If applicable, the audit firm shall report on:

(a) Uncorrected comments reported in the preceding audit;

(b) The status of prior-year questioned costs, whether resolved with the federal grantor or unresolved; and

(c) Questioned costs from the preceding audit and any unresolved questioned costs from prior years.

(6) The audit firm shall report immediately, in writing, to the Commissioner of the Department for Public Health, any fraud, irregularity, illegal act, or indication of an illegal act of the auditee, that comes to its attention during the audit proceedings[term of the contract].

(7) A vendor selected to conduct a local health department audit shall meet criteria provided in the request for proposal instructions provided by[ef] the Department for Public Health.

Section 3. Internal Control Procedures. (1) A local health department shall have written internal control procedures that shall be followed by the local health department. The chief executive officer, senior local health department management official, or other staff shall notify the Department for Public Health immediately[,] if evidence of possible fraud or mismanagement is discovered.

(2) A local health department shall use an automated financial accounting system approved by the Department for Public Health.

(3) Local health departments shall submit all financial reports to the Department for Public Health in accordance with the [accounting] instructions provided by the department[and time frames distributed to all local health departments].

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

~~(a) "OMB Circular A-87 - Cost Principles for State, Local and Indian Tribes Government"; and~~

~~(b) "OMB Circular A-133 - Audits of States, Local Governments and Nonprofit Organizations".~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Resource Management, Financial Management Branch, 275 East Main Street, Frankfort, Kentucky, 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: October 4, 2018

FILED WITH LRC: October 8, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 26, 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 November 19, 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 November 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone: 502-564-6746, fax: 502-564-7091, email 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 minimum accounting and auditing procedures for the local health departments.

(b) The necessity of this administrative regulation: This administrative regulation ensures proper accounting and auditing procedures for the local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the cabinet to promulgate administrative regulations to qualify for the receipt of federal funds. KRS 211.170(1), (3), and (6) authorize the cabinet to establish policies governing the activities and practices of local health departments, establish standards of operation, and allocate, modify or cancel allotments of state funds to local health departments pursuant to KRS 212.120.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes uniform accounting and auditing procedures for local health departments, and ensures those procedures are in compliance with the federal Office of Management and Budget (OMB), as required for the receipt of federal funds.

(2) If 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 accounting and auditing procedures to the most current OMB uniform guidance by referencing the applicable code of federal regulation.

(b) The necessity of the amendment to this administrative regulation: As a recipient of federal funding, the Department for Public Health is required to implement accounting and auditing procedures that are in compliance with OMB processes. This amendment is necessary to update the references to the applicable code of federal regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by establishing consistent and proper accounting and auditing requirements for local health departments.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides for consistent accounting and auditing report terminology and guidance for local health department personnel.

(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 all local health departments with the exception of Lexington-Fayette County Health Department, Louisville-Jefferson County Health Department, and the Northern Kentucky District Health Department including the counties of Boone, Campbell, Grant, and Kenton.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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: Local health department personnel will need to review this administrative regulation and become familiar with the new accounting and auditing procedures, and reporting requirements.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local health departments throughout the state will have uniform accounting and auditing report requirements.

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

(a) Initially: This is an ongoing program and there will be no initial costs to the administrative body.

(b) On a continuing basis: This is an ongoing program and there will be no increased costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current agency funds will be used to implement and enforce this 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 are no fees associated with this administrative regulation. An increase in funding is not needed to implement 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 regulation.

(9) TIERING: Is tiering applied? Tiering is applied in this administrative regulation. Local health departments receiving less than \$750,000 in federal funding are not subject to the OMB accounting procedures and audit report requirements. Those local health departments that receive \$750,000 or more in federal funds must comply with OMB accounting procedures and audit report requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local health departments, district health departments, Local Health Budget

Branch within the Division of Administration and Financial Management.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194.050(1), 211.170(1), (3), (6), and 2 C.F.R. Part 200.

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

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

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

(c) How much will it cost to administer this program for the first year? This is an ongoing program, there will be no initial costs.

(d) How much will it cost to administer this program for subsequent years? This is an ongoing program, there will be additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Office of Management and Budget Super Circular, 2 C.F.R. 200 Subparts E and F.

(2) State compliance standards. This administrative regulation adopts the accounting and auditing provisions for the receipt of federal funds.

(3) Minimum or uniform standards contained in the federal mandate. Under uniform guidance provisions, the federal mandate requires states to adopt the OMB accounting and auditing requirements contained in the Super Circular.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no different, stricter, or additional responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Administration and Financial Management (Amendment)

902 KAR 8:170. Local health department financial management requirements.

RELATES TO: KRS 41.240(4), [211.170], 211.180(1), 212.025, 212.120[212.230, 212.240], 212.245(3), (4), 212.890, 424.110-424.150, 2 C.F.R. Part 200

STATUTORY AUTHORITY: KRS 194A.050(1), 211.170(1), (3), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to ~~protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth; to~~ operate the programs and fulfill the responsibilities vested in the cabinet; or to comply with federal law. KRS 211.170(1), ~~and~~ (3), ~~and~~ (6) require the cabinet[require the Department for Public Health] to establish policies and standards of operation; supervise financial, personnel, program, administrative and other functions; and allocate, modify,

or cancel allotments of state funds for Kentucky's local health departments. This administrative regulation establishes minimum fiscal and financial management requirements for Kentucky's county and district local health departments and for all other classes of local health departments, except if a specific Kentucky revised statute requires a more stringent minimum requirement.

Section 1. Definitions. (1) "Fee-for-service program" means a program in which service fees, excluding program administration fees, are greater than fifty (50) percent of funding.

(2) "Local support" means local health department financial support:

(a) Including:

1. Unrestricted receipts from a local government agency or special district;

2. Receipts from the public health taxing district;

3. Nonfederal receipts from a contract with a board of education; and

4. An unrestricted donation from another source; and

(b) Excluding funds from the Unrestricted~~Undesignated~~ and Restricted fund balances.

(3)~~["OMB" means the federal Office of Management and Budget.~~

(4) "Public health department director" means:

(a) The administrative or health officer of a county or district health department;

(b) The administrative assistant of a county health department that does not have a health officer;

(c) The director of a district health department that does not have a health officer;

(d) The district director of health of an independent district department of health; or

(e) The commissioner of an urban-county department of health or of a health department serving a county with a city of the first class.

(4)~~(5)~~ "Restricted fund~~balance~~" means the portion of a local health department's total fund balance that is limited~~restricted~~ by the Department for Public Health~~for use~~ for a specific program's expenses or other items of expense.

(5)~~(6)~~ "Unrestricted~~Undesignated~~ fund balance" means the portion of a local health department's total fund balance that is not limited~~restricted~~ by the Department for Public Health for a specific program's expenses or other items of expense.

Section 2. Budgeting Requirements. (1) Each local health department shall prepare a fiscal year budget in accordance with annual budgeting guidance provided~~instructions developed and distributed~~ by the Department for Public Health.

(2) Each local health department shall have a balanced budget in which receipts at least equal expenditures, and~~Each local health department~~ shall operate within its approved budgets.

(3) Each local health department annual budget shall be approved by both the governing local board of health and the Department for Public Health.

(4)(a) Each local health department shall be responsible for making budget changes necessitated by:

1. Changes in financial status;

2. Changes in project status; or

3. The addition or deletion of a new project.

(b) Changes shall:

1. Be subject to review and approval by the Department for Public Health; and

2. Require a corresponding change in plans if required by the Department for Public Health.

(5) Actual capital expenditures of local health departments for furniture and equipment, data processing equipment, and vehicles shall not exceed the approved budgeted amount without prior approval by the governing board of health.

(6) Actual use of a local health department's unrestricted~~undesignated~~ fund balance in excess of the amount included in the approved budget shall be approved by the governing board of health and shall be used solely for the operation and maintenance of local health departments.

(7) An actual deficit in a local health department's financial operations for the fiscal year wherein cash expenditures and payroll related liabilities exceed available cash receipts, including approved use of the unrestricted fund balance, shall not be allowable.

(8)(a)~~(f)~~ The Department for Public Health shall notify the local health department in writing if it determines that:

1. A local health department is receiving fewer receipts than are budgeted;~~or~~

2. A local health department is making expenditures in excess of the approved budget; or,

3.~~if through any other circumstances~~A deficit condition is probable at the end of the fiscal year~~, the Department for Public Health shall notify the local health department in writing of the determination~~.

(b) Within fifteen (15) working days of receipt of the notification, the local health department shall inform the Department for Public Health in writing of the reasons that the determination may be in error.

(c) If the reasons and corrective actions listed by the local health department are not sufficient ~~in the department's opinion~~ to prevent a deficit condition from occurring at the end of the fiscal year, the Department for Public Health shall direct the local health department to:

1. Institute a hiring freeze on employees;~~;~~

2. Institute a freeze on meritorious, promotional, or other salary increments;~~;~~

3. Institute a reduction in contractual and other expenditure categories;~~;~~ or,

4. Take other action necessary to correct the deficit situation.

Section 3. Use of Receipts. (1) A local health department may, with the approval of the Department for Public Health, transfer funds from a restricted to an unrestricted account.

(2)~~(4)~~ Receipts from any source shall be used in accordance with laws, policies, administrative regulations, and contracts governing the use of the receipts. Receipts shall be used only for the operation and maintenance of the health department for necessary, reasonable, and proper purposes that protect and improve the health of the people of the Commonwealth.

(3)~~(2)~~ The minimum acceptable level of local support shall be determined annually by the Commissioner of the Department for Public Health.

(4)~~(3)~~ The state allotment to a local health department shall be adjusted in the following circumstances:

(a) The local health department decreases its budgeted amount of local support below the minimum acceptable level. The state allotment shall be decreased by the same percentage in the year of the decrease.

(b) The local health department receives less local financial support than the required level. The state allotment shall be decreased by~~a percentage equal to~~ the percentage that the actual local support was deficient~~less than the required local support~~. The decrease shall apply to the fiscal year following the shortage.

(c) The local health department accumulates an unrestricted fund balance, as of June 30 of a fiscal year, in excess of thirty (30) percent of that year's expenditures for non fee programs plus forty (40) percent of that year's expenditures for fee-for-service programs, or \$100,000, whichever is greater. The local health department shall submit, to the Department ~~for~~^{of} Public Health, a written plan of use for the amount of the excess. If approved, the funds shall be placed into a local restricted fund to be used solely for the purpose(s) approved.

(4) Fees.

(a)1. A request from a local health department to change patient fees to either a sliding or nominal fee basis shall be sent to the Department for Public Health for approval.

2. A request shall include documentation of the proposed full amount of the fee, the estimated annual cost of the service, and the estimated net fee income for the service.

3. Charges for medical supplies and equipment may be requested as a percentage of the acquisition cost of the supply or equipment item or may be requested as charges for individual

items.

(b) Patient fees charged to self-pay patients shall be on a sliding fee basis approved by the Department for Public Health and be based on the level of income matched with the level of poverty, utilizing the federal poverty guidelines as published annually by the Federal Department of Health and Human Services, according to the following scale:

1. Above 250 percent of poverty, fee shall be assessed at full charge of service;

2. From 101 to 250 percent of poverty, fee shall be based on a schedule of discounts; and

3. Below 101 percent of poverty, there shall be no fee~~[-if approved by the Department for Public Health, may be charged on a sliding fee basis, in accordance with the following formula: Fees for self-pay patients with a household income up to 250 percent of the most recent poverty guidelines, published annually by the Department of Health and Human Services, shall be based on a schedule of discounts from 101 to 250 percent of poverty, with full charge assessed for individuals above 250 percent of poverty and no charge for individuals below 101 percent of poverty;] except as specified in paragraph (c) of this subsection.~~

(c) [:

4.] A nominal fee up to five (5) dollars shall be charged for communicable disease services specified by the Department for Public Health.

(d) The inability to pay the assessed fee shall not be a barrier to services.

(e) [:- and 2.] A charge shall not be made to school age children at a school-based clinic if requested by the local health department and authorized by the Department for Public Health.

(f) [a- Inability to pay the assessed fee shall not be a barrier to services.

b.] A policy of a local health department that may result in referral of services due to nonpayment of fees shall be approved by the Department for Public Health.

(g) 1. [c-] A local health department shall bill third-party payors for covered services provided to individuals.

2. [(e)] If a third-party governmental payor is billed for services rendered to an eligible patient, the regulations of the third-party payor shall be followed for the part of the fee charged directly to the patient.

3. [(d)] A Medicaid "spend-down" patient shall be billed at 100 percent of charges.

(e) A patient's [patient who has] health insurance carrier [coverage] shall be billed at 100 percent of charges. A balance not covered by the health insurance carrier shall be charged to the patient, except that the amount charged shall not exceed the amount that a patient without health insurance coverage would be charged, using standard discounts as applied to total charges for services rendered.

(h) [(f)] A fee, regardless of the source of the fee or the funding of the project, shall be applied to the project that generates the fee, in accordance with income procedures of 2 C.F.R. 200.307(e) [the OMB Circular A-102]. A third-party cost reimbursement payment and an interim payment shall be recorded in the same project where the costs were recorded, in proportion to the expenditures of each project that were reimbursed by the third party.

(5) A matching requirement for any source of receipts shall be the sole responsibility of each local health department.

(6) The following policies shall be applied in closing receipt accounts for the local health department fiscal year, July 1 to June 30:

(a) Receipts earned and received during a fiscal year shall be recorded as a receipt of that fiscal year; and

(b) Receipts earned in one (1) fiscal year and received after June 30 of that fiscal year shall be recorded as new fiscal year receipts.

Section 4. Expenditure Policies. Policies and procedures required by 2 C.F.R. 200 Subpart E [the OMB Circular A-87] shall be followed by local health departments for expenditures in projects, regardless of the source of funds for the project. The following policies concerning allowable expenditures and their

proper documentation shall be followed by local health departments:

(1) Salaries, wages, benefits, and personnel payments.

(a) Salaries and wages for only those positions specified in administrative regulations for local health departments, [902-KAR 8:040 and] 902 KAR 8:060 through 902 KAR 8:090, and 902 KAR 8:140, shall be allowable. The positions and related expenditures shall be included in the approved budget or approved budget revisions of the local health department. Other salary, wage, or bonus payments shall not be allowable, unless specifically approved by the Department for Public Health. Uniform pay dates shall be determined annually by the Department for Public Health.

(b) Expenditures shall be authorized for payment of employer paid fringe benefits required or allowed by policies of the Department for Public Health.

1. Required benefits shall be payments of the single-coverage amount for health insurance and life insurance that are part of the state-negotiated plans.

2. Additional allowed benefits shall be determined by the public health department director and approved by the governing board of health.

3. A part-time employee or a personal services contract employee working less than 100 hours per month shall not be eligible for employer-paid fringe benefits.

4. A payment to or on behalf of an employee for another direct or fringe benefit or other reason shall not be made unless:

a. Specifically allowed by this administrative regulation;

b. Approved by the Department for Public Health; and

c. A disbursement for services of a contract employee or independent contractor shall be made in accordance with the terms of the written contract. A contract payment shall not be made without proper written documentation demonstrating that services have been rendered.

(2) Capital expenditures.

(a) Capital expenditures are allowable for necessary capital equipment, land, and buildings.

1. The equipment in this category shall cost more than \$5,000 and have an expected useful life of one (1) year or more.

2. The same purchasing policies apply to capital items as apply to noncapital purchases.

3. Before purchasing land or buildings or contracting for the construction or remodeling of a building, the local health department shall contact the Department for Public Health for approval.

(b) A local health department shall pay a vendor within thirty (30) working days of the receipt of the service or goods, or within thirty (30) working days of the receipt of the invoice or bill from the vendor, whichever is later, unless the local health department and the vendor have agreed in writing to a longer period of time.

(c) A local health department shall not donate anything of value to any individual or entity.

Section 5. Travel Policies. (1) The public health department director shall insure that travel expenses are economical.

(2) [(4)] A person who travels on official local health department business shall state on the expense voucher the purpose of each trip and shall maintain records to support claims.

(a) A local health department may provide an employee with a credit card to cover travel expenses.

(b) Due care shall be taken to assure that use of a local health department credit card is not abused.

(c) A local health department shall not provide an employee with cash to pay travel expenses. The public health department director responsible for insuring that travel reimbursement conforms to this policy shall disallow, reduce, or strike from an expense voucher any claim contrary to this administrative regulation, and may require written justification for an amount claimed.

(3) [(2)] With the exceptions cited in this policy, reimbursement shall not be claimed for expenses of a person other than an employee, or other person in the official service of the local health department. Only necessary expenses of official travel shall be reimbursed.

~~(4)~~~~(3)~~ Each day's vicinity travel shall be listed on a separate line on the expense voucher. The employee's supervisor or the public health department director shall monitor vicinity mileage claimed by an employee on travel status.

~~(5)~~~~(4)~~ A travel voucher shall be signed and dated by the employee submitting the claim and by an employee designated in accordance with the local health department's internal control procedures. The public health department director's travel voucher shall be signed by one (1) or more board of health members designated at a board of health meeting to perform the function.

~~(6)~~~~(5)~~ The official work station of an employee shall be:

- (a) The street address of the local health department facility;
- (b) For a local health department with more than one (1) facility, the facility in which the employee most often works;
- (c) Established not for an employee's purposes, but in the best interest of the local health department; and
- (d) Designated for a valid purpose.

~~(7)~~~~(6)~~ A standard travel expense voucher or another voucher approved by the Department for Public Health shall be used to claim reimbursement for travel expenses.

(a) Each travel expense voucher shall show the claimant's identifying number, name, address, and official workstation. The travel voucher may be typed, prepared by computer, or legibly prepared in ink.

(b) Receipts shall be stapled to the travel voucher.

(c) If leave interrupts official travel, the travel voucher shall show the dates of leave.

~~(8)~~~~(7)~~ A travel expense shall not be reimbursed unless the travel was authorized in advance by the public health department director or designee as follows:

~~(a) Travel in Kentucky and within the other forty-nine (49) states and the District of Columbia may be approved by the public health department director or designee; and~~

~~(b) Budgeted out-of-state travel funds shall be available in the amounts required for the out-of-state travel.~~

~~(9)~~~~(8)~~ A local health department employee traveling on local health department business shall use the most economical, standard transportation available and the most direct and usually traveled routes. Expenses added by use of other transportation or routes shall be assumed by the employee.

~~(10) Local~~~~(9)~~ health department-owned vehicles and gasoline credit cards shall be used for local health department business travel if available and feasible.

(a) Mileage payment shall not be claimed by an individual when local health department vehicles are used.

(b) Routine personal use of a local health department vehicle, including commuting use, shall not be an allowable public expenditure.

(c) An assignment of a vehicle to an employee who takes the vehicle home shall be minimal and limited to direct service personnel providing:

1. On-call direct services, or a majority of services in the field; or
2. Substantial direct services on the way to or from the employee's workstation.

(d) If a vehicle is assigned under paragraph (c) of this subsection, some personal commuting mileage may be unavoidable. A local health department shall develop a written policy to address the unavoidable personal mileage. The policy shall conform to current federal and state tax requirements for income and travel and shall be forwarded to the Department for Public Health for review and approval.

~~(11)~~~~(10)~~ Mileage claims for use of privately-owned vehicles shall be disallowed if a local health department vehicle was available and feasible.

~~(12)~~~~(11)~~ An employee on official travel status whose private or agency automobile breaks down may continue in travel status as approved by the public health department director.

~~(13)~~~~(12)~~ An employee on official travel status may be granted annual leave during which time and travel expenses shall not be reimbursed.

~~(a)~~ An employee on official travel status may be continued on travel status, as approved by the public health department director,

if the employee becomes incapacitated due to illness or injury that qualifies as official sick leave. ~~(b)~~ Medical expenses shall not be reimbursable~~[allowable]~~ travel costs.

~~(14)~~~~(13)~~ On nonworking days, an employee on official travel status shall forfeit official travel status once~~if~~ the employee returns to his official work station or domicile.

~~(15)~~~~(14)~~ Reimbursement shall not be paid for travel between the employee's residence and official workstation, unless requested to report to work while off duty.

~~(16)~~~~(15)~~ Commercial airline travel shall be coach or tourist class. Additional expense for first-class travel shall not be reimbursed.

~~(17)~~~~(16)~~ Mileage for each in-state trip shall be based on the Department of Transportation's official mileage map or on the Finance and Administration Cabinet's mileage chart if available. Out-of-state mileage shall be based on mileage maps. If point of origin is the claimant's residence, mileage~~[,]~~ and time shall be paid between the residence and travel destination, or between the work station and travel destination, whichever is shorter.

~~(18)~~~~(17)~~ The cost of renting a car or other special conveyance in lieu of ordinary transportation shall be allowed only with acceptable written justification to the public health department director. Privately-owned aircraft may be used only when it is to the advantage of the local health department as evidenced by a reduction in both travel costs and travel time.

~~(19)~~~~(18)~~ Lodging costs shall be the most economical available.

(a) Facilities providing special government rates or commercial rates shall be used where feasible.

(b) State-owned facilities or local health departments shall be used for meeting rooms and lodging if available, practical, and economical.

~~(20)~~~~(19)~~ A claimant who attaches the hotel's or motel's preprinted, receipted bill shall be reimbursed for the claimant's actual cost of lodging, subject to the following provisions:

(a) Reimbursement at a Kentucky state park shall be at the park's actual rate.

(b) The local health department shall not pay for lodging located within forty (40) miles of a claimant's residence or work station without approval of the public health department director.

(c) Lodging accommodations shared with another person or persons, not a local health department employee, shall be reimbursed at the rate for a single room. Lodging accommodations shared with other local health department employees shall be reimbursed on a pro rata basis.

~~(21)~~~~(20)~~ Mileage reimbursement for official use of privately-owned vehicles shall be at the mileage reimbursement rate determined by the Department for Public Health.

~~(22)~~~~(21)~~ With receipts, actual commercial transportation costs shall be reimbursed.

~~(23)~~~~(22)~~ Reimbursement for use of privately-owned aircraft shall not exceed the cost of air coach fare or the privately-owned vehicle rate, whichever is less.

~~(24)~~~~(23)~~ A claimant using camping vehicles for lodging shall be reimbursed for actual expense plus parking or camping charges. A receipt for parking or camping charges shall be submitted.

~~(25)~~~~(24)~~ Actual parking, bridge, and toll charges shall be reimbursable. Toll receipts shall not be required for in-state travel by a two (2) axle vehicle.

~~(26)~~~~(25)~~ Reasonable expenses shall be allowed for baggage handling, for delivery to or from a common carrier or lodging, and for storage. Charges for overweight baggage shall be allowed if the excess was for official business.

~~(27)~~~~(26)~~ Registration fees required for admittance to meetings shall be allowed. An employee shall not claim meal expenses for meals included in the registration fee. A notation shall be made on the travel voucher that the registration fee included the cost of meals. Reimbursement for registration fees and other job-related training may be claimed as "other expenses" on the travel voucher and charged to the appropriate expenditure accounts. Receipts for job-related fees shall be attached to the travel voucher.

~~(28)~~~~(27)~~ Telephone and~~[,]~~ fax~~[,]~~ ~~and telegraph~~ costs for

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necessary official business shall be ~~reimbursable~~[allowed].

~~(29)[A call to agency central offices shall be made collect, or a telephone credit card or similar telephone card shall be used.~~

~~(28)]~~ If justified, other necessary miscellaneous expenses associated with official travel may be allowed by the public health department director. Receipts shall be attached to the travel voucher.

~~(30)[(29)]~~ Receipts shall be required for travel expenses over ten (10) dollars except for subsistence expense items.

~~(31)[(30)]~~ Subsistence shall include amounts determined to have been spent for meals, taxes, and tips. To be eligible for subsistence for breakfast or lunch while traveling in Kentucky, a claimant's authorized work shall require overnight accommodations at a destination more than forty (40) miles from both work station and home and shall also require absence from the work station and home during mealtime. The claimant shall attach to his travel voucher, either his lodging receipts or other credible documentation sufficient for audit.

~~(32) Local[(34)]~~ health department employees assigned to attend a function of an organization not under their control may be reimbursed for actual meal costs charged or arranged for by the organization. Receipts for meals shall be attached to the travel voucher.

~~(33)[(32)]~~ The local health department may pay for subsistence and related expenses at staff meetings not to exceed four (4) meals per year for an employee. The subsistence expense shall not exceed the department's standard meal reimbursement amount. Travel status shall not be required for staff meeting meals.

~~(34)[(33)]~~ Other allowable travel expense reimbursements shall consist of the following:

(a) Expenditures for the actual and reasonable cost of meals provided for district and county board of health members for official board functions, and for meals of guests invited to participate in the official business conducted at these functions;

(b) Travel expenditures of board of health members attending official board of health functions, in accordance with travel policy provisions;

(c) Travel expenditures incurred by board members other than the chairperson if approved by the chairperson or the full board;

(d) Travel expenditures incurred by the chairperson if approved by the vice-chairperson or the full board;

(e) Expenditures for meals and transportation expenses of local health department advisory committee members attending official local health department functions; and

(f) Travel expenses of a person applying for a position that will designate the applicant as the public health department director for the department, or as the medical director subject to the limits applicable to local health department employees, but no more than one (1) round trip for each applicant.

~~(35)[(34)]~~ Expenditures shall be authorized for employee morale and welfare items, as defined in 2 C.F.R. 200.437[OMB circular A87], in an amount not to exceed twenty-five (25) dollars per employee per fiscal year. Receipts shall be kept for all expenditures.

~~(36)[(35)]~~ Expenditures shall be allowed for other items necessary for the maintenance and operation of the local health department, if the expenditure is made in accordance with statutes and administrative policies.

(a) The Department for Public Health may require a local health department to provide adequate justification for any expenditure made by the local health department.

(b) If the justification is determined to be inadequate, appropriate corrective action shall be taken by the Department for Public Health.

Section 6. Purchasing Policies. (1) Each local health department shall develop and follow formal procedures for authorizing purchases made on behalf of the local health department.

(a) These procedures shall be outlined in the local health department's written internal control procedures.

(b) Written purchase orders (service authorizations for independent contractors) and receiving reports or service

verifications shall be used except for utility bills and purchase orders not in conformance with standard business practice.

(2) A local health department shall use[at least] the following minimum procedures in accordance with 2 C.F.R. 200.322 for purchasing and advertisement for bids:

(a) If an expenditure for a single type of good or service not covered by contract policies is more than \$40,000 in a fiscal year, advertisements for bids shall be made in accordance with KRS 424.110-424.150. The Department for Public Health may be contacted for assistance in determining whether an expenditure is for a single type of good or service. The local health department shall:

1. Record, in writing, and maintain for department review:

a. Price quotations received; and

b. Reasons and basis for selecting and placing the order, if the lowest price was not selected; and

2. Select the lowest or[and] best bid.

(b) If the expenditure for a single type of good or service is \$3,000[more than \$10,000] but not greater than \$40,000 in a fiscal year, the local health department shall:

1. Obtain three (3) or more price quotations from qualified sources of supply, if available, in the department's normal trade area; and

2. Record, in writing, and maintain for department review:

a. Price quotations received; and

b. Reason and basis for selecting and placing.

(c) If a single type of good or service purchased is less than \$3,000, to the extent practicable, the local health department shall distribute purchases equitably among qualified suppliers. Purchases may be awarded without soliciting competitive quotations[not greater than \$10,000 annually, purchases may be made by local health departments from any available source of supply as long as the maximum value for each purchase is obtained].

(d) The requirements for competitive bidding shall not apply to a purchase made under the provisions of a state price contract.

(e) A physician who is the health officer for more than one (1) local health department may purchase supplies and services or technical services on a cooperative purchasing basis, in accordance with the purchasing administrative regulations for local health departments.

(f) A local health department shall not enter into a lease or purchase agreement for nonprofessional services with a local health department employee or a business entity in which a local health department employee owns or controls more than five (5) percent interest, except if determined to be in the best interest of the public and approved in writing by the Department for Public Health.

Section 7. Contracting for Services. (1) A local health department shall not contract with a provider who is disbarred or suspended by a federal funding agency or by a Kentucky licensure board.

(2) This policy applies to personal services contracts for services of a professional or technical nature not available through the local health department merit system.

(3) Services of a professional or technical nature shall be contracted for in writing in accordance with this policy except:

(a) Nonprofessional emergency repair services of skilled tradesmen shall not require written contracts. Nonemergency services of skilled tradesmen shall be procured in accordance with purchasing policies.

(b) Administrative or management services, financial management services, data processing services, or consulting services, or studies shall not be contracted for if these services can be provided to the local health department by the Department for Public Health.

(4) Allowable services.

(a) The service desired to be contracted for shall be an essential service that[which] is necessary for carrying out public health services.

(b) A local health department shall not use a personal services contract to substitute for establishing a position in the local health

department.

(c) A local health department shall not contract for personal services with an individual who works 1,200 hours or more in a year, except with Department for Public Health approval.

(5) A provider shall not be paid more than the standard hourly rate determined by the Personnel Cabinet. In determining acceptable rates of reimbursement, consideration shall be given to:

- (a) The type of service to be provided;
- (b) The availability of providers;
- (c) The duration of services to be performed;
- (d) Rates being paid to regular employees for similar services;

and

(e) Comparable rates being paid in the area and other parts of the state for similar services.

(6) A contract shall not be entered into with a provider when a conflict of interest, real or apparent, ~~exists~~will occur.

(a) Conflicts of interest fall into the following categories:

1. Constitutional;
2. Statutory;
3. Common-law; and
4. Department for Public Health policies.

(b) A contract shall not be entered into with a local health department employee or local board of health member, unless authorized in writing by the Department for Public Health, and except for medical or professional services under \$10,000.

(c) A county board of health member who is not a member of the district board of health shall not incur a conflict of interest if the district health department contracts for the county board of health member's services.

(d) A contract exceeding \$5,000 in a fiscal year shall not be entered into with a professional service corporation that has employees or governing board members as constituents, unless authorized in writing by Department for Public Health.

(7) In drafting a contract, a determination shall be made concerning whether the provider of the service is an "independent contractor".

(a) If it is determined that the individual is not an independent contractor, the local health department shall withhold applicable federal, state, and local taxes and Social Security (FICA), and shall use a standard local health department personal services contract.

(b) If it is determined that the provider is an independent contractor, a standard local health department independent contract shall be used.

(8) A contract:

(a) Shall not exceed one (1) year in duration and shall not contain a clause ~~that~~which indicates the contract is automatically renewable at the end of the fiscal year;

(b) Shall expire on or before June 30 of each fiscal year unless approved by the Department for Public Health; and

(c) May be extended into the new fiscal year by filing a formal contract extension, approved by the Department for Public Health.

(9) Either party shall have the right to terminate a contract at any time upon notice to the other party.

(a) A local health department may add a clause to a contract requiring up to a ninety (90) day notice prior to termination.

(b) Confirmation of termination shall be in writing and a copy of the notice of termination shall be provided to the Department for Public Health.

(10) All local health department contracts and amendments are subject to review by the Department for Public Health.

(a) If the Department for Public Health questions the legality, propriety, necessity, rate of compensation, or description of services, in a contract, the department shall notify the local health department of its concerns.

(b) A contract for which clarification is requested by the Department for Public Health shall be put on hold until a review has been completed.

(11) A contract may be modified at any time, and a proposed change shall be accomplished by formal contract amendment.

Section 8. Disposition of Assets, Surplus, or Excess Property.

(1) If one (1) or more counties withdraw from a district health department, the following policies shall apply to the disposition of

surplus receipts, assets, and liabilities:

(a) Program restricted surplus receipts or supplies, inventories, or equipment shall be retained by the district health department except in the case of complete dissolution of the district. If the district is dissolved, program restricted surplus receipts and items shall be equitably distributed to the county or counties proportionate to their taxing district or fiscal court participation in the district;

(b) Unrestricted receipts, supplies, and inventories shall be divided among district and withdrawing county boards of health proportionate to the ratio of local taxing district support provided by each county in the year preceding the withdrawal;

(c) Deficits shall be charged to the district and withdrawing county boards of health according to the ratio of local taxing district or fiscal court support provided by each party in the year preceding the withdrawal;

(d) Equipment purchased by withdrawing county boards of health prior to the organization of the district shall be returned to the board which originally purchased the equipment;

(e) Equipment purchased during the operation of the district shall be divided among the district and the withdrawing boards of health according to the ratio of local taxing district or fiscal court support provided by the withdrawing county boards of health to the total local taxing district or fiscal court support of the district in the year preceding the withdrawal:

1. The net inventoried book value of the equipment shall be used in determining the distribution.

2. The Department for Public Health shall approve the final disposition of equipment.

(f) Buildings owned by the district board of health shall remain the property of the district health department. If total dissolution of a district health department occurs, buildings owned by the district shall be sold according to the policies of the Department for Public Health and the proceeds shall be added to the surplus receipts of the district to be divided according to the procedures listed in this subsection; and

(g) The Department for Public Health shall approve the disposition of assets and liabilities.

(2) A local health department may sell or dispose of any real or personal property including intangible property which is not needed or has become unsuitable for use.

(3) The funding source shall be contacted for the exact requirements. Property purchased with restricted funds may have disposal requirements in addition to or instead of the following requirements:

(a) A written determination as to need or suitability of any property of the local health department shall be made, and shall fully describe the property, its intended use at the time of acquisition, and the reasons why it is in the public interest to dispose of the item;

(b) Surplus or excess property may be transferred, with or without compensation, to another governmental agency, or it may be sold at public auction or by sealed bids. The highest bid shall be accepted. Other methods of disposition of surplus or excess property shall not be allowable;

(c) If a local health department receives no bids for surplus or excess property, either at public auction or by sealed bid, or reasonably determines that the aggregate value of the item is less than \$500, the property may be disposed of, consistent with the public interest, in any manner determined appropriate by the local health department. A written description of the property, the method of disposal, and the amount of compensation, if any, shall be made; and

(d) Any compensation resulting from the disposal of surplus or excess property shall be deposited in the local health department's bank account. If the property was purchased with restricted funds, appropriate accounting of the compensation received shall be made as required by 2 C.F.R. Part 200 Subpart E [OMB Circular A-87, incorporated by reference].

Section 9. Bank Accounts and Investments. (1) Fidelity bonding shall be obtained on local health department employees and board of health members who handle funds of the local health department.

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(a) An individual who makes deposits or signs checks or other instruments on local health department checking or investment accounts or certificates shall be bonded.

(b) Employees or board members shall be bonded in an amount sufficient to cover the total amount of funds to which they have access at any one (1) time.

(2) Local health departments may invest and reinvest money subject to their control and jurisdiction in the following investments:

(a) Obligations of the United States and of its agencies and instrumentalities. These investments may be accomplished through repurchase agreements reached with national or state banks chartered in Kentucky, and bonds or certificates of indebtedness of the state of Kentucky and of its agencies and instrumentalities;

(b) A savings and loan association insured by an agency of the government of the United States up to the amount so insured; and

(c) Interest-bearing deposits, or other authorized insurance instruments, in national or state banks chartered in Kentucky and insured by an agency of the government of the United States up to the amount so insured, and in larger amounts if the bank shall pledge as security, obligations as permitted by KRS 41.240(4), having a current quoted market value at least equal to uninsured deposits.

(3) A local health department may hold funds in its local bank account in a federally-insured bank at the minimum level necessary for efficient operations.

(4) Local health department funds shall not be transferred to a public health taxing

district account or to an account not reported in the local health department financial statements. ~~[Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "OMB-87 - Cost Principles for State, Local and Indian Tribes Government", edition 5/04; and~~

~~(b) "OMB-A-102 - Grants and Cooperative Agreement with State and Local Government".~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky, 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: October 4, 2018

FILED WITH LRC: October 8, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 26, 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 November 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 November 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email 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 minimum fiscal and financial management requirements for county and district local health departments and for all other classes of local health departments, except if a specific KRS requires a more stringent minimum requirement.

(b) The necessity of this administrative regulation: This administrative regulation ensures consistent fiscal and financial management practices for all local health departments with the exception of Lexington-Fayette County Health Department, Louisville-Jefferson County Health Department, and the Northern Kentucky District Health Department including the counties of Boone, Campbell, Grant and Kenton. As a recipient of federal funding local health departments are required to have fiscal and financial management policies in compliance with the applicable federal Office of Management and Budget (OMB) code of federal regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the cabinet to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.170(1), (3) and (6) authorize the cabinet to establish policies governing the activities and practices of local health departments, establish standards of operation, and allocate, modify or cancel allotments of state funds to local health departments pursuant to KRS 212.120.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures consistent practices in the local health departments by providing fiscal and financial management policies, and standards of operation.

(2) If 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 fiscal and financial management practices to the most current OMB uniform guidance by referencing the applicable code of federal regulation.

(b) The necessity of the amendment to this administrative regulation: As a recipient of federal funding, the Department for Public Health is required to implement fiscal and financial management procedures that are in compliance with OMB processes. This amendment is necessary to update the references to the applicable code of federal regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by establishing fiscal and financial management, administrative, and operational practices for local health.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assist in establishing policies governing the activities and practices of the local health departments. It assist in supervising the local health departments' fiscal and financial management, program, administrative, and other functions.

(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 all local health departments with the exception of Lexington-Fayette County Health Department, Louisville-Jefferson County Health Department, and the Northern Kentucky District Health Department including the counties of Boone, Campbell, Grant, and Kenton.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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: Local health department personnel will need to review this administrative regulation and become familiar with changes in the fiscal and financial management requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There will be no cost associated with this

amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local health departments throughout the state will have consistent fiscal and financial management policies and standards of operation.

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

(a) Initially: This is an ongoing program and there will be no initial costs to the administrative body.

(b) On a continuing basis: This is an ongoing program and there will be no increased costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current agency funds will be used to implement and enforce this 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 are no fees associated with this administrative regulation. An increase in funding is not needed to implement 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 regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as all local health departments are required to comply with this administrative regulation. Those health departments who are exempted from this regulation have the option of accepting these fiscal and financial management policies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local health departments, district health departments, Local Health Budget Branch within the Division of Administration and Financial Management.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194.050(1), 211.170(1), (3), (6), and 2 C.F.R. Part 200.

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

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

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

(c) How much will it cost to administer this program for the first year? This is an ongoing program, there will be no initial costs.

(d) How much will it cost to administer this program for subsequent years? This is an ongoing program, there will be additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Office of Management and Budget Super Circular, 2 C.F.R. 200 Subparts E and F.

(2) State compliance standards. This administrative regulation adopts the fiscal and financial management provisions for the

receipt of federal funds.

(3) Minimum or uniform standards contained in the federal mandate. Under uniform guidance provisions, the federal mandate requires states to adopt the OMB fiscal and financial management requirements contained in the Super Circular.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no different, stricter, or additional responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Program Integrity (Amendment)

907 KAR 1:005. Nonduplication of payments.

RELATES TO: KRS 205.520, 42 U.S.C. 1396k, 42 C.F.R. parts 433, 447

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)[, EO 2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid program [of Medical Assistance in accordance with Title XIX of the Social Security Act]. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the Medicaid program policies [sets forth the principles] relating to nonduplication of payment and treatment of third-party liability [for medical services, made available to both the categorically needy and the medically needy].

Section 1. Nonduplication of Payment. (1) In accordance with 42 C.F.R. 447.15, a payment to a provider for a service provided to a recipient shall be payment in full to the provider for the service, except as provided in subsection (3) of this section.

(2)(a) A provider shall not seek payment from a recipient for a covered service provided to the recipient, except as permitted pursuant to subsection (3) of this section.

(b) A recipient shall not be financially liable to a provider for a covered service provided by the provider to the recipient, except as provided pursuant to subsection (3) of this section.

(3) A cost-sharing obligation that complies with 907 KAR 1:604 and 42 C.F.R. 447.50-447.90 shall not be a violation of this section [Nonduplication of payment as required by 42 C.F.R. 447.15 is assured as follows:

(1) When a recipient makes payment for a covered service, and the payment is accepted by the provider as either partial payment or payment in full for that service, no responsibility for reimbursement shall attach to the cabinet and no bill for the same service shall be paid by the cabinet.

(2) When the cabinet makes payment for a covered service and the provider accepts the payment made by the cabinet in accordance with the cabinet's fee structure, the amounts paid shall be considered payment in full; and no bill for the same service shall be tendered to the recipient, or payment for the same service accepted from the recipient].

Section 2. Third-party Liability. (1) The department shall comply with [requirement contained in] 42 C.F.R. [C.F.R.] Part 433, Subpart D, and consider [that] any third-party liability [be considered] as a resource.

(2) A recipient shall cooperate with the department for third-party liability purposes in accordance with 42 U.S.C. 1396k, 42

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C.F.R. 433.138, and 42 C.F.R. 433.145.

~~(3) If[is met as follows: (1) When] payment for a covered service is due and payable from a third-party source such as Medicare, an insurance plan, or some other third-party with a legal obligation to pay, the amount payable by the cabinet shall be reduced by the amount of the third-party obligation. (2) Notwithstanding the provisions of subsection (1) of this section, the cabinet shall, in accordance with the provisions of 42 C.F.R. 431.625, make no payment on behalf of any person of an amount payable under Title XVIII, Part B, Supplementary Medical Insurance (SMI), whether or not the SMI eligible recipient has enrolled in and paid the premium for participation in the insurance plan.]~~

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 5, 2018

FILED WITH LRC: October 8, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 26, 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 November 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 November 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone: 502-564-6746, fax: 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonthant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program policies relating to nonduplication of payment and third party liability.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid program's nonduplication of payment and third party liability policies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Medicaid program's nonduplication of payment and third party liability policies.

(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 nonduplication of payment and third party liability policies in accordance with federal law.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes this administrative regulation by making technical corrections, updating citations to federal law for third party liability, clarifying that certain payments may be made for Medicare Part B for third party liability purposes, and updating references to federal law relating to nonduplication of payments.

(b) The necessity of the amendment to this administrative

regulation: This amendment is necessary to update citations to federal law and third party liability requirements for payments made for Medicare Part B third party liability and nonduplication of payments.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the content of the authorizing statutes by clarifying third party liability requirements and controlling federal law.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by clarifying third party liability requirements and controlling federal law.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, any enrolled provider that delivers services to recipients, and Medicaid enrollees and recipients. The current Medicaid membership is 1,400,689 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: Providers will be required to accept department or recipient payment as payment in full. Recipients will need to ensure that no other entities have liability to pay before the department, which is the payor of last resort.

(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 expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Beneficiaries will be able to fully participate in the Medicaid program.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding is necessary to implement this administrative regulation.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(25), 42 U.S.C. 1396k, 42 C.F.R. 433.138,

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

KRS 205.520(4) states: "It is the intention of the General Assembly to comply with the provisions of Title XIX of the Social Security Act which require that the Kentucky Medical Assistance Program recover from third parties which have a legal liability to pay for care and services paid by the Kentucky Medical Assistance Program."

KRS 205.520(5) states: "The Kentucky Medical Assistance Program shall be the payor of last resort and its right to recover under KRS 205.622 to 205.630 shall be superior to any right of reimbursement, subrogation, or indemnity of any liable third party."

3. Minimum or uniform standards contained in the federal mandate. When another party has a legal obligation to support a Medicaid recipient or pay for the recipient's medical expenses, the Department for Medicaid Services must identify the responsible party and seek reimbursement for any Medicaid expenditures spent for services provided to the beneficiary.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments do not impose requirements that are stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.520, 205.622, 205.624, 42 C.F.R. 433.138, 42 C.F.R. 431.625.

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

(a) How much 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 for state or local governments during the first year of implementation.

(b) How 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 for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates no cost resulting from the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost resulting from the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services
Division of Policy and Operations
(Amendment)

907 KAR 1:075. Hearings and appeals for individuals with an intellectual disability.

RELATES TO: KRS 205.175, 205.231, 205.237, 210.270

STATUTORY AUTHORITY: KRS 194A.025(1), 194A.050(1),

205.231, 205.237, 205.520(3), 205.531, 42 C.F.R. 431 Subpart E, 42 U.S.C. 1396j, ~~EO 2004-726~~

NECESSITY, FUNCTION, AND CONFORMITY:~~[EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.]~~ The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to provide for a system of hearings to be available to Medicaid recipients. This administrative regulation establishes~~[is promulgated to satisfy]~~ the hearing requirement of KRS 205.231 and 210.270 relative to Medicaid-eligible individuals with an intellectual disability lodged in state institutions who are proposed by the cabinet to be reclassified and transferred. In accordance with KRS 205.237, the cabinet is also setting the maximum fees that may be charged to the recipient for representation by attorneys with regard to the hearings or further resultant appeals.

Section 1. Definitions. (1) "At the time of any action affecting a recipient's claim" means at the time that the cabinet proposes to:

(a) Reclassify the level of care of a recipient; or

(b) Transfer the recipient from the state institution in which the recipient is lodged.

(2) "Authorized representative" means:

(a) 1. A parent; [;]

2. A guardian; [or]

3. A committee of the recipient; or

4. Other person designated by the recipient including a relative or friend;

(b) [or] An attorney acting at the request of the parent, guardian, [or] committee of the recipient, [;] or [an attorney acting] on behalf of the recipient; or

(c) A representative of the facility caring for the recipient who is acting on behalf of the recipient.

(3) [(2)] "Recipient" means an individual:

(a) With an intellectual disability;

(b) [;] Lodged in a state institution;

(c) [;] Who is eligible for Medicaid benefits; and

(d) Who is having the cost of his or her care paid for using funds from the Medicaid Program. [(3) The phrase "at the time of any action affecting his claim," means at the time that the cabinet proposes to reclassify the level of care of a recipient (as defined in subsection (2) of this section) or to transfer such recipient from the state institution in which he is lodged.]

Section 2. Informing the Recipient of the Recipient's~~[His]~~ Rights. Each recipient and authorized representative~~[his parent, guardian or committee]~~ shall be informed in writing:

(1) At the time of any action affecting the recipient's~~[his]~~ claim, of the recipient's~~[his]~~ right to a hearing;

(2) Of [;] the method by which the recipient~~[he]~~ may obtain a hearing; and

(3) That the recipient shall~~[that he may]~~ be represented by an authorized representative or be self-represented~~[such as legal counsel, relative, friend or other spokesman, or he may represent himself. All federal notice requirements].~~

Section 3. Request for a Hearing. (1) At the time of any action affecting a recipient's claim, any recipient, or an authorized representative acting on the recipient's~~[his]~~ behalf, may request a hearing by filing a written statement clearly indicating a desire for a hearing with~~[either] the secretary of the Cabinet for Health and Family Services~~~~[local office or central office of the Department for Social Insurance a written or oral statement clearly indicating a desire for a hearing. If the request for a hearing is made orally, the oral request shall be reduced to writing within ten (10) days by the person requesting the hearing, with the written request provided to the same office of the Department for Social Insurance which accepted the oral request].~~

Section 4. Time Limitation for Request. The time limitation for a hearing request shall be as established~~[is shown]~~ in KRS 210.270.

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Section 5. Continuation of Benefits. ~~If [When]~~ the request for a hearing of a decision to reclassify or transfer any patient with an intellectual disability is received within the thirty (30) day period ~~established~~, ~~provided for~~ by KRS 210.270.;

(1) Medicaid reimbursement shall continue, until the conclusion of the hearing; and

(2) The recipient shall not be transferred, until the conclusion of the hearing.

Section 6. Acknowledgment of Hearing Requests by the Appeal Panel. (1) The acknowledgment letter sent by the appeal panel shall contain information regarding the hearing process, including:

(a) The right to case record review prior to the hearing; and

(b) The right to representation.

(2) A subsequent notification shall include the time and place where the hearing will be held.

Section 7. Withdrawal or Dismissal of Request. (1) The recipient, or the recipient's [his] authorized representative, may withdraw the recipient's [his] request for a hearing at any time prior to release of the appeal panel's decision.;

(2) As appropriate, the recipient or the recipient's authorized representative shall be provided, however, he (or his authorized representative) is granted the opportunity to discuss withdrawal with the recipient's [his] legal counsel or representative, if any, prior to finalizing the action.

(3) Except as provided in subsection (4) of this section, a hearing request shall be dismissed if the recipient fails ~~[without prior notification]~~ to report for the hearing without prior notification.

(4) ~~A, except that no~~ hearing request shall not be dismissed without extending to the recipient, or the recipient's [his] authorized representative, the opportunity to establish that the failure to report for the hearing was for good cause.

Section 8. Recipient's Rights Prior to a Hearing. (1) Each recipient and the recipient's authorized representative, as appropriate, [All recipients and their parents, guardians or committees] shall be informed of the recipient's right to:

(a) ~~[their right to]~~ Legal counsel or other representation.;

(b) ~~[of the right to]~~ Case record review relating to the issue; and

(c) ~~[of the right to]~~ Submit additional information in support of the claim.

(2) ~~If [When]~~ the hearing involves medical issues:

(a) ~~;~~ A medical assessment shall be completed by a different provider [other] than the person or persons involved in the original decision ~~[shall be obtained at cabinet expense]~~ if the appeal panel considers it necessary pursuant to subsection (3) of this section.

(b) The medical assessment may be requested by:

1. The recipient;

2. The recipient's ~~[or his]~~ authorized representative.;

3. ~~[by]~~ An appeal panel member.

(3) A medical assessment ~~[and]~~ shall be considered necessary by the appeal panel if, in the opinion of a majority of the members of the appeal panel, the available medical information is insufficient for the appeal panel to determine [panel's purposes of determining] whether the recipient should be:

(a) Reclassified; or

(b) Transferred.

(4) The reason for denial shall be set forth in writing if:

(a) ~~[If]~~ A medical assessment at cabinet expense is requested by the recipient; and

(b) The request for a medical assessment is denied by the appeal panel [the reason for denial shall be set forth in writing].

Section 9. Corrective Action Prior to a Hearing. (1) Prior to a hearing, the chair of the appeal panel may review the case record. If the chair determines that a proposed, pending, or completed action was made erroneously or inappropriately, the chair [If after a review of the case record, but prior to scheduling a hearing, the chairman of the appeal panel determines that action taken or proposed to be taken, is incorrect, he] shall authorize corrective action in the form of:

(a) Continuing assistance; or

(b) Eligibility.

(2) Except as provided in subsection (3) of this section, following a corrective action pursuant to subsection (1) of this section, the hearing request shall [then] be dismissed.

(3) A hearing request shall ~~be~~ subject to reinstatement at the request of the recipient or the recipient's [his] authorized representative if that individual feels the corrective action does not fully resolve the issues prompting the hearing request.

(4) ~~Any [The]~~ request for reinstatement pursuant to this section shall ~~[must]~~ be made within twenty (20) days of the notice of the corrective action.

Section 10. Conduct of a Hearing. (1) A hearing or appeal [Hearings and appeals] relating to a decision [decisions] to reclassify or transfer a person [persons] with an intellectual disability in a state institution [institutions] shall be in accordance with the requirements established [contained] in 42 C.F.R. [C.F.R.] 431 Subpart E (431.200 through 431.250), [dated November 1, 1991, herein incorporated by reference, and] KRS 210.270, and, as necessary, KRS Chapter 13B.

(2) The appeal panel shall be appointed as required by KRS 210.270.

(3) A hearing officer ~~[A copy of the incorporated material shall be available for review during regular working hours in the commissioner's office, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601 from 8 a.m. through 4:30 p.m. Eastern Time, Monday through Friday. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.~~

(4) ~~All hearing officers]~~ of the Cabinet for Health and Family Services Administrative Hearings Branch shall be [are] designated as the cabinet representative, in accordance with KRS 210.270(6) [representatives of the Secretary, Cabinet for Health and Family Services, to the appeal panel established in KRS 210.270].

(4) The hearing officer shall conduct the hearing in accordance with KRS 13B.080 and 194A.025.

(5) ~~(2) The hearing officers shall serve as the chairman of each appeal panel established in KRS 210.270, and as chairman will conduct the proceedings of the appeal panel and make any and all rulings on procedural matters at, before, or after the hearing.~~

(3) The chairman of the appeal panel is, pursuant to the authority of KRS 194.025, delegated the authority to administer oaths and affirmations, examine witnesses and parties who appear at the hearing, and issue subpoenas to compel the attendance of any witness or the production of books, papers, correspondence, memoranda and other records which he feels are necessary and relevant for determining the proper level of care of the patient or whether the patient should be transferred.

(4) The chair [chairman] of the appeal panel may, ~~at his discretion,~~ direct or grant a continuance of a hearing in order to secure necessary evidence.

(6) In accordance with KRS 194A.060 and 205.175, ~~[(5)]~~ all members of the appeal panel shall be required to:

(a) Maintain the confidentiality of:

1. The hearings;

2. ~~The~~ records;

3. ~~The~~ reports; and

4. All other documents related to the appeal panel; and

(b) Safeguard all information relating to:

1. The recipient; and

2. Any authorized representative [the patients and their parents, guardians and committees in accordance with KRS 194.060 and 205.175].

(7) ~~[(6)]~~ The chair [chairman] of the appeal panel shall be responsible for:

(a) Maintaining the official records of a patient's case before the appeal panel;

(b) ~~;~~ Receiving a notice of appeal;

(c) ~~;~~ Acknowledging the appeal;

(d) ~~;~~ Taking and recording the vote of the appeal panel; and

(e) Sending notice of the decision to the:

1. Recipient; or
2. Authorized representative[notifying the parent, guardian or committee of the decision].

(8)[(7)] Following the hearing, the chair[chairman] of the appeal panel shall:

(a) Take the vote of the appeal panel; and
(b) Assign the task of writing the decision to the chair or any other member of the appeal panel[assign to himself or any other member of the appeal panel the task of writing the decision].

(9)[(8)] The decision of the appeal panel shall:

(a) Be in writing;
(b) Include a finding of facts;
(c) Identify laws and administrative regulations that[which] support the decision;

(d) Be sent to the appealing party within ninety (90) days from the date of the request for the hearing; and

(e) Advise the recipient or authorized representative[parent, guardian or committee] of the right to appeal the decision in the manner prescribed by KRS 210.270(7).

(10)[(9)] The recipient, the recipient's[his] representative, and any other party to the hearing may:

(a) Present evidence pertinent to the issue on which the adverse action was, or is proposed to be, taken; and

(b) Advance any arguments without undue interference.

(11)[(10)] The chair[chairman] and other members of the appeal panel shall, if necessary to secure full information on the issue, examine each party who appears and the party's[his] witnesses.[The appeal panel may take any additional evidence which it deems necessary; but if additional evidence is taken, all interested parties shall be afforded the opportunity of examining or rebutting such additional evidence.]

(12) The parties to the hearing, with the consent of the appeal panel, may stipulate the facts involved, in writing. The hearing may be decided on the basis of stipulation or the appeal panel may schedule a hearing and take additional evidence as is deemed necessary.

(13) All hearings shall be conducted informally and in a manner designed to determine the substantial rights of the parties. The parties and their witnesses shall testify under oath or affirmation. All facts relevant to the issue appealed shall be considered and passed upon.]

Section 11.[Hearings on other issues. Hearings on issues other than patient reclassification, or transfer of a person with an intellectual disability in Medicaid reimbursement status in state institutions shall be conducted in accordance with the provisions of 904 KAR 2:055.]

Section 12.] Limitation of Fees. (1) The cabinet, and its officers and employees, either in their official or personal capacity, shall not be liable for payment of any attorney's fee. In accordance with KRS 205.237, the fee an attorney may charge an individual shall[may] not exceed the following:

(a) Seventy-five (75) dollars for preparation and appearance at the hearing before an appeal panel;

(b) \$175 for preparation and presentation, including pleadings and appearance in courts, of appeals to the Circuit Court;

(c) \$300 for preparatory work and briefs and all other matters incident to appeals to the Court of Appeals; and

(d) \$300 for preparatory work and briefs and all other matters incident to appeals to the Supreme Court.

(2) The fee agreed to by the attorney[representative] and his or her client within the[above] maximums established pursuant to subsection (1) of this section shall be deemed to have the approval of the cabinet.

(3)(a) Enforcement of payment of the fee shall be a matter entirely between the attorney[counsel or agent] and the recipient.

(b) The fee shall not be deducted, either in whole or in part, from benefit checks that[which] may be due and payable to the recipient.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 5, 2018

FILED WITH LRC: October 8, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 26, 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 November 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 November 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone: 502-564-6746, fax: 502-564-7091, email 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 governs hearings and appeals for individuals with an intellectual disability.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish processes relating to hearings and appeals for individuals with an intellectual disability.

(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 a hearings and appeals process for individuals with an intellectual disability.

(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 processes by which individuals with an intellectual disability may utilize hearings and appeals.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation provide updates to statutory references, to the process utilized pursuant to KRS 210.270, and various technical changes for compliance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to update statutory references, and to clarify the process utilized pursuant to KRS 210.270.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by providing various updates to statutory references and to KRS Chapter 13A.

(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 updating references and clarifying the processes utilized pursuant to KRS 210.270.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, any state institution that lodges individuals with an intellectual disability and that seeks to transfer or reclassify those residents

certain state institutions, and any recipient or parent, guardian, authorized representative, or committee of the recipient could be affected by this administrative regulation. The number of individuals impacted by this administrative regulation cannot be determined as the department does not know and cannot predict the number of individuals who have or will develop an intellectual disability, become institutionalized, and then be identified as ready for transfer or reclassification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No additional action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Recipients and interested parties will better be able to participate in the appeal process.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the 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: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees 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? Tiering is not applied as the requirements established herein apply to all regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 431 Subpart E.

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. KRS 210.270 establishes and requires a hearing process for individuals with an intellectual disability upon reclassification or when the individual could be moved to a private facility.

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. subpart E governs fair hearings for applicants and beneficiaries.

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 no additional costs as a result of the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs as a result of the amendments to this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amendment)

907 KAR 8:040. Coverage of occupational therapy, physical therapy, and speech-language pathology services provided by various entities.

RELATES TO: KRS 205.520, 205.622, 369.101-369.120, 42 C.F.R. 431.17, 440.130, 45 C.F.R. Part 164, 42 U.S.C. 1396a(a)(30)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), [42 C.F.R. 440.130;] 42 U.S.C. 1396a(a)(30)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a 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. This administrative regulation establishes the Medicaid Program coverage provisions and requirements regarding occupational therapy services, physical therapy services, and speech-language pathology services provided by adult day health care programs, rehabilitation agencies, special health clinics, mobile health services, multi-therapy agencies, and comprehensive outpatient rehabilitation facilities to Medicaid recipients.

Section 1. Provider Participation. To be eligible to provide and be reimbursed for services covered under this administrative regulation, a provider shall be:

(1) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(2) Currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

(3)(a) An adult day health care program;

(b) A multi-therapy agency;

(c) A comprehensive outpatient rehabilitation facility;

(d) A mobile health service;

(e) A special health clinic; or

(f) A rehabilitation agency.

Section 2. Coverage of Services. (1) The services covered under this administrative regulation shall include:

- (a) Physical therapy;
- (b) Occupational therapy; or
- (c) Speech-language pathology services.

(2) To be covered under this administrative regulation, a service shall be:

- (a) Provided to a recipient;
- (b) Provided by:

1. An occupational therapist who renders services on behalf of a provider listed in Section 1(3) of this administrative regulation;

2. A physical therapist who renders services on behalf of a provider listed in Section 1(3) of this administrative regulation;

3. A speech-language pathologist who renders services on behalf of a provider listed in Section 1(3) of this administrative regulation;

4. An occupational therapy assistant who renders services:

- a. Under supervision in accordance with 201 KAR 28:130; and
- b. On behalf of a provider listed in Section 1(3) of this administrative regulation;

5. A physical therapist assistant who renders services:

- a. Under supervision in accordance with 201 KAR 22:053; and
- b. On behalf of a provider listed in Section 1(3) of this administrative regulation; or

6. A speech-language pathology clinical fellow who renders services:

a. Under the supervision of a speech-language pathologist; and

b. On behalf of a provider listed in Section 1(3) of this administrative regulation;

(c) Ordered by:

1. A physician currently participating in the Medicaid Program in accordance with 907 KAR 1:671;

2. An advanced practice registered nurse currently participating in the Medicaid Program in accordance with 907 KAR 1:671;

3. A physician assistant currently participating in the Medicaid Program in accordance with 907 KAR 1:671; or

4. A psychiatrist currently participating in the Medicaid Program in accordance with 907 KAR 1:671;

(d) Consistent with a plan of care that shall:

1. Be developed:

a. By:

(i) An occupational therapist currently participating in the Medicaid Program in accordance with 907 KAR 1:671;

(ii) A physical therapist currently participating in the Medicaid Program in accordance with 907 KAR 1:671; or

(iii) A speech-language pathologist currently participating in the Medicaid Program in accordance with 907 KAR 1:671; and

b. In collaboration with:

(i) A physician currently participating in the Medicaid Program in accordance with 907 KAR 1:671;

(ii) An advanced practice registered nurse currently participating in the Medicaid Program in accordance with 907 KAR 1:671;

(iii) A physician assistant currently participating in the Medicaid Program in accordance with 907 KAR 1:671; or

(iv) A psychiatrist currently participating in the Medicaid Program in accordance with 907 KAR 1:671; and

2. Identify a specific amount and duration;

(e) For the:

1. Maximum reduction of the effects of a physical or intellectual disability; or

2. Restoration of a recipient to the recipient's best possible functioning level; and

(f) Medically necessary.

(3)(a) There shall be an annual limit of twenty (20) visits for each of the following:

1. Occupational therapy service visits per recipient per calendar year except as established in paragraph (c) of this subsection;

2. Physical therapy service visits per recipient per calendar year except as established in paragraph (c) of this subsection; and

3. Speech-language pathology service visits per recipient per calendar year except as established in paragraph (c) of this subsection.

(b) For example, a recipient may receive twenty (20) occupational therapy visits, twenty (20) physical therapy visits, and twenty (20) speech-language pathology service visits per calendar year.

(c) The limit established in paragraph (a) of this subsection may be exceeded if services in excess of the limits are determined to be medically necessary by the:

1. Department, if the recipient is not enrolled with a managed care organization; or

2. Managed care organization in which the enrollee is enrolled, if the recipient is an enrollee.

(d) Medical necessity shall be determined on an individual basis per recipient based on the given recipient's needs.

(e) Prior authorization by the department shall be required for visits above the limit established in paragraph (a) of this subsection for a recipient who is not enrolled with a managed care organization.

Section 3. Documentation, Records Maintenance, Protection, and Security. (1) A provider shall maintain a current health record for each recipient.

(2) A health record shall:

(a) Document the provider's initial assessment of the recipient and any subsequent assessments;

(b) Document each service provided to the recipient; and

(c) Include detailed staff notes that state:

1. Progress made toward outcomes identified according to the provider's assessment and in the plan of care developed pursuant to Section 2(2)(d) of this administrative regulation;

2. The date of each service;

3. The beginning and ending time of each service; and

4. The signature and title of the individual providing each service.

(3) The individual who provides a service shall date and sign the health record within forty-eight (48) hours of~~on~~ the date that the individual provides the service.

(4)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(5) A provider shall comply with 45 C.F.R. Part 164.

Section 4. Medicaid Program Participation Compliance. (1) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672;~~and~~

(c) KAR Title 895; and

(d) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department in accordance with 907 KAR 1:671.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

Section 5. No Duplication of Service. (1) The department shall not reimburse for an occupational therapy service, physical therapy service, or speech-language pathology service provided to a recipient by more than one (1) provider of any Medicaid program in which the respective service is covered during the same time period.

(2) For example, if a recipient is receiving an occupational

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therapy service from a multi-therapy agency enrolled with the Medicaid Program, the department shall not reimburse for the same occupational therapy service provided to the same recipient during the same time period via the home health program.

Section 6. Third Party Liability. A provider shall comply with KRS 205.622.

Section 7. Out-of-State Providers. The department shall cover a service under this administrative regulation that is provided by an out-of-state provider if the:

- (1) Service meets the coverage requirements of this administrative regulation; and
- (2) Provider:
 - (a) Complies with the requirements of this administrative regulation; and
 - (b) Is:
 - 1.a. Licensed as an adult day health care program in the state in which it is located;
 - b. A comprehensive outpatient rehabilitation facility licensed in the state in which it is located;
 - c. Licensed as a mobile health service in the state in which it is located;
 - d. A special health clinic licensed in the state in which it is located;
 - e. A rehabilitation agency licensed in the state in which it is located;
 - f. An occupational therapist or occupational therapist group;
 - g. A physical therapist or physical therapist group;
 - h. A speech-language pathologist or speech-language pathologist group; or
 - i. A multi-therapy agency;
 2. Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 3. Currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671.

Section 8. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

- (2) A provider that chooses to use electronic signatures shall:
 - (a) Develop and implement a written security policy that shall:
 1. Be adhered to by each of the provider's employees, officers, agents, or contractors;
 2. Identify each electronic signature for which an individual has access; and
 3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
 - (b) Develop a consent form that shall:
 1. Be completed and executed by each individual using an electronic signature;
 2. Attest to the signature's authenticity; and
 3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
 - (c) Provide the department, immediately upon request, with:
 1. A copy of the provider's electronic signature policy;
 2. The signed consent form; and
 3. The original filed signature.

Section 9. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with any claim or medical record.

Section 10. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 11. Appeals. (1) An appeal of an adverse action by the

department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 5, 2018

FILED WITH LRC: October 8, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 26, 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 November 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 November 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone: 502-564-6746, fax: 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions regarding occupational therapy, physical therapy, and speech language pathology services provided to Medicaid recipients by adult day health care programs, multi-therapy agencies (any combination of physical therapists, occupational therapists, speech-language pathologists), comprehensive outpatient rehabilitation facilities (CORFs), rehabilitation agencies, special health clinics, and mobile health services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to expand the physical therapy, occupational therapy, and speech-language pathology service provider base to ensure Medicaid recipient access to the associated services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by enhancing Medicaid recipient access to care as federally mandated.

(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 enhancing Medicaid recipient access to care as federally mandated.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation align OT, PT, and ST providers with the rest of the Medicaid provider base by allowing forty-eight (48) hours for a service to be signed. The amendment also requires compliance with Title 895 KAR for this provider base.

(b) The necessity of the amendment to this administrative

regulation: The amendment to this administrative regulation is necessary to align some required administrative tasks on OT, PT, and ST providers with the rest of the Medicaid provider base, and to require compliance with Title 895 KAR.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by equalizing some administrative tasks between provider types and requiring compliance with Title 895 KAR.

(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 allowing all providers to submit certain forms on the same timeframe, and to require compliance with all Medicaid regulations, including Title 895 KAR.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Adult day health care programs, occupational therapists, physical therapists, speech-language pathologists, multi-therapy agencies (combination of occupational therapists, physical therapists, and speech-language pathologists), comprehensive outpatient rehabilitation facilities (CORFs), rehabilitation agencies, mobile health service providers, special health clinics, and recipients of the services will be affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Providers will need to comply with Title 895 as applicable. Providers will also be able to submit certain signed information on a longer timeframe.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Entities will benefit by being eligible to receive Medicaid reimbursement for services provided pursuant to Title 895 KAR, and will be able to submit certain signed information on a longer timeframe.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the 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 sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds comprised of general fund and restricted fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding are necessary.

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

(9) Tiering: Is tiering applied? Tiering is neither applied nor necessary as the provisions in this administrative regulation apply equally to the affected parties.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30).

2. State compliance standards. KRS 194A.030(2) states, "The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal

Social Security Act."

3. Minimum or uniform standards contained in the federal mandate. There is a federal mandate to ensure recipient access to services covered by the state's Medicaid program. As the Department for Medicaid Services (DMS) covers occupational therapy, physical therapy, and speech-language pathology services it must ensure that an adequate provider base exists to ensure recipient access to care. A relevant federal law – 42 U.S.C. 1396a(a)(30) 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 1903(i)(4)) 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."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not 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 statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 1396a(a)(30) and KRS 194A.030(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? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? The department anticipates no additional costs as a result of the amendment to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs as a result of the amendment to 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 1:050. State funded adoption assistance.

RELATES TO: KRS 199.555, 205.639(17) [(2), — (3)], 216B.450(5), 600.020(21), (54) [(20), — (48)], 620.020(5), Chapter 625[.]

VOLUME 45, NUMBER 5 – NOVEMBER 1, 2018

STATUTORY AUTHORITY: KRS 194A.050(1), 199.555(10)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.555(10) requires the cabinet to establish and promulgate by administrative regulation criteria to be followed for the adoption of special needs children. This administrative regulation establishes guidelines for the implementation of the state-funded adoption assistance program for children who may otherwise grow up in foster care.

Section 1. Definitions. (1) "Adoption subsidy" means a payment for a special needs child placed for adoption when an adoption assistance agreement is complete.

(2) "Extraordinary medical expenses" is defined by KRS 199.555(4).

(3) "Nonrecurring adoption expenses" is defined by KRS 199.555(3).

(4) "Secretary" means the Secretary of the Cabinet for Health and Family Services or designee.

(5) "State-funded adoption assistance" is defined by KRS 199.555(2).

Section 2. Adoption Assistance Eligibility Criteria. (1) The secretary shall decide whether to pay and provide adoption assistance in accordance with KRS 199.555(5) if:

(a) The child is a special needs child as described in subsections [subsection] (2) and (3) of this section;

(b) The child is committed to the cabinet; and

(c) The prospective adoptive parent will only be able to care for the child with an adoption subsidy.

(2) A special needs child is a child for whom adoptive placement without financial assistance is unlikely in accordance with KRS 199.555(1), because the child:

(a) Has a physical or mental disability;

(b) Has an emotional or behavioral disorder;

(c) Has a recognized risk of physical, mental, or emotional disorder;

(d) Is a member of a sibling group in which the siblings are placed together;

(e) Has had previous adoption disruption or multiple placements;

(f) Is a member of a racial or ethnic minority and two (2) years old or older; or

(g) [4-] Is age seven (7) or older and;

1. The child has a significant emotional attachment or psychological tie to his or her foster family; and

2. The cabinet has determined that it would be in the child's best interest to remain with the family.

(3) To qualify for state-funded adoption assistance, a special needs child shall:

(a) Be committed to the Cabinet for Health and Family Services;

(b) Not have a parent with custody or a legal claim to the child;

(c) Be under age eighteen (18); and

(d) Not be eligible for federal Title IV-E adoption assistance in accordance with 922 KAR 1:060, with the exception of extraordinary medical expenses pursuant to Sections 7(1), [Section] 8, and 10(2)[(4)] of this administrative regulation.

Section 3. Parental Standards. A parent receiving a child eligible for adoption assistance payments shall meet the same standards as those applied to other adoptive applicants in accordance with:

(1) 922 KAR 1:350; or

(2) 922 KAR 1:310.

Section 4. Adoption Placement Agreement. (1) Prior to placing a child for adoption, the prospective adoptive parent and the cabinet shall review and sign the adoption placement agreement to

set forth the terms of a child's placement with the prospective adoptive parent.

(2) The adoption placement agreement shall advise the prospective adoptive parent of the:

(a) Special needs of the child;

(b) Cabinet's expectations; and

(c) Services offered by the cabinet to assist the prospective adoptive parent in the adoption process.

Section 5. Adoption Assistance Agreement. Prior to finalization of the adoption, the prospective adoptive parent and the cabinet shall negotiate and sign an adoption assistance agreement in accordance with KRS 199.555(6) that shall:

(1) Determine the nature and amount of the adoption subsidy; and

(2) Remain in effect until suspended or terminated in accordance with Section 6 of this administrative regulation.

Section 6. Adoption Assistance Suspension and Termination. (1) Except as provided in subsection (2) of this section, the cabinet shall temporarily suspend state-funded adoption assistance payments during the period of time the adopted child:

(a) 1. Resides in:

a. Foster care as defined by KRS 620.020(5);

b. A residential treatment facility as defined by KRS 600.020~~(54)~~~~[(48)]~~;

c. A psychiatric residential treatment facility as defined by KRS 216B.450(5);

d. A psychiatric hospital as defined by KRS 205.639~~(17)~~~~[(2)-or (3)]~~ beyond thirty (30) consecutive calendar days; or

e. Detention:

(i) As defined by KRS 600.020~~(21)~~~~[(20)]~~;

(ii) Outside the adoptive home; and

(iii) For a period of thirty (30) calendar days or more; or

2. Is absent from the home of the adoptive parents for a period of thirty (30) consecutive calendar days or more, unless the child is absent due to medical care or school attendance; and

(b) Receives care and support for the child's special needs from a local, state, or federal public agency.

(2) State-funded adoption assistance shall be renegotiated in accordance with 922 KAR 1:530, Section 3(2).

(3) State-funded adoption assistance payments shall be terminated in accordance with KRS 199.555(8) if the:

(a) Adoptive parent:

1. Is no longer legally responsible for the special needs child in accordance with KRS Chapter 625;

2. Becomes deceased; or

3. Requests discontinuation of the adoption assistance payments; or

(b) Special needs child:

1. Becomes deceased;

2. Marries;

3. Gains full-time employment;

4. Is considered an emancipated minor;

5. Is inducted into military service;

6. Reaches age eighteen (18); or

7. If the child is enrolled in high school, reaches:

a. Age nineteen (19); or

b. The month of the child's high school graduation, if the child's graduation precedes the child's 19th birthday.

Section 7. Adoption Assistance Payments. (1) State-funded adoption assistance payments may include:

(a) Extraordinary medical expenses related to the child's special needs that:

1. Existed prior to the adoption; and

2. Are not reimbursable by another source;

(b) Nonrecurring adoption expenses not to exceed \$1,000 incurred in the adoption of a child who is considered a special needs child; and

(c) An adoption subsidy.

(2) An adoption assistance payment shall begin on the date that the adoption placement agreement and adoption assistance

agreement are signed by the adoptive parent and the cabinet.

(3) The amount of the state-funded adoption assistance payment shall not exceed the amount paid for foster care maintenance for the same child, in accordance with KRS 199.555(7), including medically fragile, specialized medically fragile, and care plus foster care[resource—home] per diem reimbursements established by the Department for[of] Community Based Services.

(4) A child placed in therapeutic foster care, as described in 922 KAR 1:310, shall not be eligible to receive adoption assistance payments in excess of:

(a) A care plus foster care[resource—home] per diem reimbursement established by the Department for Community Based Services; or

(b) The therapeutic foster care per diem reimbursed by the child-placing agency on behalf of the child if the:

1. Dollar amount is necessary to meet the child's needs; and
2. Commissioner or designee approves.

Section 8. Covered Extraordinary Medical Services. (1)(a) Copayments for covered extraordinary medical expenses shall be required using the adopted parent household's adjusted gross income in relation to Kentucky's estimated median household income established by the United States Census Bureau.

(b) To the extent state resources allow, the cabinet shall annually adjust the estimated median income used for copayment calculations concurrent with the United States Census Bureau.

(c) Unless otherwise noted in this section, copayments shall be as established in this paragraph.

1. A copayment for extraordinary medical services shall not be required from an adoptive parent whose household's adjusted gross income is at or below 100 percent of Kentucky's estimated median household income.

2. A ten (10) percent copayment for extraordinary medical services shall be required from an adoptive parent whose household's adjusted gross income is over 100 percent, but less than 150 percent, of Kentucky's estimated median household income.

3. A fifteen (15) percent copayment for extraordinary medical services shall be required from an adoptive parent whose household's adjusted gross income is over 150 percent, but less than 200 percent, of Kentucky's estimated median household income.

4. A twenty (20) percent copayment for extraordinary medical services shall be required from an adoptive parent whose household's adjusted gross income is over 200 percent of Kentucky's estimated median household income.

(2) A verifiable receipt and service provider contact information shall be submitted prior to reimbursement for services listed in this section.

(3) Copayments shall be deducted from each monthly receipt that is submitted for payment of a covered extraordinary medical service.

(4) Services covered by the extraordinary medical program may include:

(a) Orthodontia with a:

1. Copayment of fifty (50) percent of the cost; and

2. Dentist or physician's verification that the child's medical or dental need existed prior to the adoption finalization;

(b) Transportation if mileage for health treatment needs exceed the yearly mileage for foster care rates;

(c) Child care services:

1. For a full-time or part-time working parent who works a minimum of twenty (20) hours per week;

2. For a non-working parent with documentation from a qualified professional, as defined by KRS 202B.010(12), of the therapeutic need for the service;

3. With fees paid to the child care provider by the adoptive parent and reimbursed by the cabinet only after the cabinet receives a paid receipt as verified from the child care provider;

4. With annual employment verification provided to the cabinet by a working adoptive parent;

5. Reimbursed at a rate based on the age of the child and

certification of the provider in accordance with 922 KAR 2:160; and
6. Ending upon the child reaching age thirteen (13), unless documentation from a medical or mental health professional stating the diagnosed need for continuance of the child care is:

a. Provided upon the child reaching age thirteen (13); and

b. Submitted every six (6) months to the cabinet's social service worker;

(d) Tutoring:

1. Not to exceed twenty-five (25) dollars per hour for no more than two (2) hours per week;

2. Provided by personnel other than immediate family, for which qualifications are verified by a social services worker;

3. For a child:

a. With an individual education plan (IEP); and

b. Two (2) or more grade level years behind chronological age; and

4. With need and unavailability of services as documented by the child's school;

(e) Respite care:

1. Offered to a child approved for the medically complex or care plus rates prior to adoption finalization, at two (2) respite days per child per month;

2. Offered to a child approved for the specialized medically fragile rate prior to adoption finalization, at three (3) respite days per month per child;

3. That shall not be cumulative; and

4. Submitted monthly for reimbursement; and

(f) Evidence-based or evidence-informed health services after Medicaid and private health insurance have been exhausted, such as:

1. Counseling;

2. Expressive or art therapy;

3. Behavioral therapy;

4. Physical therapy;

5. Occupational therapy;

6. Speech therapy;

7. Medication; or

8. Special equipment.

Section 9[8]. Annual Family Contact. (1) Annual contact with the adoptive family shall be made by mail or home visit to determine that the:

(a) Child remains in the adoptive home;

(b) Parent continues to provide care and support for the child; and

(c) Adoption assistance payments continue to meet the special needs of the child.

(2) The cabinet may conduct a home visit after an adoption assistance annual contact is made by mail:

(a) If:

1. The adoptive parent requests a home visit;

2. The special needs of the child change, as indicated by the adoptive parent;

3. Attempts to update information by additional mail or phone contact have failed; or

4. The cabinet receives information that is contrary to the information verified by the adoptive parent during the annual contact; or

(b) In accordance with 922 KAR 1:330.

Section 10[9]. Adoption Assistance Renegotiation. (1) Renegotiation of an adoption assistance agreement:

(a) May be requested by the cabinet or the adoptive parent before or after the adoption is finalized; and

(b) Is contingent on compliance with Sections 2(2), 6, 9[8], and 12[14] of this administrative regulation.

(2) If conditions in KRS 199.555(6) are met, the cabinet shall reimburse extraordinary medical expenses requested by an adoptive parent of a special needs child to prevent disruption of the adoption:

(a) After the adoption is final; and

(b) Through state funded adoption assistance.

(3) A move of the special needs child or the adoptive parent of

the special needs child out of the state or country shall have no effect on the child's eligibility for state funded adoption assistance payments.

(4) If an adoption assistance payment is changed through renegotiation, the cabinet and adoptive parent shall sign a new adoption assistance agreement.

Section 11[40]. Service Appeal. An applicant for adoption assistance payments or an adoptive family aggrieved by a cabinet action shall be granted an administrative hearing in accordance with 922 KAR 1:320.

Section 12[44]. Notice of Change. (1) Cabinet staff shall provide notice of a reduction, discontinuance, or termination of adoption assistance payments:

(a) Ten (10) calendar days in advance; and

(b) In accordance with 922 KAR 1:320, Section 6.

(2) An adoptive parent shall notify the cabinet of any changes in circumstances that would make the adoptive parent ineligible for adoption assistance payments or change the amount of the adoption assistance payment as described in KRS 199.555(9) and Section 6 of this administrative regulation.

Section 13[42]. State-funded Adoption Assistance Limitation. The number of state-funded adoption assistance cases and the amount of state-funded adoption assistance payments paid per case shall be limited by available funds for the state-funded adoption assistance program.

Section 14[43]. Training. Contingent upon the availability of funding, the Department for Community Based Services shall offer training to adoptive parents receiving state-funded adoption assistance consistent with training offered to foster[resource] home parents as specified in 922 KAR 1:495[4:350].

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 4, 2018

FILED WITH LRC: October 8, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 26, 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 November 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 November 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746; fax 502-564-7091, email 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 state-funded adoption assistance program for children who would otherwise grow up in foster care to the extent funds are available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish state-funded adoption assistance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by establishing the state-funded adoption assistance program.

(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 a state-funded adoption assistance program.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation clarifies extraordinary medical services, the maximum adoption subsidy amount, and renegotiations of adoption assistance for post-adoption stabilization services. In addition, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify and refine criteria applicable to state-funded adoption assistance in stewardship of public funds and the best interest of families involved in public agency adoptions.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its clarification of and update of the state-funded adoption assistance program.

(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 the establishment of clearer guidelines regarding the state-funded adoption assistance program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There were 1,065 unique children adopted from foster care 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: The amendment to this administrative regulation reinforces current adoption assistance agreement language between the cabinet and an adoptive parent. There is no new action anticipated for adoptive parents or their children.

(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 reinforces existing practice specified through the adoption assistance agreement between the cabinet and an adoptive parent. There is no new or additional cost anticipated for adoptive parents or their children.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation clarifies benefits and services for adoptive parents and children adopted through a public agency adoption.

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

(a) Initially: There is no new or additional cost anticipated for the administering agency as a result of this amendment. With increasing numbers of adoptions, the department will have to monitor outlays.

(b) On a continuing basis: There is no new or additional cost for the administering agency as a result of this amendment. The administrative body will continually monitor its costs to make any adjustments necessary to maintain state-funded adoption assistance within appropriations.

(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 implementation and

enforcement of this administrative regulation is state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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. Co-payments passed along to an adoptive parent are set by the provider.

(9) TIERING: Is tiering applied? Tiering is not applied. The state funded adoption assistance program is implemented in a like manner statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services 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), 199.555(10)

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

(a) How much 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 state-funded adoption assistance program has been operational for a number of years. It does not generate revenue for the state; however, it supports the health, safety, and well-being of children adopted from foster care.

(b) How 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 directly generate any new revenue in 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 state appropriations.

(d) How much will it cost to administer this program for subsequent years? The administration of this program 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 1:060. Federal Title IV-E adoption assistance.

RELATES TO: KRS 199.500(1), 199.502, 199.555, 199.557, Chapter 625, 45 C.F.R. 1356.40(b), 1356.41, 42 U.S.C. 673, 675(3), 1382c(a)(3) [Pub.L. 110-351]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.557(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 199.557(4) requires the cabinet to implement federal Title IV-E adoption assistance payments in accordance with the administrative regulations promulgated by the cabinet. This administrative regulation establishes guidelines for the implementation of the federal Title

IV-E adoption assistance program for children who may otherwise grow up in foster care.

Section 1. Definitions. (1) "Adoption assistance agreement" is defined by 42 U.S.C. 675(3).

(2) "Adoption subsidy" means a payment for a special needs child placed for adoption when an adoption assistance agreement is complete.

(3) "Federal Title IV-E adoption assistance" is defined by KRS 199.557(1).

(4) "Nonrecurring adoption expenses" is defined by 42 U.S.C. 673(a)(6).

(5) "Relative" means the father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, niece, great grandmother, great grandfather, great aunt, or great uncle of the child.

Section 2. Adoption Assistance Eligibility Criteria. (1) A child shall be determined by the cabinet as a special needs child in accordance with 42 U.S.C. 673(c), if:

(a) The child is available for adoption in accordance with:

1. KRS 199.500(1);
2. KRS 199.502; or
3. KRS Chapter 625;

(b) The child has a specific factor or condition described by KRS 199.555(1) that makes the child difficult to place for adoption without adoption assistance; and

(c) Effort has been made to place the child with an appropriate adoptive parent without providing adoption assistance.

(2) If the child has a strong emotional tie with the prospective adoptive parent while in the care of the prospective adoptive parent as a foster child, an exception to subsection (1)(c) of this section shall be made.

(3) A special needs child shall:

(a) Meet the eligibility criteria established in 42 U.S.C. 673 when the adoption proceedings are initiated including:

1. Eligibility for Aid to Families with Dependent Children effective on July 16, 1996, upon the child's removal from the home of a relative;

2. Eligibility[Eligible] for Supplemental Security Income;

3. Status as a child:

a. Born to a minor parent who is receiving Title IV-E foster care maintenance; and

b. Who has received Title IV-E foster care maintenance; ~~and~~

~~(b) Not have a parent with custody or legal claim to the child;~~

4. Having been in foster care for sixty (60) consecutive months on or after October 1, 2009; or

5. Status as a sibling of a child described in subparagraph 1, or 4, of this paragraph to be placed in the same adoption placement as the child; and

(b) Not have a parent with custody or legal claim to the child.

(4) ~~[In accordance with 42 U.S.C. 673, as amended by Pub.L. 110-351, effective October 1, 2009.]~~ Eligibility for Aid for Families with Dependent Children specified in subsection (3)(a)1, of this section shall not apply to a child in accordance with 42 U.S.C. 673(e)~~[who is at least:~~

~~(a) Sixteen (16) years old on September 30, 2010;~~

~~(b) Fourteen (14) years old on September 30, 2011;~~

~~(c) Twelve (12) years old on September 30, 2012;~~

~~(d) Ten (10) years old on September 30, 2013;~~

~~(e) Eight (8) years old on September 30, 2014;~~

~~(f) Six (6) years old on September 30, 2015;~~

~~(g) Four (4) years old on September 30, 2016;~~

~~(h) Two (2) years old on September 30, 2017; or~~

~~(i) Any age on September 30, 2018].~~

(5) If an adoption assistance agreement is terminated in accordance with Section 7 of this administrative regulation or renegotiated for a period of time in accordance with 922 KAR 1:530, a child previously eligible for federal Title IV-E adoption assistance shall be treated as having the same financial circumstances as the child had when originally adopted.

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Section 3. Parental Standards. A parent receiving a child eligible for adoption assistance shall meet the same standards as those applied to other adoptive applicants in accordance with:

- (1) 922 KAR 1:350; or
- (2) 922 KAR 1:310.

Section 4. Adoption Placement Agreement. (1) Prior to a prospective adoptive parent receiving an adoption subsidy, the prospective adoptive parent and a cabinet representative shall review and sign the adoption placement agreement.

(2) The adoption placement agreement shall advise the prospective adoptive parent of the:

- (a) Special needs of the child;
- (b) Cabinet's expectations; and
- (c) Services offered by the cabinet to assist the prospective adoptive parent in the adoption process.

Section 5. Adoption Assistance Agreement. (1) At the time of or prior to finalization of the adoption, an adoptive parent and the cabinet shall negotiate and sign an adoption assistance agreement that[which] shall:

(a) Be in effect in accordance with 42 U.S.C. 675(3) and 45 C.F.R. 1356.40(b);

(b) Determine the nature and amount of the adoption subsidy; and

(c) Remain in effect until terminated, even if the adoptive parent moves out of the Commonwealth of Kentucky.

(2) If an adoption is finalized, the cabinet shall pay nonrecurring adoption expenses incurred by an adoptive parent during the adoption of a special needs child pursuant to 45 C.F.R. 1356.41.

(3) If a child is eligible for adoption assistance under 42 U.S.C. 673(a)(2)(A)(ii)(I)(bb), the requirement of Section 4(1) of this administrative regulation shall be waived.

(4) An adoption assistance payment shall begin on the date that the adoption assistance agreement is signed by the adoptive parent.

(5)(a) The amount of federal Title IV-E adoption assistance shall not exceed the amount that would be paid for foster care maintenance for the same child, in accordance with 42 U.S.C. 673(a)(3), including medically-fragile, specialized medically-fragile, and care plus foster care[resource—home] per diem reimbursements established by the Department for Community Based Services.

(b) A child placed in therapeutic foster care, as described in 922 KAR 1:310, shall not be eligible to receive adoption assistance in excess of:

1.[to-exceed] A care plus foster care[resource-home] per diem reimbursement established by the Department for Community Based Services; or

2. The therapeutic foster care per diem reimbursed by the child-placing agency on behalf of the child if the:

- a. Dollar amount is necessary to meet the child's needs; and
- b. Commissioner or designee approves.

Section 6. Federal Title IV-E Adoption Assistance. (1) Federal Title IV-E adoption assistance shall continue in accordance with KRS 199.557 and 42 U.S.C. 673(a)(4) until the child reaches age:

(a) Eighteen (18); or

(b) Twenty-one (21), if the child is determined to have a disability in accordance with subsection (2) of this section.

(2) Disability determination.

(a) In accordance with KRS 199.557 and 42 U.S.C. 673(a)(4), an adopted special needs child shall have a disability that warrants continuation of the child's federal Title IV-E adoption assistance if the child has been determined to meet the definition of permanent or total disability pursuant to 42 U.S.C. 1382c(a)(3) by either the:

1. Social Security Administration; or
2. Medical review team of the cabinet.

(b) In making a child's disability determination, the medical review team shall consider:

1. The child's medical history and subjective complaint regarding an alleged physical or mental disability, illness, or

impairment; and

2. Competent medical testimony relevant to whether:

a. A physical or mental disability, illness, or impairment exists; and

b. The disability, illness, or impairment is sufficient to reduce the child's ability to gain full-time employment or pursue opportunities in a state or federal education program.

(c) Other factors to be considered by the medical review team in making a determination shall include the child's:

1. Age;
2. Employment history;
3. Educational background; and

4. Subjective complaint regarding the alleged effect of the physical or mental condition on the child's ability to support and care for self.

(d) The child shall be referred, if necessary, for further appraisal of his or her abilities.

(e) If the medical review team makes the disability determination, the medical review team shall provide a written report of the determination under this subsection to the cabinet and the:

1. Child, if the child is age eighteen (18) or older; or

2. Adoptive parent, if the child is under age eighteen (18).

(3) Federal Title IV-E adoption assistance may include:

(a) Nonrecurring adoption expenses not to exceed \$1,000 incurred in the adoption of a special needs child; and

(b) An adoption subsidy.

Section 7. Termination of Adoption Assistance Payments. In accordance with KRS 199.557 and 42 U.S.C. 673(a)(4), federal Title IV-E adoption assistance payments shall be terminated if:

(1) The adoptive parent requests;

(2) The child reaches age:

1. Eighteen (18); or

2. Twenty-one (21), if the child is determined to have a disability in accordance with Section 6(2) of this administrative regulation;

(3) The cabinet determines that the:

1. Adoptive parent is no longer legally responsible for the support of the child; or

2. Child is no longer receiving support from the adoptive parent; or

(4) No adoptive parent who signed the adoption assistance agreement remains living.

Section 8. Adoption Assistance Renegotiation. (1) Renegotiation of an adoption assistance agreement may be requested by the adoptive parent before or after the adoption is finalized in accordance with 42 U.S.C. 673 or 922 KAR 1:530.

(2) The renegotiated amount of federal Title IV-E adoption assistance payments shall be agreed upon by the:

(a) Adoptive parent; and

(b) Cabinet.

(3) If the adoption assistance payment is renegotiated in accordance with subsections[subsection] (1) and (2) of this section, the cabinet and adoptive parent shall sign a new adoption assistance agreement.

(4) Federal Title IV-E adoption assistance payments shall not be changed by a move of the adoptive parents out of the state or country.

Section 9. Service Appeal. An applicant for adoption assistance payments or an adoptive family aggrieved by a cabinet action shall be granted an administrative hearing in accordance with 922 KAR 1:320.

Section 10. Notice of Change. (1) Cabinet staff shall provide notice of termination of adoption assistance payments:

(a) Ten (10) calendar days in advance; and

(b) In accordance with 922 KAR 1:320, Section 6.

(2) In accordance with 42 U.S.C. 673, an adoptive parent shall notify the cabinet of any change in circumstance that would make the adoptive parent ineligible for adoption assistance payments or

change the amount of the adoption assistance payment.

Section 11. Extraordinary Medical Expenses. In accordance with KRS 199.555(6) or 922 KAR 1:050, an adoptive child shall be eligible for assistance with extraordinary medical expenses.

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 4, 2018

FILED WITH LRC: October 8, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 26, 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 November 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 November 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone: 502-564-6746, fax: 502-564-7091, email 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 adoption assistance supported under federal Title IV-E of the Social Security Act.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the adoption assistance program under federal Title IV-E of the Social Security Act.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes through its establishment of federal Title IV-E adoption assistance.

(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 statutes through its establishment of the federal Title IV-E adoption assistance.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation incorporates a change impacting children's eligibility for federal Title IV-E adoption assistance as a result of Pub. L. 115-123. In addition, the amendment clarifies the maximum adoption subsidy for children placed in privately approved therapeutic foster homes, allows for renegotiations of adoption assistance in accordance with 922 KAR 1:530, and makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is most necessary to reflect eligibility criteria changes based on age of the child, effected by Pub. L. 115-123. Without this amendment, the state risks federally imposed corrective action and possible penalty.

(c) How the amendment conforms to the content of the

authorizing statutes: The amendment conforms to the content of the authorizing statutes through its alignment with recent change to the Title IV-E of the Social Security Act as amended by Pub. L. 115-123.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its alignment with overarching federal law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There were 1,065 unique children adopted from foster care 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: The amendment to this administrative regulation clarifies existing practice regarding renegotiations in accordance with 922 KAR 1:530. More importantly, the amendment conforms to the overarching federal law preserving the state's federal Title IV-E funding for adoption assistance. There is no new action anticipated for existing adoptive parents or their children.

(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 anticipated for adoptive parents or their children.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation clarifies benefits and services for adoptive parents and children adopted through a public agency adoption. In addition, the amendment protects federal funding for adoption assistance.

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

(a) Initially: There is no new or additional cost anticipated for the administering agency as a result of this amendment. With increasing numbers of adoptions, the department will have to monitor outlays.

(b) On a continuing basis: There is no new or additional cost for the administering agency as a result of this amendment. The administrative body will continually monitor its costs to make any adjustments necessary to maintain state-funded adoption assistance within appropriations.

(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 implementation and enforcement of this administrative regulation is state general funds and federal funds made available under Title IV-E of the Social Security Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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. The federal Title IV-E adoption assistance program is implemented in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 1356.40(b), 1356.41, 42 U.S.C. 673, 675(3), 1382c(a)(3)
2. State compliance standards. KRS 194A.050(1), 199.557(4)
3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1356.40(b), 1356.41, 42 U.S.C. 673, 675(3), 1382c(a)(3)
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 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), 199.557(4), 45 C.F.R. 1356.40(b), 1356.41, 42 U.S.C. 673, 675(3), 1382c(a)(3)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The federal adoption assistance program has been operational for a number of years. It supports the health, safety, and well-being of children adopted from foster care.

(b) How 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 federal adoption assistance program has been operational for a number of years. It supports the health, safety, and well-being of children adopted from foster care.

(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 state appropriations.

(d) How much will it cost to administer this program for subsequent years? The administration of this program 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 1:530. Post-adoption placement stabilization services.

RELATES TO: KRS 199.011, 600.020, 605.100, 605.130, 620.170, 45 C.F.R. 1355.34(b), (c), 1356.22, 42 U.S.C. 673

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472, 605.100(1), 605.130(7)(4), 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the cabinet to promulgate, administer, and enforce those administrative regulations necessary to qualify for the receipt of federal funds. To maintain eligibility for full funding under Title IV-E and IV-B of the Social Security Act, under 45 C.F.R. 1355.34(b) and (c), the cabinet shall design services to help children achieve permanency, to include post-legal adoption services. KRS 199.472 mandates that the cabinet establish[establishes] criteria for the adoption of children by administrative regulation. KRS 605.150

authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(7)(4), which requires the cabinet to perform other services necessary for the protection of children, and KRS 605.100(1), which requires the cabinet to arrange for a program of care, treatment, and rehabilitation of the children committed to it. This administrative regulation establishes post-adoption placement stabilization services for children who were adopted from the custody of the cabinet, to the extent funds are available.

Section 1. Definitions. (1) "Aftercare plan" means a plan of care for a child upon the discontinuance of post-adoption placement stabilization services, which:

- (a) Recommends services for the continued care of the child;
 - (b) Identifies community resources that have been arranged for the child or parent; and
 - (c) Includes actions that the parent agrees to take.
- (2) "Child-caring facility" is defined by KRS 199.011(5)(6).
- (3) "Commitment" is defined by KRS 600.020(13)(12).
- (4) "Family team meeting" means a meeting convened to develop services to avoid the dissolution of an adoption in accordance with Section 2(2)(b)4, of this administrative regulation.
- (5) "Post-adoption placement stabilization services" or "PAPSS" means coordination, payment, and provision of care and treatment of an adopted child by the cabinet to prevent dissolution of the adoption.

Section 2. Eligibility Requirements for Services. (1) The cabinet shall consider a request for PAPSS made on behalf of an adopted child if:

(a) The adoptive parent receives adoption assistance for the child in accordance with 922 KAR 1:050 or 922 KAR 1:060; and

(b) Cabinet staff determines that after the provision of other prevention services, such as services provided in subparagraph (2)(b)2, of this section, the adoption of the child remains in jeopardy of dissolution.

(2) If the threshold criteria of subsection (1) of this section are met, the cabinet shall consider a child eligible for PAPSS if:

(a) Upon a child's placement with a child-caring facility or a decision to extend PAPSS, the child is assessed a level of care by the cabinet or its agent and determined to meet criteria for:

- 1. Level IV as established in 922 KAR 1:360, Section 4(4); or
- 2. Level V as established in 922 KAR 1:360, Section 4(5); and

(b) The adoptive parent:

1. Receives adoption assistance for the child in accordance with 922 KAR 1:050 or 922 KAR 1:060;

2. Has cooperated with other services to prevent the adoption's dissolution, such as:

a. ~~Wrap-around~~[IMPACT Plus] services through the Kentucky Medicaid Program;

b. Family Preservation ~~Services~~[Program] in accordance with KRS 200.575[922 KAR 1:410]; or

c. Crisis stabilization through the Kentucky Medicaid Program;

3. Authorizes the cabinet to:

a. Coordinate PAPSS for the child;

b. Make a referral on behalf of the child to a child-caring facility for the child's placement; and

c. Access confidential medical and treatment information about the child; and

4. Agrees to:

a. Participate in a family team meeting:

(i) To include designated regional cabinet staff, family members, staff of the child-caring facility providing services to the child, or other individuals requested by the family or cabinet staff;

(ii) Within the first thirty (30) days of a child's receipt of PAPSS; and

(iii) As established in Section 4(4) of this administrative regulation;

b. Cooperate with an assessment of the child to determine the child's needs and eligibility for PAPSS as required by paragraph (a) of this subsection[in Section 2(2)(a) of this administrative regulation];

c. Place the child with:

(i) A child-caring facility operating in accordance with 922 KAR 1:360; or

(ii) An out-of-state, licensed child care institution upon authorization by the cabinet for payment to the child care institution in accordance with Section 3(1) of this administrative regulation;

d. Participate in the child's treatment to support reunification with the child; and

e. A renegotiation~~[temporary discontinuance]~~ of the child's adoption assistance to one (1) dollar, provided in accordance with 922 KAR 1:050 or 922 KAR 1:060, during the period of time the child receives PAPSS.

Section 3. Payment. (1) To the extent funds are available, the cabinet shall pay a reimbursement rate for PAPSS consistent with the child's assessed level of care as established in Section 2(2)(a) of this administrative regulation unless:

(a) The child's child care institution does not have an agreement with the cabinet in accordance with 922 KAR 1:360; and

(b) Approval for a different rate is obtained from the commissioner or designee.

(2) During the time period in which a child receives PAPSS, the cabinet shall temporarily reimburse for the renegotiated ~~[discontinue]~~ adoption assistance in accordance with:

(a) Section 2(2)(b)4.e. of this administrative regulation; and

(b) 922 KAR 1:050 or 922 KAR 1:060.

Section 4. Timeframes for PAPSS. (1) The cabinet shall discontinue payment for PAPSS after the child has received PAPSS for sixty (60) calendar days, unless an additional time period of PAPSS has been approved in accordance with subsections (2) and (3) of this section.

(2) After the child has received PAPSS for sixty (60) calendar days, to the extent funds are available, the:

(a) Commissioner or designee may approve the child for an additional thirty (30) calendar days, for a total of ninety (90) calendar days of PAPSS, if the:

1. Child continues to meet the requirements specified in Section 2(2)(a) of this administrative regulation; and

2. Adoptive parent continues to meet the requirements specified in Section 2(2)(b) of this administrative regulation; or

(b) Cabinet may continue PAPSS to a child if the:

1. Child continues to meet the requirements specified in Section 2(2)(a) of this administrative regulation;

2. Child's assessed needs require PAPSS beyond an additional thirty (30) calendar days; and

3. Adoptive parent:

a. Voluntarily commits the child to the cabinet in accordance with KRS 620.170 and 45 C.F.R. 1356.22; and

b. Continues to meet the requirements specified in Section 2(2)(b) of this administrative regulation.

(3) To the extent funds are available, the cabinet may provide PAPSS to a child beyond ninety (90) calendar days in a twelve (12) month period, if the:

(a) Child continues to meet the requirements specified in Section 2(2)(a) of this administrative regulation; and

(b) Adoptive parent meets the requirements of subsection (2)(b)3. of this section.

(4) If a child receives PAPSS, the cabinet shall call at least one (1) family team meeting for the child. The meeting may be called:

(a) At thirty (30) calendar day intervals; or

(b) More frequently than one (1) time in a thirty (30) day period with the consent of the adoptive parent.

Section 5. Continuation of PAPSS Through Voluntary Commitment. (1) If an adoptive parent voluntarily commits a child to the cabinet for the child's continued benefit of PAPSS and continues to meet criteria established in Section 2(2)(b) of this administrative regulation, the cabinet shall seek no child support from the adoptive parent.

(2) Any extension to the voluntary commitment of the child to the cabinet shall be in accordance with KRS 620.170 and 45 C.F.R. 1356.22.

Section 6. Discontinuation and Aftercare. The cabinet may develop an aftercare plan for the adoptive parent and child, if the:

(1) Cabinet discontinues PAPSS; and

(2) Adoptive parent assists in the aftercare plan's development.

Section 7. Appeals. (1) An adoptive parent shall be granted an administrative hearing in accordance with 922 KAR 1:320 if the cabinet fails to:

(a) Use reasonable promptness in its:

1. Response to a request for PAPSS; or

2. Referral of an eligible child to a child-caring facility for approved PAPSS; or

(b) Call a family team meeting for a child during the:

1. Sixty (60) calendar days a child receives PAPSS; or

2. Period of time a child receives an extension to PAPSS in accordance with Section 4(2)(2) and (3) of this administrative regulation.

(2) Private child-caring facilities shall have appeal rights in accordance with 922 KAR 1:360, Sections 14 and 15.

(3) An adoptive parent may request a review by the commissioner if criteria of 922 KAR 1:320, Section 4(5) or 10(2)(4)(2) are met.

Section 8. Out-of-State Request for PAPSS. The cabinet shall consider out-of-state requests for a child adopted from the custody of the cabinet on a case-by-case basis, to include considerations regarding the:

(1) Needs of the child;

(2) Consent of the parent; and

(3) Extent of funds available

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 5, 2018

FILED WITH LRC: October 8, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 26, 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 November 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 November 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091, email 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 procedures for the implementation of post adoption placement stabilization services (PAPSS) for children who were adopted from the custody of the cabinet to the extent funds are available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under the Social Security Act and to help children achieve and

maintain permanency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by allowing the cabinet to qualify for federal funds and establishing procedures for the implementation of PAPSS.

(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 PAPSS in a manner that is consistent with federal and state requirements, available funding, and the interests of families and children being served.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation ensures that adoption assistance contracts are renegotiated due to the provision of PAPSS in accordance with federal law. The amendment also clarifies instances of a child being authorized for payment with an out-of-state child care institution. Lastly, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure federal compliance and prudent stewardship of available departmental resources in the provision of post-adoption assistance and supports to children and families involved in a public agency adoption.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by better aligning with the needs of adopted children and overarching federal requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its refinement of PAPSS in accordance with federal standards and the interests of adoptive families and children.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There were 1,065 unique children adopted from foster care in Kentucky in 2017. Any child who was adopted from foster care is eligible for PAPSS.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment clarifies current practice within the administrative regulation. There is no new action required on the part of adoptive parents.

(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 cost for adoptive families.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of the amendment, there will be greater clarity regarding the conditions for PAPSS.

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

(a) Initially: The amendment to this administrative regulation is not anticipated to create new costs for the department. With increasing numbers of public agency adoptions, the demand for PAPSS will have to be monitored to ensure the agency remains within existing appropriations.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to result in new costs. The administrative body will continually monitor its costs to make any adjustments necessary to maintain PAPSS within existing appropriations.

(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 implementation and enforcement of this administrative regulation is state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: 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. PAPSS is implemented in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

45 C.F.R. 1355.34(b), (c), 1356.22, 42 U.S.C. 673

2. State compliance standards. KRS 194A.050(1), 199.472, 605.100(1), 605.130(7), 605.150

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1355.34(b), (c), 1356.22, 42 U.S.C. 673

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 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, 605.100(1), 605.130(7), 605.150, 45 C.F.R. 1355.34(b), (c), 1356.22

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will not generate any revenue for the cabinet in the first year. Providing additional supports to adoptive families in order to prevent children from re-entering foster care supports the overall well-being of that child and decreases the public cost of caring for the child if the child reenters foster care or if the adoption dissolves.

(b) How 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 in 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 state appropriations.

(d) How much will it cost to administer this program for subsequent years? The administration of this program 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:

NEW ADMINISTRATIVE REGULATIONS

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(New Administrative Regulation)

105 KAR 1:147. Involuntary Cessation of participating employers.

RELATES TO: KRS 61.510, 61.522, 61.546, 61.552, 61.555, 61.565, 61.590, 61.598, 61.625, 61.637, 61.675, 78.510 – 78.852, 26 U.S.C. 401

STATUTORY AUTHORITY: KRS 61.522(8), 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705, and 78.510 to 78.852. KRS 61.522 authorizes the Board of Trustees of Kentucky Retirement Systems to involuntarily terminate participation of employers in the Kentucky Employees Retirement System and the County Employees Retirement System determined by the board to no longer qualify to participate in a governmental plan or to be noncompliant with the provisions of KRS 61.510 to 61.705 or 78.510 to 78.852. The Board of Trustees of Kentucky Retirement Systems shall require lump sum payment of the full actuarial cost of benefits accrued by its current and former employees for those involuntarily ceased employers. KRS 61.522(8) requires the board to promulgate administrative regulations to administer the provisions of the statute. This administrative regulation establishes the procedures and requirements for involuntary cessation from participation in the Kentucky Employees Retirement System and the County Employees Retirement System.

Section 1. Definitions.

(1) "Ceased employer" means an employer who the Board of Trustees has determined must involuntarily cease participation.

(2) "Involuntary cessation date" means the date established by the Board of Trustees when approving the employer's involuntary cessation from participation in the Kentucky Employees Retirement System or County Employees Retirement System.

Section 2. Upon determination by the Board of Trustees, an employer shall be required to involuntarily cease participation from the Kentucky Employees Retirement System or the County Employees Retirement System.

(1) The Board of Trustees shall provide written notice to the employer of its intention to involuntarily cease participation. The notice shall be sent by certified mail to the employer's designated reporting official on file at Kentucky Retirement Systems.

(2) The notice shall provide an explanation of the board's decision for involuntary cessation, including whether:

(a) The board has determined that the employer is no longer qualified to participate in a governmental plan; or

(b) The board has determined that the employer has failed to comply with the requirements of KRS 61.510 to 61.705 or 78.510 to 78.852.

(3) The notice shall provide the employer with the opportunity to fully resolve its noncompliance within sixty (60) days of the date the notice was issued by Kentucky Retirement Systems. The board may extend this time if provided a written statement from the employer ensuring full resolution but requiring additional time due to factors outside the employer's control preventing the employer from fully resolving its noncompliance within sixty (60) days of the date of the notice.

(a) Upon expiration of this time, the board shall determine whether the employer fully resolved its noncompliance and shall remain a participant of the Kentucky Employees Retirement System or County Employees Retirement System or that the employer failed to fully resolve its noncompliance and to proceed with involuntary cessation.

(b) If the board determines that the employer fully resolved its noncompliance, then the employer shall be informed that the

involuntary cessation process shall be suspended contingent upon continued compliance.

(4) If the board determines involuntary cessation should proceed, the employer shall be provided with written notice indicating:

(a) That the employer shall pay the full actuarial cost of the benefits accrued by its current and former employees;

(b) That the employer shall be responsible for all fees incurred by Kentucky Retirement Systems for use of external professional services including the administrative costs of an actuarial study performed by Kentucky Retirement Systems' consulting actuary;

(c) That the employer shall be responsible for reimbursing Kentucky Retirement Systems for the cost of compensation and benefits of Kentucky Retirement Systems' employees computed on an hourly basis as well as the costs of postage, printing, and other expenses incurred by Kentucky Retirement Systems;

(d) That the involuntary cessation of participation applies to all of the employer's current and former employees; and

(e) An involuntary cessation date.

(5) The employer shall submit in an encrypted electronic file a list of each current and former full-time employee as defined by KRS 61.510(21) and 78.510(21) who were employed during any time period the employer participated in Kentucky Employees Retirement System or County Employees Retirement System, containing:

(a) Full name;

(b) Last known address;

(c) Date of birth;

(d) Social Security number or Kentucky Retirement Systems member identification number;

(e) Beginning date of employment;

(f) Date employment ended, if applicable;

(g) Sick leave balance;

(h) Beginning and ending dates of any active duty military service when the employee was not employed by the employer; and

(i) Beginning and ending dates of any active duty military service when the employee was employed by the employer.

(j) If the employer refuses or fails to submit the requested information, Kentucky Retirement Systems shall make reasonable efforts to issue a notice to the last known address on file to those current and former employees of the employer that involuntary cessation has been initiated. Kentucky Retirement Systems will provide an involuntary cessation date and notification that the employee will no longer earn service credit while employed with the employer after that date.

(6) Upon receipt of the actuarial study, Kentucky Retirement Systems shall:

(a) Issue an invoice to the employer for the full actuarial cost of cessation as determined in the actuarial study and the total administrative costs for administering the involuntary cessation; and

(b) Require the employer to pay the invoice by lump sum within thirty (30) days of its issuance by Kentucky Retirement Systems.

Section 3. (1) (a) Former employees of the ceased employer who are currently employed with a different employer participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance until terminating employment with the participating employer.

(b) Current employees of the ceased employer who are also employed by another employer participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance unless they terminate all employment with participating employers.

(2) Current employees of a ceased employer shall terminate employment with the ceased employer and all employers participating in the State Police Retirement System, County

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Employees Retirement System, and Kentucky Employees Retirement System prior to retiring pursuant to KRS 61.590 or taking a refund pursuant to KRS 61.625.

(3) Employees of a ceased employer shall comply with KRS 61.637 and 105 KAR 1:390 after retirement.

(4) Employees of a ceased employer shall have sixty (60) days from the involuntary cessation date to pay in full any outstanding balance on an installment purchase agreement pursuant to KRS 61.552(14) and 105 KAR 1:150.

(5) (a) The four (4) percent employer pay credit and applicable interest accrued while employed with a ceased employer shall vest as of the involuntary cessation date for those employees who began participating on or after January 1, 2014.

(b) Employees of the ceased employer who began participating on or after January 1, 2014, shall not be vested in the four (4) percent employer pay credit or applicable interest attributable to a time of employment with an employer other than the ceased employer.

(6) Employees of the ceased employer shall receive service credit for sick leave accrued pursuant to KRS 61.546 or 78.616 as of the involuntary cessation date.

(a) If the employer participates in a sick leave program established in KRS 61.546 or 78.616, the employer shall report to Kentucky Retirement Systems the number of hours of each employee's accumulated sick leave as of the involuntary cessation date.

(b) Kentucky Retirement Systems shall credit the months of sick leave service reported pursuant to this section to the employee's total service credit to determine the employer's full actuarial cost.

(c) If the employer refuses or fails to certify an employee's unused sick leave, Kentucky Retirement Systems shall credit the months of sick leave last reported to the employee's file with Kentucky Retirement Systems as of the employer's involuntary cessation date.

(7) Kentucky Retirement Systems shall credit the months of military service pursuant to KRS 61.555(1)-(2) reported prior to the employer's involuntary cessation date to determine the employer's full actuarial cost.

(8) Kentucky Retirement Systems shall use the employer's involuntary cessation date as the member's last day of paid employment pursuant to KRS 61.510(32) for any member who files for disability retirement benefits that has not established a last day of paid employment prior to the involuntary cessation date.

Section 4. If the employer fails to timely remit the full actuarial cost and Kentucky Retirement Systems' total administrative costs attributable to involuntary cessation, the Board of Trustees may file an action in the Franklin Circuit Court to enforce the provisions of KRS 61.522 and this administrative regulation to recover the full actuarial cost.

Section 5. (1) A person eligible to purchase service credit pursuant to KRS 61.552 related to employment with the ceasing employer, must either complete the purchase or enter into a service purchase agreement with Kentucky Retirement Systems no later than the employer's involuntary cessation date.

(2) Current and former employees shall not be eligible to purchase service credit related to employment with a ceased employer, pursuant to KRS 61.552 after the employer's involuntary cessation date.

(3) A person may purchase service credit pursuant to KRS 61.552(20) if the service is not related to employment with the ceased employer.

(4) A former employee of a ceased employer who becomes employed with a participating employer after terminating employment with the ceased employer may purchase service credit pursuant to KRS 61.552 that is not related to employment with a ceased employer.

Section 6. (1) If an employer files legal action against Kentucky Retirement Systems regarding the provisions of KRS 61.522 or this administrative regulation, the employer shall pay all administrative

costs and legal fees incurred by Kentucky Retirement Systems if the employer's legal action against Kentucky Retirement Systems is unsuccessful or is dismissed for any reason other than by the agreement of the parties.

Section 7. If any due date or time period deadline provided in KRS 61.522 or this administrative regulation falls on a Saturday, Sunday, or day that Kentucky Retirement Systems is closed due to state holiday, the due date or time period deadline shall extend to the close of business of the next business day.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: October 4, 2018

FILED WITH LRC: October 5, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2018 at 9:00 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky. 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 until November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mark C. Blackwell, Executive Director Office of Legal Services, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8645, fax (502) 696-8801, email mark.blackwell@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mark C. Blackwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the involuntary cessation processes and procedures for an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System to be used by the Board of Trustees of Kentucky Retirement Systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the involuntary cessation processes and procedures for an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System to be used by the Board of Trustees of Kentucky Retirement Systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the involuntary cessation processes and procedures for an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System to be used by the Board of Trustees of Kentucky Retirement Systems.

(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 involuntary cessation processes and procedures for an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System to be used by the Board of Trustees of Kentucky Retirement Systems in accordance with KRS 61.522.

(2) If 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: Kentucky Retirement Systems and employers participating in the Kentucky Employees Retirement System or the County Employees Retirement System required to involuntarily cease participation pursuant to KRS 61.522(2)(b).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An employer required to involuntarily cease participation will be required to pay by lump sum to Kentucky Retirement Systems the full actuarial cost of the benefits accrued by its current and former employees as well as the cost of the actuarial study and any other administrative costs as determined by the Board of Trustees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If an employer is required to involuntarily cease participation, which is established by KRS 61.522(2)(b), it will be required to pay by lump sum to Kentucky Retirement Systems the full actuarial cost of the benefits accrued by its current and former employees as well as the cost of the actuarial study and any other administrative costs as determined by the Board of Trustees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The involuntary cessation processes and procedures will allow Kentucky Retirement Systems to involuntarily cease the participation of agencies determined by the Board to no longer qualify to participate in a governmental plan or to have failed to comply with Kentucky Retirement Systems' requirements.

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

(a) Initially: The cost of completing the process of involuntary withdrawal.

(b) On a continuing basis: There will be no continuing cost to the employer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and agency funds).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees. The employer must pay the administrative costs incurred by Kentucky Retirement Systems pursuant to KRS 61.522.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers required to involuntarily cease participation are subject to the same processes and procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Retirement Systems and employers required to involuntarily cease participation in the Kentucky Employees Retirement System or the County Employees Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.522.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 employer will have to pay its internal administrative costs and Kentucky Retirement Systems' administrative costs. The administrative regulation generates no revenue, but will allow Kentucky Retirement Systems to involuntarily cease the participation of certain employers. The employer is required by statute to pay the full actuarial cost.

(a) How much 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? Ultimately, the cost to Kentucky Retirement Systems should be negligible, as KRS 61.522 requires an involuntary ceasing employers to pay its internal administrative costs and Kentucky Retirement Systems' administrative costs related to cessation.

(d) How much will it cost to administer this program for subsequent years? KRS 61.522 requires the ceasing employer to pay its internal administrative costs and Kentucky Retirement Systems' administrative costs so the cost to Kentucky Retirement Systems should be negligible.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Social Work (New Administrative Regulation)

201 KAR 23:150. Complaint procedure, disciplinary action, and reconsideration.

RELATES TO: KRS 335.030, 335.070(1)(a), (2), (3), (4), (5), (6), (7), (8), 335.150, 335.155

STATUTORY AUTHORITY: KRS 335.070(3), 335.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070(1)(a) authorizes the board to regulate the practice of social work and enforce the provisions of KRS 335.010 to KRS 335.160 and KRS 335.990. KRS 335.070(3) authorizes the board to promulgate and enforce reasonable administrative regulations to carry out the provisions of KRS 335.010 to KRS 335.160 and KRS 335.990. KRS 335.070(2) and KRS 335.150 requires the board to regulate the conduct of licensees, to investigate alleged violations, to promote the efficient and fair conduct of disciplinary proceedings, and take appropriate action. This administrative regulation establishes the procedures to be followed in handling formal and informal disciplinary proceedings before the board, in the imposition of sanctions and disciplinary action of a licensee or applicant in violation of KRS 335.030 or 335.150.

Section 1. Definitions.

(1) "Administrative hearing" or "hearing" means any type of formal adjudicatory proceeding conducted by the board to adjudicate the legal rights, duties, privileges, or immunities of a named person in accordance with KRS Chapter 13B.

(2) "Complainant" means an individual, government agency, or the board that makes a written complaint alleging misconduct against a licensee, an applicant for licensure, or a person who is not duly licensed in accordance with the provisions of KRS 335.010 to 335.160 and 335.990 but is engaged in the practice of social work contrary to KRS 335.030.

(3) "Complaint" means a written allegation that alleges conduct

by a licensee or other individual that might constitute a violation of KRS 335.010 to 335.160 and 335.990, or the administrative regulations promulgated by this board.

(4) "Complaint committee" means a committee of board members comprised of at least two (2) board members appointed by the chair, one of whom shall be a social worker duly licensed by the board. Upon receipt of a complaint, the complaint shall be referred to the committee to review and make recommendations regarding disposition to the board.

(5) "Formal complaint" means a formal administrative pleading authorized by the board that sets forth a charge against a licensee or applicant and commences a formal disciplinary proceeding under KRS Chapter 13B.

(6) "Hearing officer" means the individual, duly qualified and employed pursuant to KRS 13B, assigned by an agency head as presiding officer for an administrative hearing or the presiding member of the agency head.

(7) "Initiating complaint" means a written complaint alleging a violation of KRS 335.010 through 335.160 or the administrative regulations of the board.

(8) "Licensee" means a person holding a license issued by the board pursuant to KRS 335.080, 335.090, or 335.100, or holding a temporary permit issued in accordance with 335.070(1)(b)(1) and 201 KAR 23:015.

(9) "Motion to reconsider" means a written request from a licensee or their legal representative that the board reconsider, modify, or reverse its decision regarding probation, suspension, or other disciplinary action.

(10) "Party" means:

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

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

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

(11) "Respondent" means the named person against whom an initiating complaint or formal complaint has been made.

(12) "Temporary permit holder" means a person to whom the board has granted temporary permission to practice social work, in accordance with KRS 335.070(9) and 201 KAR 23:015(1).

(13) "Unlicensed practice" means the unlawful practice of social work by a person who has not been duly licensed by the board in accordance with the provisions of KRS 335.010 to 335.160.

Section 2. Initiating Complaint.

(1) A complaint may be initiated by:

(a) An individual;

(b) An individual who is authorized to act on the behalf of an employer of a licensee or applicant;

(c) A government agency; or

(d) The board.

(2) An initiating complaint shall be:

(a) Made by a complainant in writing to the board on a Kentucky Board of Social Work Complaint Form (Complaint Form), along with an Authorization for Release of Medical Records Form (if applicable);

(b) Signed by the complainant unless the nature of the initiating complaint alleges an immediate danger to the health, safety, and welfare of the public; and

(c) Received in the board office by mail, hand delivery, or by an online complaint submitted through the board's website.

(3) The board may, at any time, conduct an investigation on its own initiative without receipt of a written complaint if the board has reasonable cause to believe that there may be a violation of KRS 335.010 through 335.160 and 335.990 or the administrative regulations of the board.

(4) A certified copy of a court record for conviction of a misdemeanor or felony shall be considered a valid initiating complaint against a licensee or temporary permit holder.

(5) Redaction.

(a) The board may direct that an initiating complaint be redacted of personal names, identification numbers, and contact

information, and shall use the following procedures when redacting an initiating complaint:

(b) A copy of an initiating complaint may be redacted of personal names, personal identification numbers, and personal contact information upon recommendation of the complaint committee and consent by majority vote of the full board. The board shall keep the original initiating complaint free of redactions and store the document in the complaint case file.

(c) The board may send a redacted copy of an initiating complaint to the respondent to meet the requirements of Section (3)(1) of this administrative regulation. The original initiating complaint that is free of redactions may be viewed by the respondent upon written request submitted to the board.

(d) The original copy of the initiating complaint that is free of redactions shall not be released to the respondent or the public until final disposition of the matter.

Section 3. Consideration of Initiating Complaint.

(1) If requested by the board attorney in consultation with the executive director, the complaint committee may review an initiating complaint at the next regularly-scheduled meeting of the board or as soon as practicable to determine whether grounds exist for disciplinary action and that a reply from the respondent is warranted.

(2) The complaint committee may recommend to the board that a complaint be dismissed and the matter closed where it determines that:

(a) The board lacks jurisdiction over the person named in the complaint;

(b) There is insufficient evidence to support the complaint;

(c) There are no violations of laws, rules and regulations governing the practice of social work; or

(d) The conduct complained of does not warrant disciplinary or other remedial action.

Section 4. Notice to Respondent.

(1) If the complaint is not referred to the complaint committee pursuant to Section 3 of this administrative regulation, the board shall notify a respondent in writing of the receipt of the initiating complaint and send a copy of the complaint to the respondent at his or her mailing address or electronic mail address provided the board.

(a) The board may keep the complainant's name confidential until completion of the investigation, if any.

(b) A respondent shall file a reply to the initiating complaint with the board within thirty (30) days after receipt of notice of the initiating complaint.

(c) Failure of a respondent to file a timely reply to the complaint shall constitute a violation of a board order or administrative regulation and shall be grounds for disciplinary action under KRS 335.150(1)(f).

(2) Request for extension of time.

(a) A respondent or his or her legal representative may request an extension of time or additional time to reply by submitting a written request to the board on or before the expiration of the thirty (30) day due date in subsection (3)(b).

(b) The board shall not consider a response or request for extension filed after expiration of the thirty (30) day due date in this subsection.

Section 5. Recommendations of Complaint Committee.

(1) Based on consideration of the initiating complaint and the respondent's reply, the complaint committee shall recommend one (1) of the following options to the board at a regular meeting of the board:

(a) Dismissal;

(b) Further investigation;

(c) Referral to another committee of the board;

(d) Request an Authorization for Release of Medical Records Form from a party;

(e) Settlement by agreed order, or assurance of voluntary compliance pursuant to KRS 335.150(4);

(f) Issuance of a formal complaint;

(g) Initiating a complaint or referral to another government agency; or

(h) Filing an action in Circuit Court, pursuant to KRS 335.160.

(2) A complaint committee member having a known conflict of interest shall disclose the existence of the conflict in writing to the board chairman or executive director. The board shall review the written disclosure at the next regularly scheduled meeting and determine by majority vote whether the committee member shall be excused, if warranted.

Section 6. Board Action upon Recommendation of Complaint Committee.

(1) The board shall review the committee's recommendations and shall approve or reject the recommendations in whole or in part.

Section 7. Investigations.

(1) If an investigation is approved by the board, the complaint committee shall appoint one (1) of its members or an agent of the board to conduct an investigation of the complaint.

(2) In its investigation, the board may be assisted by:

- (a) Board staff;
- (b) A board agent; or
- (c) The Office of the Attorney General; or
- (d) Other appropriate local, state, or federal agency.

Section 8. Formal Complaints. If the board finds that sufficient evidence exists to file a formal complaint, the board shall:

(1) Resolve the case informally by agreed order; or

(2) Issue a formal complaint and provide notice of hearing to the respondent in accordance with KRS Chapter 13B and 335.155.

Section 9. Resolution by Informal Proceedings.

(1) At any time during the complaint process, the board, through counsel, may enter into informal discussions or negotiations with a respondent for the purpose of settling and informally dispensing with the matter.

(2) An agreed order or assurance of voluntary compliance reached through informal proceedings shall be approved by the board and signed by the chairman of the board, the respondent, and the respondent's attorney, if any. A copy shall be placed in the licensee's file and a copy shall be mailed to the complainant.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 10. Procedures for Disciplinary Hearings.

(1) All procedures for disciplinary hearings shall conform to KRS Chapter 13B.

(2) Testimony to be considered by the hearing officer may be taken by deposition. A party or witness may be allowed to testify by deposition, rather than attend the hearing, upon the filing of a written request to the hearing office and a showing of inability to attend the hearing and that other parties shall have an opportunity to cross-examine at the deposition. The hearing officer shall rule upon motions to allow testimony to be considered by deposition.

(3) The hearing officer may order that at least five (5) days prior to the hearing, each party shall file a summary of each witness's expected testimony.

(4) The board may request recovery of administrative costs and fees incurred by the board in processing, investigating, or administering a complaint, which shall be paid by a respondent.

(a) The request for recovery of administrative costs and fees by the board shall be submitted by motion for costs to the hearing officer assigned to preside over a Chapter 13B hearing of the complaint.

(b) The board may request recovery of reasonable costs and fees to the circuit court judge presiding over a civil action by the board to enjoin violations pursuant to KRS 335.160.

(c) Administrative costs and fees may include costs incurred by the board for the investigation, attorney's fees, court reporter fees, and hearing officer fees.

Section 11. Dismissal of a Complaint.

(1) Upon reaching a decision to dismiss an informal complaint or a formal complaint, the board shall notify the respondent and complainant of the disposition of the matter in writing, by personal service, regular mail, or electronic mail address provided to the board.

(2) Dismissal of an informal complaint shall be a final board action and shall not be subject to further investigation by the board or appeal under KRS 335.155.

Section 12. Final Disposition.

(1) Upon reaching a final disposition for a disciplinary hearing, the board shall notify the respondent and complainant of the final disposition of the matter in writing, by personal service, by the regular mail or electronic mail address provided to the board.

Section 13. Motion to Reconsider.

(1) A respondent may file a motion to reconsider, modify, or reverse the final disposition of a disciplinary hearing to the board.

(2) The motion to reconsider shall provide evidence of the following:

- (a) Grounds and reasons for reconsideration, modification, or reversal;
- (b) Rehabilitation or restitution, if applicable; and
- (c) Status of probation, parole, or supervision by any state or federal government agency or board.

(3) The board shall notify a respondent and complainant of the disposition of the reconsideration in writing, by personal service, by the regular mail, or electronic mail address provided to the board.

(4) The board shall consider no more than one (1) motion to reconsider from a respondent in a final matter.

Section 14. Unlicensed Practice.

(1) If the complaint committee concludes that a complaint is substantiated to show that a person is practicing social work without a license, the committee shall prepare a letter signed by the board chair or an authorized representative to notify the person of the committee's belief that the person is practicing without a license and request that the person voluntarily cease the practice without a license.

(2) Penalty. Any person who shall be found by the board, after hearing or by agreed order, to have unlawfully engaged in the practice of social work shall be subject to a fine to be imposed by the board not to exceed \$250 per day of unlicensed practice, and not to exceed the total sum of \$2,500.

(3) The board may forward the complaint to the appropriate county attorney or Commonwealth's attorney with a request that appropriate action be taken in accordance with KRS 335.990.

(4) The board may also initiate an action for injunctive relief in Franklin Circuit Court, the Circuit Court of the county where the board's principal place of business is located, or the Circuit Court of the county where the person is practicing social work without a license.

Section 15. Incapacity of Respondent.

(1) If the board has reasonable cause to believe that a licensee or applicant has been legally declared mentally incompetent and may be mentally incapable of practicing social work:

(a) The board shall file an initiating complaint, pursuant to KRS 335.150(1)(h) or KRS 335.150(4);

(b) The board may order the licensee or applicant to submit to an examination by a psychologist, physician, or certified alcohol and drug counselor designated by the board to determine the licensee's or applicant's mental status to practice social work.

(c) The expense of this examination may be incurred by the board.

(d) The board shall consider the findings and conclusion of the examination and the final investigative report at a regularly-scheduled meeting of the board.

(e) The board shall disclose the findings and conclusions of the examination and the final investigative report to the licensee or applicant, or to a legal representative that has reported representation of the licensee or applicant to the board in writing.

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Section 16. Emergency Action.

(1) Nothing in this section shall be construed to prevent the board from taking emergency action if authorized by KRS 13B.125.

Section 17. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Kentucky Board of Social Work Complaint Form," November 2018; and

(b) "Authorization for Release of Medical Records," November 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

DR. JAY MILLER, CSW, Board Chairman

APPROVED BY AGENCY: October 11, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, the 22nd day of November, 2018 at 2:00 p.m. Eastern Time, at the Kentucky Board of Social Work, 125 Holmes Street, Suite 310, 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 within five days of the hearing date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.), on November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Florence Huffman, Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601. Main Line (502) 564-2350, Direct Line (502) 782-2856, fax (502) 696-8030, and by email florence.huffman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Florence Huffman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for receiving and processing complaints against individuals regarding the practice of social work. The regulation sets the complaint procedures, hearing and appeal procedures, and reconsideration procedure for board disciplinary actions.

(b) The necessity of this administrative regulation: The regulation is necessary to establish uniform procedures for receiving and processing complaints. The regulation is necessary to establish a hearing and appeal and reconsideration procedure for board disciplinary actions.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS Chapter 335 requires the board to enforce the provisions of the chapter. KRS 335.070 and 335.150 require the board to investigate allegations brought to its attention and prosecute violations of the chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will inform licensees and the public of the complaint procedures and hearing process for complaints.

(2) If 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. The regulation will create a uniform procedure for hearing and processing complaints and reconsidering the disposition of complaints. The

regulation will allow the board to recover costs associated with disciplinary actions.

(b) The necessity of the amendment to this administrative regulation: The regulation is necessary to create uniform procedures for complaints and reconsiderations. The regulation is necessary to help the board recover the costs of processing complaints.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.070 and 335.150 require the board to enforce the provisions of KRS Chapter 335. KRS 335.070(1) allows the board to take disciplinary action against licensees that violation the terms of the statute and impose disciplinary fines and conditions.

(d) How the amendment will assist in the effective administration of the statutes: The regulation will create uniform procedures for complaints and reconsiderations. This regulation will protect individuals that file complaints by creating a process to protect confidential information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 650 persons will seek licensure within the next fiscal year, this regulation will also continue as new applicants seek licensure from the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation requires licensees to comply with the complaint procedures. This administrative regulation will allow the board to recover costs and fees in disciplinary actions and protect confidential information submitted by individual complainants as needed.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees and the public will benefit from uniform complaint procedures and a method to request that the board reconsider disciplinary actions. Individuals that file complaints will have confidential information protected by the board. Licensee fees used in the complaint processes can be recovered by the board.

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

(a) Initially: The annual budget for the board is \$338,300. It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis: The budget for the Board is estimated to continue to have an annual budget of \$421,000. It will not cost the administrative body any additional funds to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded solely by fees paid by the licensees and applicants.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not necessary because the procedures for filing and reviewing complaints in this regulation will be applied to all individuals equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of

Social Work is an administrative body created by KRS 335.030.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.050, KRS 335.070(1), KRS 335.150, KRS 335.160.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? No 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 (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

**PUBLIC PROTECTION CABINET
Board of Examiners of Psychology
(Repealer)**

201 KAR 26:211. Repeal of 201 KAR 26:210.

RELATES TO: KRS 319.064

STATUTORY AUTHORITY: KRS 319.032(1)(a), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) requires the board to promulgate administrative regulations that establish the requirements, standards, and tests to determine the moral, intellectual, educational, scientific, technical, and professional qualifications of applicants for licensure, and for preparing or selecting and administering examinations on general psychological knowledge. This administrative regulation establishes educational requirements for licensure as a psychological associate.

Section 1. 201 KAR 26:210, Educational requirements for licensure as a licensed psychological associate, is hereby repealed.

ELIZABETH MCKUNE, ED.D., Chair

APPROVED BY AGENCY: October 12, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation repealer shall, if requested, be held on November 26, 2018, at the hour of 10:00 a.m., at the Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by no later than five (5) business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by five (5) business days prior to the hearing, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation repealer. A transcript of the public hearing will not be made unless a written request for a transcript is made five (5) business days prior to the hearing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation repealer. Written comments shall be accepted until November 30, 2018. Send written notification of intent to attend the public hearing,

and/or written comments on the proposed administrative regulation repealer to:

CONTACT PERSON: David C. Trimble, General Counsel, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601; phone (502) 782-8823; fax (502) 564-4818; email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 201 KAR 26:210, which previously set educational requirements for licensure as a licensed psychological associate by the Board.

(b) The necessity of this administrative regulation: This administrative regulation repeals 201 KAR 26:210, whose substantive necessary provisions specifying educational requirements for licensure by the Board as a licensed psychological associate are being concurrently added to 201 KAR 26:200 for regulatory efficiency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032(1)(a) requires the board to promulgate administrative regulations regarding the education and licensing of psychological professionals; this repealer allows for the board to do so more efficiently in a single administrative regulation at 201 KAR 26:200.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Kentucky Board of Examiners of Psychology is charged with regulating the profession and practice of psychology in the Commonwealth of Kentucky. KRS 319.032(1)(a) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements for licensure as a psychological associate. This repealer will facilitate compliance by consolidating educational requirements for licensees in 201 KAR 26:200.

(2) If 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: There are One Thousand Five Hundred and Thirty-Seven (1,537) licensees under the Kentucky Board of Examiners of Psychology. To the extent any of these licensees are seeking licensure as a psychological associate, this repealer will facilitate identifying educational requirements by relocating them to 201 KAR 26:200.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will no longer have to comply with 201 KAR 26:210.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The regulated entities will not face any additional cost to comply with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question: This repealer will simplify education

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

(a) Initially: There will be no cost to initially implement this repealer.

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

implement this repealer.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No, this repealer does not directly or indirectly establish fees.

(9) TIERING: Is tiering applied? No. This is a repealer.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Examiners of Psychology is responsible to implement this regulation. Units or divisions of government impacted would include those that employ or contract with licensed psychologists, including for example, school psychologists.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1)(a) authorizes the Board of Examiners of Psychology 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 will not generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? No additional administrative cost will be incurred by this repealer.

(d) How much will it cost to administer this program for subsequent years? No additional administrative cost will be incurred by this repealer.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

GENERAL GOVERNMENT CABINET Board of Licensure for Occupational Therapy (Repealer)

201 KAR 28:021. Repeal of 201 KAR 28:020, 201 KAR 28:090, 201 KAR 28:110, 201 KAR 28:180, and 201 KAR 28:210.

RELATES TO: KRS 319A.070

STATUTORY AUTHORITY: KRS 319A.070(3)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3)(a) authorizes the Board of Licensure for Occupational Therapy to promulgate administrative regulations relating to professional conduct to carry out the provisions of KRS Chapter 319A. This administrative regulation repeals 201 KAR 28:020, 201 KAR 28:090, 201 KAR 28:110, 201 KAR 28:180, and 201 KAR 28:210. 201 KAR 28:020 is repealed to prevent duplication, as all its provisions are requested on application form OTB-1,

incorporated in 201 KAR 28:060. 201 KAR 28:090, 28:110, and 28:210 are being repealed because their necessary substantive provisions regarding license renewals and fees are more efficiently addressed in a single administrative regulation governing licensure at 201 KAR 28:060. 201 KAR 28:180 is being repealed because it is duplicative of KRS 319A.100, and its necessary substantive provisions, such as the Supervision Temporary Permit Application Form, Form OTB-2, are more efficiently addressed in a single administrative regulation governing licensure at 201 KAR 28:060.

Section 1. The following administrative regulations are hereby repealed:

- (1) 201 KAR 28:020, General provisions;
- (2) 201 KAR 28:090, Renewals;
- (3) 201 KAR 28:110, Fees;
- (4) 201 KAR 28:180, Temporary Permits; and
- (5) 201 KAR 28:210, Inactive Status.

STACY GRIDER, Chair

APPROVED BY AGENCY: October 8, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2018, at 10:00 a.m., EDT, at the Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Jared Downs, Counsel, Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40601-5412, phone 502-564-3296, fax 502-564-4818, email Jared.Downs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jared Downs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 201 KAR 28:020, 201 KAR 28:090, 201 KAR 28:110, 201 KAR 28:180, and 201 KAR 28:210, which are either duplicative of statute or more efficiently addressed in a single licensing regulation for ease of use.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal duplicative and confusing regulations regarding licensure of Occupational Therapists and Occupational Therapist Assistants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is a repealer that conforms with the Board's authority in KRS 319A.070.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in reducing the amount of duplicative and confusing regulations within Title 201.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is a repealer.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is a repealer.

(d) How the amendment will assist in the effective

administration of the statutes: This administrative regulation is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All 3,777 licensees and applicants of the Board of Licensure for Occupational Therapy will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The repeal of this administrative regulation will not require the regulated entities identified in question (3) to take any new action to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will not incur any cost to comply with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will be able to find information and procedures for license application, renewal, and reinstatement more efficiently in a single administrative regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: Nothing. This is a repeal of an administrative regulation.

(a) Initially: There will be no initial implementation cost. This is a repeal of an administrative regulation.

(b) On a continuing basis: There will be no implementation cost on a continuing basis. This is a repeal of an administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation and enforcement of this repealer.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this is a repeal of administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Licensure for Occupational Therapy will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 319A.070.

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

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

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

state or local government for subsequent years.

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Repealer)

401 KAR 40:051. Repeal of 401 KAR 40:050.

RELATES TO: KRS 224.10, 224.46, 224.99, 224.99-010, 224.99-020, 224.99-030

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) provides the Energy and Environment Cabinet the authority to repeal 401 KAR 40:050. This administrative regulation is being repealed as a result of the Governor's Red Tape Reduction Initiative since the contents are duplicative of the authority contained in KRS 224.99-010, 224.99-020, and 224.99-030.

Section 1. 401 KAR 40:050, Penalties, is hereby repealed.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 10, 2018

FILED WITH LRC: October 11, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2018, at 6:00 p.m. in Training Room B of the Energy and Environment Cabinet at 300 Sower Boulevard, Frankfort, Kentucky. 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 November 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather Alexander, Environmental Control Supervisor, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-6303, fax: (502) 564-4245, email heather.alexander@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 401 KAR 40:050, Penalties. The contents are duplicative of the authority contained in KRS 224.99-010, 224.99-020, and 224.99-030.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to repeal 401 KAR 40:050 as the contents are duplicative of the authority contained in KRS 224.99-010, 224.99-020, and 224.99-030.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to promulgate administrative regulations not inconsistent

with the provisions of law administered by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will ensure that the Department for Environmental Protection 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: This is not applicable as this is a repealer administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not applicable as this is a repealer administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not applicable as this is a repealer administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not applicable as this is a repealer administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: No individuals, businesses, organizations, or state and local governments are affected by this administrative regulation. These entities will continue to be governed by KRS Chapter KRS 224.99-010, 224.99-020, and 224.99-030.

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

(a) List 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 actions associated with the repeal of 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 are no costs associated with the repeal of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3): No benefits will accrue with the repeal of this administrative regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There is no cost associated with the repeal of this administrative regulation.

(a) Initially: There is no cost associated with the repeal of this administrative regulation.

(b) On a continuing basis: There is no cost associated with the repeal of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding associated with 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 are no fees or funding associated with the repeal of 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 or increased with the repeal of this administrative regulation.

(9) TIERING: Is tiering applied? No, this is a repeal of an existing regulation that is 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? This administrative regulation will not impact individuals, businesses, organizations, or state and local governments. These entities will continue to be

governed by KRS Chapter KRS 224.99-010, 224.99-020, and 224.99-030.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10, 224.46, 224.99, 224.99-010, 224.99-020, and 224.99-030.

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

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

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

(c) How much will it cost to administer this program for the first year? This repeal will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repeal will not cost the agency additional funding.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will have no fiscal impact as it repeals one administrative regulation.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Repealer)

401 KAR 42:341. Repeal of 401 KAR 42:011, 42:030, 42:040, 42:045, 42:050, 42:070, 42:080, 42:090, 42:095, 42:200, 42:290, 42:300, 42:316, 42:320, 42:335, and 42:340.

RELATES TO: KRS 61.878(1)(c), 224.1, 224.10, 224.40, 224.43, 224.46, 224.60, 322, 322A, 40 C.F.R. Part 280, 42 U.S.C. 2011-2021, 2022-2286i, 2296a-2297h-13, 6991-6991m

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.60-105
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the Energy and Environment Cabinet to repeal 401 KAR 42:011, 42:030, 42:040, 42:045, 42:050, 42:070, 42:080, 42:090, 42:095, 42:200, 42:290, 42:300, 42:316, 42:320, 42:335, and 42:340. This administrative regulation repeals these administrative regulations because all the requirements are being consolidated into 401 KAR 42:020, 42:060, 42:250, and 42:330.

Section 1. The following administrative regulations are hereby repealed:

(1) 401 KAR 42:011, Scope of Underground Storage Tank Program;

(2) 401 KAR 42:030, UST system general operating requirements;

(3) 401 KAR 42:040, UST system release detection;

(4) 401 KAR 42:045, Delivery prohibition;

(5) 401 KAR 42:050, UST system release reporting, investigation, and confirmation;

(6) 401 KAR 42:070, Out-of-service UST systems, temporary closure and permanent closure of UST systems, and change in service of UST systems;

(7) 401 KAR 42:080, Classification of UST systems containing petroleum and listing of associated cleanup levels;

(8) 401 KAR 42:090, Financial responsibility;

(9) 401 KAR 42:095, Lender liability;

(10) 401 KAR 42:200, Annual fee for underground storage tanks;

(11) 401 KAR 42:290, Ranking system;

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- (12) 401 KAR 42:300, Third-party claims;
- (13) 401 KAR 42:316, Petroleum Storage tank Environmental Assurance Fund eligibility criteria for contracting companies and partnerships;
- (14) 401 KAR 42:320, Hearings;
- (15) 401 KAR 42:335, Financial audits; and
- (16) 401 KAR 42:340, Laboratory certification.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 10, 2018

FILED WITH LRC: October 11, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2018, at 6:00 p.m., at 300 Sower Blvd, 1st Floor, Training Room B. 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 November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather Alexander, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502) 782-6303, fax (502) 564-4245, email heather.alexander@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 401 KAR 42:011, 42:030, 42:040, 42:045, 42:050, 42:070, 42:080, 42:090, 42:095, 42:200, 42:290, 42:300, 42:316, 42:320, 42:335, and 42:340.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal the regulations that have been combined and consolidated into 401 KAR 42:020, 42:060, 42:250, and 42:330.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to promulgate administrative regulations not inconsistent with the provision of law administered by the cabinet. These regulations being repealed have been consolidated into 401 KAR 42:020, 42:060, 42:250, and 42:330.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These administrative regulations currently establish standards for owners and operators of underground storage tanks (UST) and the UST program, implemented under the provisions of KRS Chapter 224. These provisions have been consolidated into 401 KAR Chapter 42.

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

(a) How the amendment will change this existing administrative regulation: The amendment repeals the regulations pertaining to the UST program.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the content of the regulations have been consolidated into 401 KAR 42:020, 42:060, 42:250, and 42:330.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the regulations pertaining to the UST program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will place the requirements pertaining to the UST program into 401 KAR 42:020, 42:060, 42:250, and 42:330.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will have no

impact as the requirements are being consolidated into 401 KAR 42:020, 42:060, 42:250, and 42:330.

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

(a) List 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 action required by this repealer.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3): There will not be an accrual of benefits associated with this repealer.

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

(a) Initially: There is no cost associated with the repeal of these administrative regulations.

(b) On a continuing basis: There is no cost associated with the repeal of these administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. This is a repeal of administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact state or local governments that own or operate an underground storage tank facility as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(28), 224.60-120(6), 224.60-130(1)(a) through (e), 40 C.F.R. 280, Subpart H.

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

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

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

(c) How much will it cost to administer this program for the first year? This repealer will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repealer will not cost the agency additional funding.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This repealer will not impact funding.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(New Administrative Regulation)

701 KAR 5:150. Nontraditional instruction program.

RELATES TO: KRS 158.070

STATUTORY AUTHORITY: KRS 156.029, 156.070, 156.160, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) states that the primary function of the Kentucky Board of Education (KBE) is to adopt policies and administrative regulations by which the Kentucky Department of Education (department) shall be governed in planning and operating programs within its jurisdiction. KRS 156.070(5) requires the KBE, upon the recommendation of the Commissioner of Education (Commissioner), to establish policy or act on all programs, services, and other matters which are within the administrative responsibility of the department. KRS 158.070 requires the KBE to promulgate an administrative regulation to prescribe the conditions and procedures for local education agencies (districts) to be approved for the nontraditional instruction program. This administrative regulation establishes the requirements and approval process for districts to be approved for the nontraditional instruction program.

Section 1. Definitions.

(1) "Certified employee" means an employee of a local school district who is required to have a certification for his position pursuant to KRS 161.020.

(2) "Instructional delivery method" means the delivery system and instructional techniques to be used in meeting the learning needs of students.

(3) "Minimum school term" or "school term" is defined in KRS 158.070(1)(b).

(4) "Nontraditional instruction day" means a day during the school term that a local school district is closed for health or safety reasons that is approved by the commissioner, pursuant to KRS 158.070(9), to be the equivalent to a student attendance day.

(5) "Nontraditional instruction plan" means the strategy approved by the commissioner and implemented by a local school district to ensure instruction on nontraditional instruction days is a continuation of learning that is occurring on regular student attendance days as required by KRS 158.070(9).

(6) "Professional learning plan" means the strategy implemented to ensure staff in a local school district acquire, enhance, and refine the knowledge, skills, practices, and dispositions necessary to create and support high levels of learning for all students.

(7) "Student attendance day" is defined in KRS 158.070(1)(e).

Section 2. Initial Application Process.

____(1) Using the Nontraditional Instruction Program Initial Application, a district submitting a nontraditional instruction plan to be approved by the commissioner shall include:

(a) A description of the instructional delivery methods, including the use of technology, to be used on nontraditional instruction days;

(b) A description of how the district will provide access to online resources, if used, and equitable instructional materials for students who do not have access to the internet and for students needing to access information differently;

(c) A description of how the district shall ensure a continuation of learning from regular student attendance days will occur on nontraditional instruction days;

(d) A description of how the district will ensure implementation of Individual Education Programs for students with disabilities, including how an Admissions and Release Committee will be involved in planning for and making decisions related to the participation and needs of students with disabilities, on nontraditional instruction days;

(e) A description of how the district will ensure implementation

of other student-specific educational plans, including Program Service Plans for English Learners, 504 Plans, and Gifted Student Service Plans for students identified as gifted and talented, on nontraditional instruction days;

(f) A description of how student participation will be measured and how evidence of student learning will be gathered on nontraditional instruction days;

(g) A description of how each job category within the district will fulfill contractual obligations on nontraditional instruction days and how employee participation will be verified on nontraditional instruction days;

(h) An explanation of the professional learning plan the district will implement to ensure certified employees have the knowledge and capacity to provide instruction on nontraditional instruction days;

(i) A description of education agencies that are external to the district but have students of the district in attendance on a part-time or full-time basis and the considerations on nontraditional instruction days that will need to be agreed upon between the district and those external education agencies;

(j) A description of stakeholder involvement in developing and implementing nontraditional instruction days;

(k) A description of how the district will relay information about nontraditional instruction days to students and families; and

(l) Other evidence deemed necessary by the department to effectively review and approve or deny a district's nontraditional instruction plan.

(2) The department shall provide technical assistance, upon request, to districts prior to submission of the Nontraditional Instruction Program Initial Application.

(3) A district shall submit an application at least 120 days prior to the beginning of a school term to have the application considered for implementation at the beginning of the upcoming school term.

(4) A committee designated by the commissioner shall review and recommend the commissioner approve or deny a completed Nontraditional Instruction Program Initial Application within forty-five (45) days from receipt of the completed application.

(5) Within thirty (30) days from receipt of the recommendation from the committee designated pursuant to subsection (4) of this section, the commissioner shall approve or deny a completed Nontraditional Instruction Program Initial Application. The Commissioner may initially approve a district to participate in the NONTRADITIONAL instruction program for up to two (2) years.

(6)(a) A district approved to participate in the nontraditional instruction program may amend its Nontraditional Instruction Program Initial Application as needed at any time by submitting a written amendment request to the department.

(b) The amendment request shall contain a description of the amendment, proposed timeline for implementation, and justification for the request.

(c) A committee designated pursuant to subsection (4) of this section shall review the amended Nontraditional Instruction Program Initial Application and recommend the commissioner approve or deny such within forty-five (45) days of the amendment submission.

(d) Within thirty (30) days from receipt of the recommendation from the committee designated pursuant to subsection (4) of this section, the commissioner shall approve or deny an amended Nontraditional Instruction Program Initial Application. An amended Nontraditional Instruction Program Initial Application approved by the commissioner shall be in effect for the remainder of the initial period of approval pursuant to subsection (5) of this section.

Section 3. Renewal Application Process.

(1) At the end of the term of approval, a district that has used at least one (1) nontraditional instruction day during the term of approval shall be eligible to complete the renewal application process. A district not eligible to complete the renewal application process shall be eligible to apply using the Nontraditional Instruction Program Initial Application and in compliance with Section 2 of this administrative regulation.

(2) Using the Nontraditional Instruction Program Renewal

Application, a returning district submitting a nontraditional instruction plan to be approved for renewal by the commissioner shall include:

(a) A description of the nontraditional instruction program that includes:

1. Revisions to the district's nontraditional instruction program that are being proposed for the program to grow in rigor and efficacy;

2. Program adjustments that are being proposed to improve the program for stakeholders; and

3. Any changes being proposed related to how the district handles food service staff and costs on nontraditional instruction days.

(b) Other evidence deemed necessary by the department to effectively review and approve or deny a district's nontraditional instruction plan.

(3) The department shall provide technical assistance, upon request, to districts prior to submission of the Nontraditional Instruction Program Renewal Application.

(4) A district shall submit an application at least 120 days prior to the beginning of a school term to have the application considered for implementation at the beginning of the upcoming school term.

(5) A committee designated by the commissioner shall review and recommend the commissioner approve or deny a completed Nontraditional Instruction Program Renewal Application within forty-five (45) days from receipt of the completed application.

(6) Within thirty (30) days from receipt of the recommendation from the committee designated pursuant to subsection (5) of this section, the commissioner shall approve or deny a completed Nontraditional Instruction Program Renewal Application. At renewal, the commissioner may approve a district to participate in the nontraditional instruction program for up to four (4) years.

(7) (a) A district approved to participate in the nontraditional instruction program may amend its Nontraditional Instruction Program Renewal Application as needed at any time by submitting a written amendment request to the department.

(b) The amendment request shall contain a description of the amendment, proposed timeline for implementation, and justification for the request.

(c) A committee designated pursuant to subsection (5) of this section shall review the amended Nontraditional Instruction Program Renewal Application and recommend the commissioner approve or deny such within forty-five (45) days of the amendment submission.

(d) Within thirty (30) days from receipt of the recommendation from the committee designated pursuant to subsection (4) of this section, the commissioner shall approve or deny an amended Nontraditional Instruction Program Renewal Application. An amended Nontraditional Instruction Program Renewal Application approved by the commissioner shall be in effect for the remainder of the renewal period of approval pursuant to subsection (6) of this section.

Section 4. Use of Nontraditional Instruction Days.

(1) Once the commissioner has approved a district to participate in the nontraditional instruction program, the district may apply for and the commissioner may approve the use of nontraditional instruction days on days when the district is closed for health or safety reasons.

(2) Pursuant to KRS 158.070, the district may apply for and the commissioner may approve up to the equivalent of ten (10) student attendance days per school year in nontraditional instruction days for the district.

(3) The district shall seek approval from the commissioner to use one (1) or more nontraditional instruction days by submitting a request and appropriate supplemental documentation, as required by the department, to the department within thirty (30) days following the day(s) the district was closed for health or safety reasons.

(4) The commissioner shall approve or deny a district's use of one or more nontraditional instruction days within thirty (30) days from receipt of the district's request and appropriate supplemental

documentation, as required by the department. A request to use (1) one or more nontraditional instruction days shall be denied by the commissioner if the district fails to supply clear evidence demonstrating a continuation of learning from regular student attendance days occurs on nontraditional instruction days. Clear evidence may include:

1. Examples of student work;
2. Lesson plans; or
3. Curriculum maps.

Section 5. Monitoring and Revocation of Nontraditional Instruction Programs.

(1) At the conclusion of the first school term of implementation of the approved Nontraditional Instruction Program Application and at the end of each school term thereafter for the entirety of the approval status, a district approved by the commissioner to participate in the nontraditional instruction program may receive an annual site visit from a review team selected and trained by the department. The purpose of the site visit is to monitor the district's progress in implementing the approved Nontraditional Instruction Program Application.

(2) If a site visit is conducted by the department, the site visit shall:

(a) Be made following adequate advanced notice to the district; and

(b) Include the gathering of information through the examination of records related to the district's implementation of the approved Nontraditional Instruction Program Application, including renewals and amendments if applicable, and through interviews with district leadership, staff, and students as well as other stakeholders.

(3) In addition to any site visit that may be conducted pursuant to subsections (1) and (2) of this section of this administrative regulation, a district approved by the commissioner to participate in the nontraditional instruction program shall, upon request, make the following available for inspection by the department:

(a) Documentation of the instructional delivery methods used on nontraditional instruction days;

(b) Evidence demonstrating the district provides access on nontraditional instruction days to online resources, if used, and equitable instructional materials for students who do not have access to the internet and for students needing to access information differently;

(c) Clear evidence demonstrating a continuation of learning from regular student attendance days occurs on nontraditional instruction days. Clear evidence may include:

1. Examples of student work;
2. Lesson plans; or
3. Curriculum maps.

(d) Evidence demonstrating the district ensures implementation of Individual Education Programs for students with disabilities, including the involvement Admissions and Release Committee in planning for and making decisions related to the participation and needs of students with disabilities, on nontraditional instruction days;

(e) Evidence demonstrating the district ensures implementation of other student-specific educational plans, including Program Service Plans for English Learners and Gifted Student Service Plans for students identified as gifted and talented, on nontraditional instruction days;

(f) Data demonstrating student participation and student learning on nontraditional instruction days;

(g) Evidence demonstrating how each job category within the district fulfills contractual obligations on nontraditional instruction days and data, including teacher work logs, demonstrating employee participation on nontraditional instruction days;

(h) The professional learning plan implemented by the district to ensure certified staff have the knowledge and capacity to provide instruction on nontraditional instruction days and evidence demonstrating implementation;

(i) Where appropriate, agreements about nontraditional instruction days between the district and educational agencies that are external to the district but have students of the district in

attendance on a part-time or full-time basis;

(j) Evidence demonstrating stakeholder involvement in developing and implementing nontraditional instruction days;

(k) Methods used by the district to relay information about nontraditional instruction days to students and families; and

(l) Other evidence deemed necessary by the department to effectively monitor the implementation of the approved Nontraditional Instruction Program Application, including renewals and amendments if applicable.

(4) At the conclusion of each term of implementation of the approved Nontraditional Instruction Program Application for the entirety of the approval status, the department may revoke approval of a district's nontraditional instruction program as a result of evidence collected pursuant to this section of this administrative regulation.

(5) Prior to having approval of its nontraditional instruction program revoked, a district shall receive a site visit from a review team selected and trained by the department. The purpose of the visit shall be to monitor the district's progress in implementing the nontraditional instruction program, collect qualitative data on the effectiveness of the nontraditional instruction program, and verify the district's compliance with all applicable laws. A site visit shall be made following adequate advance notice to the district and may include the gathering of information through:

(a) Direct observation;

(b) Interviews with staff and students; or

(c) Examination of records.

(6) Any district that has had approval of its nontraditional instruction program revoked by the department shall wait a minimum of one (1) calendar year before submitting a new Nontraditional Instruction Program Application.

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Nontraditional Instruction Program Initial Application," October 2018; and

(b) "Nontraditional Instruction Program Renewal Application," October 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Continuous Improvement and Support, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, JR., Ph.D. Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 15, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 29, 2018, at 10 a.m. in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2018.

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new regulation prescribes the conditions and procedures for local education agencies to be approved by the Commissioner of Education (Commissioner) for the nontraditional instruction program.

(b) The necessity of this administrative regulation: During the 2018 Regular Session of the Kentucky General Assembly, the legislature adopted Senate Bill 73, which became effective on July 14, 2018, revising KRS 158.070 to require the Kentucky Board of Education (KBE) to promulgate administrative regulations "to be effective with the 2019-2020 school year to prescribe the conditions and procedures for districts to be approved for the nontraditional instruction program."

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the KBE in KRS 158.070, which specifically requires the KBE promulgate regulations to "to prescribe the conditions and procedures for districts to be approved for the nontraditional instruction program."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists local education agencies by providing a mechanism to submit nontraditional instruction programs to the Commissioner for approval.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local education agencies, the KBE, and the Kentucky Department of Education (KDE) will be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A local education agency seeking initial approval for a nontraditional instruction program by the Commissioner will have to use the Nontraditional Instruction Program Initial Application and otherwise comply with the procedures in this administrative regulation. A local education agency seeking renewal of a nontraditional instruction program by the Commissioner will have to use the Nontraditional Instruction Program Renewal Application and otherwise comply with the procedures in this administrative regulation. A local education agency that has its nontraditional instruction program approved by the Commissioner will have to comply with the monitoring and oversight provisions of this administrative regulation. The KBE and KDE will implement the application procedures as well as the monitoring and oversight provisions in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated budget impact related to this administrative regulation for local education agencies, the KBE, or KDE.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation provides for streamlined, efficient Nontraditional Instruction Program Initial Application and Nontraditional Instruction Program Renewal Application processes, which benefits local education agencies as well as the KBE and KDE. This administrative regulation also

provides clarity and transparency regarding the processes the KBE and KDE will implement in monitoring and overseeing approved nontraditional instruction programs, which also benefits local education agencies as well as the KBE and KDE.

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

(a) Initially: A version of the nontraditional instruction program has existed since 2011, and KDE has been administering the program since that time. As a result, initial costs related to implementation of this administrative regulation are not anticipated.

(b) On a continuing basis: The administrative body incurs an ongoing cost of staff and resources in reviewing and approving nontraditional instruction programs and in monitoring approved nontraditional instruction programs. There are, though, no additional anticipated costs related to this administrative regulation for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no additional anticipated costs for the implementation and enforcement of this administrative regulation; however, ongoing costs of staff and resources for the administrative body related to this administrative regulation and its enabling statutes are paid using state funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies equally to local education agencies, the KBE, and the Kentucky Department of Education (KDE).

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies, the Kentucky Board of Education (KBE), and the Kentucky Department of Education (KDE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.029, 156.070, 156.160, and 158.070.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. A version of the nontraditional instruction program has existed since 2011, and KDE has been administering the program since that time. As a result, this administrative regulation is not expected to impact the expenditures and revenues of any state or local government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? A version of the nontraditional instruction program has existed since 2011, and KDE has been administering the program since that time. As a result, additional costs related to administering this program for the first year are not anticipated.

(d) How much will it cost to administer this program for subsequent years? A version of the nontraditional instruction program has existed since 2011, and there is an ongoing cost of staff and resources in reviewing and approving nontraditional instruction programs and in monitoring approved nontraditional

instruction programs. There are, though, no additional anticipated costs related to 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 (+/-): N/A

Expenditures (+/-): NA

Other Explanation: N/A

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Kentucky Department of Education (New Administrative Regulation)

704 KAR 8:010. Kentucky Academic Standards for Computer Science Elective.

RELATES TO: KRS 156.070, 156.160, 158.645, 158.6451, 160.290, 156.850, 704 KAR 3:305

STATUTORY AUTHORITY: 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645 and 158.6451. 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 156.850 requires compliance with federal provisions and acts relating to vocational education. This administrative regulation incorporates by reference the Kentucky Academic Standards for Computer Science contain the general courses of study and academic content standards of Computer Science for use in Kentucky's common schools.

Section 1. Public schools offering a computer science course or program shall meet the minimum content requirements established in the Kentucky Academic Standards for Computer Science Elective.

Section 2. Incorporation by Reference.

(1) The "Kentucky Academic Standards for Computer Science Elective", October 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, Commissioner

HAL HEINER, Chairperson

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 15, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2018 at 10 am, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the

proposed administrative regulation. Written comments shall be accepted through November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON Deanna Durrett, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes academic standards for computer science.

(b) The necessity of this administrative regulation: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations. There are currently no academic standards for computer science.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to standards. This administrative regulation establishes the minimum standards for computer science.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation set minimum academic standards for computer science.

(2) If 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: Those affected by this regulation include: all public schools, school districts, school councils and the KDE as it will be responding to questions related to this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: 704 KAR 8:010 is a new regulation. The regulation and the document incorporated by reference in 704 KAR 8:010 must be followed public schools, school districts and school councils.

(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 the districts to implement this regulation. Staffing patterns may need to be adjusted in light of new requirements. KDE will be impacted by staff time to answer questions and provide guidance.

KDE: In the drafting process of mathematics standards required by statute, the Department spent \$16,582 as of date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation processes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The create of the regulation sets minimum standards for computer science courses, where none were previously listed.

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

(a) Initially: The Department spent \$16,582 administrative cost for the development of the computer science standards that are incorporated by reference in 704 KAR 8:010 as well as staff time to oversee its administration.

(b) On a continuing basis: Additional staff time will be needed as the regulation moves through the legislative and implementation process.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds have been used to develop these standards.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: 704 KAR 8:010 does not establish any fees or directly or indirectly increase fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and local education agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies and KDE.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards for school districts.

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

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

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

(c) How much will it cost to administer this program for the first year? Staffing patterns at the local district may need to be adjusted in light of new requirements and student needs. Local district and school staff time will be impacted through the appeals portfolio review process. Local district budgets will be impacted by the need for resources to support interventions for students who need them. KDE staff time will be impacted creating guidance for implementation and answering questions from the field. Assessment cost may increase due to the opportunity for students to repeat reading and mathematics assessments several times.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost the districts to implement this regulation. Staffing patterns may need to be adjusted in light of new requirements. KDE will be impacted by staff time to answer questions and provide guidance.

KDE: In the drafting process of mathematics standards required by statute, the Department spent \$16,582 as of date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation processes.

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

Revenues (+/-): N/A

Expenditures (+/-): NA

Other Explanation: N/A

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Kentucky Department of Education
(New Administrative Regulation)

704 KAR 8:020. Required Academic Standards for Reading and Writing.

RELATES TO: KRS 156.070, 156.160, 158.6451, 158.6453, 160.290

STATUTORY AUTHORITY: 156.070, 156.160, 158.6453(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453. KRS 156.070(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 158.6453(2) requires the Kentucky Department of Education to implement a comprehensive process for the review of academic standards and assessment with the advice of a standards and assessments review and development committee. This administrative regulation incorporates by reference the Kentucky Academic Standards for Reading and Writing, which contain the general courses of study and academic content standards of reading and writing, for use in Kentucky's common schools.

Section 1. Before graduating from a Kentucky public high school, a student shall meet the minimum content requirements established in the Kentucky Academic Standards for Reading and Writing.

Section 2. Incorporation by Reference.

(1) The "Kentucky Academic Standards for Reading and Writing", October 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, 8:00 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
HAL HEINER, Chairperson

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 15, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2018 at 10:00 am, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-

564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation fulfills the requirements of KRS 158.6453 and sets forth the minimum content requirements to be met by a student per the Kentucky Academic Standards for reading and writing.

(b) The necessity of this administrative regulation: KRS 158.6453 required the Kentucky Department of Education (KDE) to implement a comprehensive process for the review of academic standards and assessment. This regulation fulfills the requirements of KRS 158.6453.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 158.6453 as it implements a process for the review Kentucky's academic standards and the alignment of corresponding assessments with the advice of a review and development committee assigned to focus on reading and writing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation conforms to KRS 158.6453 and will assist in its administration as it implements a process for the review of Kentucky's academic standards and the alignment of corresponding assessments with the advice of a review and development committee assigned to focus on reading and writing.

(2) If 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: Those affected by this regulation include: all public schools, school districts, school councils and the KDE as it will be responding to questions related to this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The standards outlined in 704 KAR 8:020 are the revised standards for reading and writing. As this regulation also includes the minimum content requirements for graduation in reading and writing, all public schools, school districts and school councils are required to follow the standards outlined in the document incorporated by reference in 704 KAR 8:020. Curriculum and content decisions are made at the local level and will be expected to follow these outlined standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Schools and Districts: A 2008 study published by LRC called The Costs of College and High School Textbooks in Kentucky indicated an average text cost of \$50 per textbook. While textbooks contain teacher materials, this cost does not account for additional expenses related to teacher training and/or local efforts to align curricula. An estimated cost per class for instructional materials: \$50 x 100 students per grade level. There also will be costs associated for local curricula development and teacher professional learning to support implementation of new curricula. Estimated teacher time for curriculum development/alignment (in a school with only 1 teacher per grade): \$4,000 (5 days for alignment work x 4 teachers x \$200/day). Estimated costs related to professional learning: \$25,000 x # grades = \$X per year.

KDE: In the revisionary process of reading and writing standards required by statute, the Department spent \$39,976.12 as of date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation processes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The compliance of public schools, school districts and school councils will ensure that each student will be qualified for graduation as they will have met the minimum content requirements for reading and writing. Graduation rates are used as part of each school's accountability model and are also reported on each school's report card.

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

(a) Initially: The Department spent \$39,976.12 administrative costs for the development of the reading and writing standards that are incorporated by reference in 704 KAR 8:020 to be compliant with KRS 158.6453, as well as staff time to oversee its administration.

(b) On a continuing basis: Additional staff time will be needed as the regulation moves through the legislative and implementation process.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds have been used to develop these standards.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Some of the state funds cut from the 2018-20 budget were used in the past by KDE to implement new standards using the research-based model of leadership networks and provide support to districts as they implement new standards. However, without those funds, much of the implementation support provided in the past will not be available.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: 704 KAR 8:020 does not establish any fee directly nor indirectly increased any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and local education agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies and the Department of Education (KDE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453 required the Kentucky Department of Education (KDE) to implement a comprehensive process for the review of academic standards and assessment. This regulation fulfills the requirements of KRS 158.6453.

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

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

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

(c) How much will it cost to administer this program for the first year? Schools and Districts: A 2008 study published by LRC called The Costs of College and High School Textbooks in Kentucky indicated an average text cost of \$50 per textbook. While textbooks contain teacher materials, this cost does not account for additional expenses related to teacher training and/or local efforts to align curricula. An estimated cost per class for instructional materials:

\$50 x 100 students per grade level. There also will be costs associated for local curricula development and teacher professional learning to support implementation of new curricula. Estimated teacher time for curriculum development/alignment (in a school with only 1 teacher per grade): \$4,000 (5 days for alignment work x 4 teachers x \$200/day). Estimated costs related to professional learning: \$25,000 x # grades = \$X per year. Typically, school districts would have used professional development funds to provide professional development for teachers to review and revise curriculum to incorporate new standards. However, HB 200 (2018) eliminated those funds therefore, other district funds will need to be used to do the work required to implement new standards.

KDE: In the revisionary process of reading and writing standards required by statute, the Department spent \$39,976.12 as of date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation processes. KDE used state professional development funds to conduct the revision and implementation process. Since those funds have been cut but revision of standards using a multi-tiered process is still required by SB 1 (2017), other funds are being used. Additional staff time will be impacted through implementation.

(d) How much will it cost to administer this program for subsequent years? Once curriculum documents are revised, implementation cost will decrease.

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

Revenues (+/-): N/A

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Kentucky Department of Education (New Administrative Regulation)

704 KAR 8:030. Required Academic Standards for Health.

RELATES TO: KRS 156.070, 156.160, 158.6451, 158.6453, 160.290

STATUTORY AUTHORITY: 156.070, 156.160, 158.6453(2)(a) NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453. KRS 156.070(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 158.6453(2)(a) requires the Kentucky Department of Education to implement a process for the review of academic standards and the alignment of corresponding assessments. This administrative regulation incorporates by reference the Kentucky Academic Standards for Health Education, which contain the general courses of study and academic content standards of health education for use in Kentucky's common schools.

Section 1. Before graduating from a Kentucky public high school, a student shall meet the minimum content requirements established in the Kentucky Academic Standards for Health Education.

Section 2. Incorporation by Reference.

(1) The "Kentucky Academic Standards for Health Education", October 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of

VOLUME 45, NUMBER 5 – NOVEMBER 1, 2018

Education, 5th floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 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
HAL HEINER, Chairperson

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 15, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2018, at 10:00 am in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation fulfills the requirements of KRS 158.6453 and sets forth the minimum content requirements to be met by a student per the Kentucky Academic Standards for Health.

(b) The necessity of this administrative regulation: KRS 158.6453 required the Kentucky Department of Education (KDE) to implement a comprehensive process for the review of academic standards and assessment. This regulation fulfills the requirements of KRS 158.6453.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 158.6453 as it implements a process for the review Kentucky's academic standards and the alignment of corresponding assessments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation conforms to KRS 158.6453 and will assist in its administration as it implements a process for the review Kentucky's academic standards and the alignment of corresponding assessments.

(2) If 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: Those affected by this regulation include: all public schools, school districts, school councils and the KDE as it will be responding to questions related to this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The standards outlined in 704 KAR 8:030 are the revised standards for health education. As this regulation also includes the minimum content requirements for graduation in health education, all public schools, school districts and school councils are required to follow the standards outlined in the document incorporated by reference in 704 KAR 8:030. Curriculum and content decisions are made at the local level and will be expected to follow these outlined standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Schools and Districts: A 2008 study published by LRC called The Costs of College and High School Textbooks in Kentucky indicated an average text cost of \$50 per textbook. While textbooks contain teacher materials, this cost does not account for additional expenses related to teacher training and/or local efforts to align curricula. An estimated cost per class for instructional materials: \$50 x 100 students per grade level. There also will be costs associated for local curricula development and teacher professional learning to support implementation of new curricula. Estimated teacher time for curriculum development/alignment (in a school with only 1 teacher per grade): \$4,000 (5 days for alignment work x 4 teachers x \$200/day). Estimated costs related to professional learning: \$25,000 x # grades = \$X per year.

KDE: In the revisionary process of health education standards required by statute, the Department spent \$23,923 as of date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation processes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The compliance of public schools, school districts and school councils will ensure that each student will be qualified for graduation as they will have met the minimum content requirements for health education. Graduation rates are used as part of each school's accountability model and are also reported on each school's report card.

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

(a) Initially: In the revisionary process of health education standards required by statute, the Department spent \$23,923 as of date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation processes.

(b) On a continuing basis: Additional staff time will be needed as the regulation moves through the legislative and implementation process.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds have been used to develop these standards.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The implementation of 704 KAR 8:030 will not require any increase in fees. Some of the state funds cut from the 2018-20 budget were used in the past by KDE to implement new standards using the research-based model of leadership networks and provide support to districts as they implement new standards. However, without those funds, much of the implementation support provided in the past will not be available.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: 704 KAR 8:050 does not establish any fee directly nor indirectly increased any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and local education agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies and the Department of Education (KDE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453 required the Kentucky Department of Education (KDE) to implement a comprehensive process for the review of academic standards and assessment. This regulation fulfills the requirements of KRS 158.6453.

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

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

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

(c) How much will it cost to administer this program for the first year? Schools and Districts: A 2008 study published by LRC called The Costs of College and High School Textbooks in Kentucky indicated an average text cost of \$50 per textbook. While textbooks contain teacher materials, this cost does not account for additional expenses related to teacher training and/or local efforts to align curricula. An estimated cost per class for instructional materials: \$50 x 100 students per grade level. There also will be costs associated for local curricula development and teacher professional learning to support implementation of new curricula. Estimated teacher time for curriculum development/alignment (in a school with only 1 teacher per grade): \$4,000 (5 days for alignment work x 4 teachers x \$200/day). Estimated costs related to professional learning: \$25,000 x # grades = \$X per year.

KDE: In the revisionary process of health education standards required by statute, the Department spent \$23,923 as of date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation processes.

(d) How much will it cost to administer this program for subsequent years? Additional staff time will be needed as the regulation moves through the legislative and implementation process. Once schools and districts have revised their curriculum, costs will decrease.

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

Revenues (+/-): N/A

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Kentucky Department of Education
(New Administrative Regulation)

704 KAR 8:040. Required Academic Standards for Mathematics.

RELATES TO: KRS 156.070, 156.160, 158.6451, 158.6453, 160.290

STATUTORY AUTHORITY: 156.070, 156.160, 158.6453(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453. KRS 156.070(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 158.6453(2) requires the Kentucky Department of Education to implement a comprehensive process for the review of academic standards and assessment with the advice of a standards and assessments review and development committee assigned to focus on mathematics. This administrative regulation incorporates by reference the Kentucky Academic Standards for Mathematics, which contain the general courses of study and academic content standards for mathematics for use in Kentucky's common schools.

Section 1. Before graduating from a Kentucky public high school, a student shall meet the minimum content requirements established in the Kentucky Academic Standards for Mathematics.

Section 2. Incorporation by Reference.

(1) The "Kentucky Academic Standards for Mathematics", October 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, 8:00 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

HAL HEINER, Chairperson

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 15, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2018, at 10:00 am, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation fulfills the requirements of KRS 158.6453 and sets forth the minimum content requirements to be met by a student per the Kentucky Academic Standards for Mathematics.

(b) The necessity of this administrative regulation: KRS 158.6453 required the Kentucky Department of Education (KDE) to implement a comprehensive process for the review of academic standards and assessment. This regulation fulfills the requirements of KRS 158.6453.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 158.6453 as it implements a process for the review Kentucky's

academic standards and the alignment of corresponding assessments with the advice of a review and development committee assigned to focus on mathematics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation conforms to KRS 158.6453 and will assist in its administration as it implements a process for the review Kentucky's academic standards and the alignment of corresponding assessments with the advice of a review and development committee assigned to focus on mathematics.

(2) If 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: Those affected by this regulation include: all public schools, school districts, school councils and the KDE as it will be responding to questions related to this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The standards outlined in 704 KAR 8:040 are the revised standards for mathematics. As this regulation also includes the minimum content requirements for graduation in mathematics, all public schools, school districts and school councils are required to follow the standards outlined in the document incorporated by reference in 704 KAR 8:040. Curriculum and content decisions are made at the local level and will be expected to follow these outlined standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Schools and Districts: A 2008 study published by LRC called The Costs of College and High School Textbooks in Kentucky indicated an average text cost of \$50 per textbook. While textbooks contain teacher materials, this cost does not account for additional expenses related to teacher training and/or local efforts to align curricula. An estimated cost per class for instructional materials: \$50 x 100 students per grade level. There also will be costs associated for local curricula development and teacher professional learning to support implementation of new curricula. Estimated teacher time for curriculum development/alignment (in a school with only 1 teacher per grade): \$4,000 (5 days for alignment work x 4 teachers x \$200/day). Estimated costs related to professional learning: \$25,000 x # grades = \$X per year.

KDE: In the revisionary process of mathematics standards required by statute, the Department spent \$33,001.17 as of date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation processes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The compliance of public schools, school districts and school councils will ensure that each student will be qualified for graduation as they will have met the minimum content requirements for mathematics. Graduation rates are used as part of each school's accountability model and are also reported on each school's report card.

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

(a) Initially: The Department spent \$33,001.17 administrative cost for the development of the mathematics standards that are incorporated by reference in 704 KAR 8:040 to be compliant with KRS 158.6453, as well as staff time to oversee its administration.

(b) On a continuing basis: Additional staff time will be needed as the regulation moves through the legislative and implementation process.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds have been used to develop these standards.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Some of the state funds cut from the 2018-20 budget were used in the past by KDE to implement new standards using the research-based model of leadership networks and provide support to districts as they implement new standards. However, without those funds, much of the implementation support provided in the past will not be available.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: 704 KAR 8:040 does not establish any fee directly nor indirectly increased any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and local education agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies and the Department of Education (KDE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453 required the Kentucky Department of Education (KDE) to implement a comprehensive process for the review of academic standards and assessment. This regulation fulfills the requirements of KRS 158.6453.

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

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

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

(c) How much will it cost to administer this program for the first year? Schools and Districts: A 2008 study published by LRC called The Costs of College and High School Textbooks in Kentucky indicated an average text cost of \$50 per textbook. While textbooks contain teacher materials, this cost does not account for additional expenses related to teacher training and/or local efforts to align curricula. An estimated cost per class for instructional materials: \$50 x 100 students per grade level. There also will be costs associated for local curricula development and teacher professional learning to support implementation of new curricula. Estimated teacher time for curriculum development/alignment (in a school with only 1 teacher per grade): \$4,000 (5 days for alignment work x 4 teachers x \$200/day). Estimated costs related to professional learning: \$25,000 x # grades = \$X per year. Typically, school districts would have used professional development funds to provide professional development for teachers to review and revise curriculum to incorporate new standards. However, HB 200 (2018) eliminated those funds therefore, other district funds will need to be used to do the work required to implement new standards.

KDE: In the revisionary process of mathematics standards required by statute, the Department spent \$33,001.17 as of date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation processes. KDE used state professional development funds to conduct the revision and

implementation process. Since those funds have been cut but revision of standards using a multi-tiered process is still required by SB 1 (2017), other funds are being used. Additional staff time will be impacted through implementation.

(d) How much will it cost to administer this program for subsequent years? Once curriculum documents are revised, implementation cost will decrease.

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

Revenues (+/-): N/A

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Kentucky Department of Education

(New Administrative Regulation)

704 KAR 8:050. Required Academic Standards for Physical Education.

RELATES TO: KRS 156.070, 156.160, 158.6451, 158.6453, 160.290

STATUTORY AUTHORITY: 156.070, 156.160, 158.6453(2)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453. KRS 156.070(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 158.6453(2)(a) requires the Kentucky Department of Education to implement a process for the review of academic standards and the alignment of corresponding assessments. This administrative regulation incorporates by reference the Kentucky Academic Standards for Physical Education, which contain the general courses of study and academic content standards physical education for use in Kentucky's common schools.

Section 1. Before graduating from a Kentucky public high school, a student shall meet the minimum content requirements established in the Kentucky Academic Standards for Physical Education.

Section 2. Incorporation by Reference.

(1) The "Kentucky Academic Standards for Physical Education", October 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, 8:00 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

HAL HEINER, Chairperson

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 15, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2018, at 10:00 am, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that

date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation fulfills the requirements of KRS 158.6453 and sets forth the minimum content requirements to be met by a student per the Kentucky Academic Standards for Physical Education.

(b) The necessity of this administrative regulation: KRS 158.6453 required the Kentucky Department of Education (KDE) to implement a comprehensive process for the review of academic standards and assessment. This regulation fulfills the requirements of KRS 158.6453.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 158.6453 as it implements a process for the review Kentucky's academic standards and the alignment of corresponding assessments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation conforms to KRS 158.6453 and will assist in its administration as it implements a process for the review Kentucky's academic standards and the alignment of corresponding assessments.

(2) If 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: Those affected by this regulation include: all public schools, school districts, school councils and the KDE as it will be responding to questions related to this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The standards outlined in 704 KAR 8:050 are the revised standards for physical education. As this regulation also includes the minimum content requirements for graduation in physical education, all public schools, school districts and school councils are required to follow the standards outlined in the document incorporated by reference in 704 KAR 8:050. Curriculum and content decisions are made at the local level and will be expected to follow these outlined standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Schools and Districts: A 2008 study published by LRC called indicated an The Costs of College and High School Textbooks in Kentucky average text cost of \$50 per textbook. While textbooks contain teacher materials, this cost does not account for additional

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expenses related to teacher training and/or local efforts to align curricula. An estimated cost per class for instructional materials: \$50 x 100 students per grade level. There also will be costs associated for local curricula development and teacher professional learning to support implementation of new curricula. Estimated teacher time for curriculum development/alignment (in a school with only 1 teacher per grade): \$4,000 (5 days for alignment work x 4 teachers x \$200/day). Estimated costs related to professional learning: \$25,000 x # grades = \$X per year.

KDE: In the revisionary process of physical education standards required by statute, the Department spent \$23,923 as of date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation processes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The compliance of public schools, school districts and school councils will ensure that each student will be qualified for graduation as they will have met the minimum content requirements for physical education. Graduation rates are used as part of each school's accountability model and are also reported on each school's report card.

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

(a) Initially: In the revisionary process of physical education standards required by statute, the Department spent \$23,923 as of date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation processes.

(b) On a continuing basis: Additional staff time will be needed as the regulation moves through the legislative and implementation process.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds have been used to develop these standards.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The implementation of 704 KAR 8:050 will not require any increase in fees. Some of the state funds cut from the 2018-20 budget were used in the past by KDE to implement new standards using the research-based model of leadership networks and provide support to districts as they implement new standards. However, without those funds, much of the implementation support provided in the past will not be available.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: 704 KAR 8:050 does not establish any fee directly nor indirectly increased any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and local education agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies and the Department of Education (KDE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453 required the Kentucky Department of Education (KDE) to implement a comprehensive process for the review of academic standards and assessment. This regulation fulfills the requirements of KRS 158.6453.

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

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

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue.

(c) How much will it cost to administer this program for the first year? Schools and Districts: A 2008 study published by LRC called The Costs of College and High School Textbooks in Kentucky indicated an average text cost of \$50 per textbook. While textbooks contain teacher materials, this cost does not account for additional expenses related to teacher training and/or local efforts to align curricula. An estimated cost per class for instructional materials: \$50 x 100 students per grade level. There also will be costs associated for local curricula development and teacher professional learning to support implementation of new curricula. Estimated teacher time for curriculum development/alignment (in a school with only 1 teacher per grade): \$4,000 (5 days for alignment work x 4 teachers x \$200/day). Estimated costs related to professional learning: \$25,000 x # grades = \$X per year.

KDE: In the revisionary process of physical education standards required by statute, the Department spent \$23,923 as of date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation processes.

(d) How much will it cost to administer this program for subsequent years? Additional staff time will be needed as the regulation moves through the legislative and implementation process. Once schools and districts have their curriculum revised, costs will decrease.

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

Revenues (+/-): N/A

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Repealer)

804 KAR 4:011. Repeal of 804 KAR 4:010.

RELATES TO: KRS 243.390, 243.630.

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 4:010, which establishes requirements and exemptions from providing information to the board when there is an ownership transfer of an alcoholic beverage license. The administrative regulation is obsolete and duplicative because the board has created and incorporated a "Transfer of Ownership Interest Application" that includes all required information as part of 804 KAR 4:400.

Section 1. 804 KAR 4:010, Information required, is hereby repealed.

CHRISTINE TROUT VAN TATENHOVE, Chairman
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: October 2, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 2018, at 10:00 a.m., EDT, 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 November 19, 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 this 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 comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Marc Manley, Legal Counsel, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-1045, fax (502) 564-7479, email Marc.MKanley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marc Manley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 804 KAR 4:010, which requires certain information be provided to the department when an applicant wishes to transfer ownership of an alcoholic beverage license. The department currently obtains the same information when an applicant files a "Transfer of Ownership Interest Application." Thus, this regulation repeals duplicative information requirements.

(b) The necessity of this administrative regulation: Regulation 804 KAR 4:010 is no longer needed. The Department of Alcoholic Beverage Control created a "Transfer of Ownership Interest Application" for transfers of ownership interests discussed in this regulation. See, 804 KAR 4:400 Section 2, Section 4(h).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations regarding matters over which it has jurisdiction. The board has promulgated 804 KAR 4:400 Section 2, Section 4(h), which incorporates by reference the department's "Transfer of Ownership Interest Application," rendering 804 KAR 4:010 duplicative and unnecessary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute. The department will still obtain the information required by 804 KAR 4:010 when an applicant files a "Transfer of Ownership Interest Application." By repealing 804 KAR 4:010, the board is repealing unnecessary and duplicative regulations.

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

(a) How the amendment will change this existing administrative regulation: This 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: Licensees seeking to transfer the ownership of an ABC interest will find it easier to comply with a single regulation governing such transfers because of this repealer.

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

(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: Regulated entities will not have to take action to comply with this repealer. Regulation of transfers of ownership interests are now established in 804 KAR 4:400, Section 2, Section 4(h).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Licensees will not face any cost from this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will benefit from the repeal of an outdated and duplicative administrative regulation.

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

(a) Initially: No additional costs are anticipated to implement

this repealer.

(b) On a continuing basis: No additional costs are anticipated on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new funding will be utilized for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No tiering is applied. This is a repealer.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What unit, part, 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 will be affected by this administrative regulation.

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations regarding matters over which it has jurisdiction. Transfers of ownership interests are discussed now in 804 KAR 4:400, Section 2, Section 4(h).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts).

(a) How much 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 state or local government by this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? Because the department already obtains and processes the information requested in 804 KAR 4:010 when an applicant files a "Transfer of Ownership Interest Application," there are no anticipated additional costs to administer this repealer for the first year.

(d) How much will it cost to administer this program for subsequent years? Because the department already obtains and processes the information requested in 804 KAR 4:010 when an applicant files a "Transfer of Ownership Interest Application," there are no anticipated additional costs to administer this repealer 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: Not applicable

PUBLIC PROTECTION CABINET Department of Insurance (Repealer)

806 KAR 2:121. Repeal of 806 KAR 2:120 and 806 KAR 2:150.

RELATES TO: KRS 304.2-250, 91A.080, 91A.0804, 304.3, 304.10-120

STATUTORY AUTHORITY: KRS 91A.080(4), 304.2-110, 304.10-180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner of the Department of Insurance to promulgate regulations to aid in the effectuation of any provision of the Insurance Code, as defined in KRS 304.1-010. This administrative regulation repeals 806 KAR 2:120, which establishes a reporting requirement that is neither required by statute nor consistent with currently accepted industry practice. This administrative regulation also repeals 806 KAR 2:150, whose necessary substantive provisions are being concurrently consolidated with 806 KAR 2:092 to reduce duplication and combine linked subjects for regulatory efficiency and simplification.

Section 1. The following administrative regulations are hereby repealed:

- (1) 806 KAR 2:120, Filing of examination report; and
- (2) 806 KAR 2:150, Collection fee.

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: October 12, 2018

FILED WITH LRC: October 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2018 at 215 W. Main Street, Frankfort, Kentucky 40602 at 9:30 a.m. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, 215 W. Main Street, Frankfort, Kentucky 40602, phone 502-564-6026, email patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patrick O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 806 KAR 2:120 and 806 KAR 2:150.

(b) The necessity of this administrative regulation: This administrative regulation repeals unnecessary and outdated administrative regulations. 806 KAR 2:120 requires an examination report to be submitted within sixty (60) days of a completed exam. Under current market conduct and financial examination rules, the regulated entities are able to review draft reports and discuss the findings. The current process is often not complete sixty (60) days after an examiner leaves a regulated entity, but all parties remain informed of the findings. The process, while not establishing a strict deadline, provides an easier and more productive finalization of the examination reports, and is preferred to the sixty (60) day deadline. 806 KAR 2:150 sets forth standards for a reasonable collection fee, and is repealed to consolidate with 806 KAR 2:092. The collection fee is part of the disclosure and collection of local government premium taxes, and the two administrative regulations refer to the same statutes and include largely duplicative provisions. The repeal is necessary to eliminate duplication and ease compliance burdens.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the

effectuation of any provision of the Kentucky Insurance Code. KRS 13A.310 states that an administrative regulation shall only be repealed by the promulgation of an administrative regulation. This administrative regulation is repealing two (2) unnecessary administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals two (2) administrative regulations that are no longer necessary.

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

(a) How the amendment will change this existing administrative regulation: This is a repealer.

(b) The necessity of the amendment to this administrative regulation: This is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will positively impact market conduct and financial examiners. The Department hires these examiners on a contract basis so the exact number fluctuates based upon the ongoing examinations. This administrative regulation will also provide compliance savings for insurers and other regulated entities charging a collection fee in conjunction with the collection of local government premium taxes.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will not be required to take any action as a result of this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There will be no cost to comply with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities: Regulated entities will benefit from reduced regulations, elimination of duplicative regulations, and consolidation of regulations with identical subject matter all of which will increase the administrative efficiencies to determine required compliance measures.

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

(a) Initially: There will not be an initial cost to implement this repealer.

(b) On a continuing basis: There will not be a continuing cost related to this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this regulation apply equally to all 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 Department of Insurance.

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

regulation. KRS 304.2-110 and KRS 13A.310.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the 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? This administrative regulation is not expected to generate any revenue for state or local government.

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

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

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with this administrative regulation.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

**PUBLIC PROTECTION CABINET
Department Of Insurance
(Repealer)**

806 KAR 5:011. Repeal of 806 KAR 5:010 and 806 KAR 5:020.

RELATES TO: KRS 304.5-130, 304.5-140, 304.5-150, 304.11-010 - 304.11-050, 304.24-420

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner of the Department of Insurance to promulgate administrative regulations to aid in the effectuation of any provision of KRS Chapter 304. This administrative regulation repeals 806 KAR 5:010, and 806 KAR 5:020, which are outdated and no longer necessary due to the regulatory requirements included within recently amended KRS 304.5-140, 806 KAR 5:025, and the U.S. Department of Treasury's execution of a Covered Agreement on September 22, 2017 with the European Union establishing reinsurance requirements.

Section 1. The following administrative regulations are hereby repealed:

- (1) 806 KAR 5:010, Reinsurance treaties filing; and
- (2) 806 KAR 5:020, Illegitimate use of reinsurance agreements.

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: October 12, 2018

FILED WITH LRC: October 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2018 at 215 W. Main Street, Frankfort, Kentucky 40602 at 9:30 a.m. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is

made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, 215 W. Main Street, Frankfort, Kentucky 40602, phone 502-564-6026, email patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patrick O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 806 KAR 5:010 and 806 KAR 5:020.

(b) The necessity of this administrative regulation: This administrative regulation repeals unnecessary and outdated administrative regulations. The regulation of reinsurance is now entirely handled by KRS 304.5-140, 806 KAR 5:025, and the Covered Agreement between the U.S. Department of Treasury and the European Union.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 13A.310 states that an administrative regulation shall only be repealed by the promulgation of an administrative regulation. This administrative regulation is repealing two (2) obsolete administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals two (2) administrative regulations that are no longer necessary.

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

(a) How the amendment will change this existing administrative regulation: This is a repealer.

(b) The necessity of the amendment to this administrative regulation: This is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation provides compliance savings for insurers and other regulated entities as it repeals obsolete administrative regulations. It does not change existing business practices of the Department of Insurance.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will not be required to take any action as a result of this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There will be no cost to comply with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities: Regulated entities will benefit from reduced regulations, elimination of duplicative regulations, and the consolidation of regulations with similar subject matter.

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

(a) Initially: There will not be an initial cost to implement this repealer.

(b) On a continuing basis: There will not be a continuing cost related to this repealer.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation:
No funding will be necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this regulation apply equally to all insurance companies, corporate sureties or other entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? 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 304.2-110 and KRS 13A.310.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the 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? This administrative regulation is not expected to generate any revenue for state or local government.

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

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

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with this administrative regulation.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of October 9, 2018

Call to Order and Roll Call

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 9, 2018, at 1:00 p.m. in Room 149 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the September 2018 meeting were approved.

Present were:

Members: Senators Ernie Harris, Perry Clark, and Alice Forgys Kerr; and Representatives David Hale, Mary Lou Marzian, and Jason Petrie.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Income Tax; General Administration

103 KAR 15:041. Repeal of 103 KAR 15:040 and 103 KAR 15:090. Todd Renner, executive director of tax policy, represented the department.

103 KAR 15:110. Ethanol tax credit.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 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.

103 KAR 15:120. Cellulosic ethanol tax credit.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 15:140. Biodiesel tax credit.

A motion was made and seconded to approve the following amendments: to amend Sections 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.

Income Tax; Corporations

103 KAR 16:011. Repeal of 103 KAR 16:010, 103 KAR 16:210, 103 KAR 16:310, and 103 KAR 16:360.

Income Tax; Individual

103 KAR 17:042. Repeal of 103 KAR 17:041.

103 KAR 17:100. Division of income between married individuals filing separate tax returns.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 17:130. Individual income tax – military personnel – nonresidents.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 17:140. Individual income tax – reciprocity – nonresidents.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND

Guests: Todd Renner, Department of Revenue; Nathan Goldman, Board of Nursing; Amber Arnett, Karen Waldrop, Department of Fish and Wildlife Resources; Clint Quarles, Department of Agriculture; Amy Barker, Law Enforcement Council; Todd Allen, Chad Collins, Department of Education; B. Dale Hamblin, Robert Swisher, Department of Workers' Claims; Jeremy Sylvester, Occupational Safety and Health Review Commission; Stephanie Bowker, Patrick O'Connor, Department of Insurance; Jonathan Scott, Department for Medicaid Services; Stephanie Brammer-Barnes, David McMahan, Office Inspector General.

The Administrative Regulation Review Subcommittee met on Tuesday, October 9, 2018, and submits this report:

CONFORMITY paragraph and Sections 3 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Income Tax; Withholding

103 KAR 18:180. Kentucky economic development acts wage assessment.

103 KAR 18:191. Repeal of 103 KAR 18:190, 103 KAR 18:200, 103 KAR 18:210, and 103 KAR 18:220.

BOARDS AND COMMISSIONS: Board of Nursing

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses. Nathan Goldman, general counsel, represented the agency.

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

301 KAR 1:015. Boat and motor restrictions. Amber Arnett, counsel, and Karen Waldrop, deputy commissioner, represented the department.

301 KAR 1:132. Sale of live bait.

Game

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

In response to questions by Representative Marzian, Ms. Waldrop stated that this administrative regulation pertained to the Western Goose Zone, to which migratory geese came from St. John's Bay. That was a small population of geese in the past; however, the population was now stable and hunting opportunities could be expanded. This administrative regulation was unrelated to matters of deer management.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Hunting and Fishing

301 KAR 3:022. License, tag, and permit fees.

In response to a question by Senator Clark, Ms. Waldrop stated that the fifteen (15) day nonresident fish license, which was rarely used, was being discontinued. Nonresidents could still purchase the seven (7) day license.

In response to questions by Representative Petrie, Ms. Waldrop stated that approximately eight (8) months ago the department increased hunting and fishing fees for Kentucky residents. These fee increases were part of the department's long-term, strategic plan to address costs. Many department fees had not been raised in the past decade and, in some cases, longer. The department intended to analyze the fee structure every four (4)

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to five (5) years. These increases were based on a two (2) to three (3) year analysis of agency expenditures. All department revenue was generated from fees or federal funds.

In response to questions by Co-Chair Hale, Ms. Waldrop stated that the nonresident youth elk hunt fee was being increased from forty (40) dollars to \$200, making the fee commensurate with those for similar permits. Very few nonresident youth elk hunt permits had been issued. The department would follow up with more detailed revenue information, but these fee increases were forecast to provide approximately \$1.9 million more in revenue.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend deer management permit language for consistency. Without objection, and with agreement of the agency, the amendments were approved.

Wildlife

301 KAR 4:090. Buying and selling of inedible wildlife parts.

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.

DEPARTMENT OF AGRICULTURE: Office of the State Veterinarian: Livestock Sanitation

302 KAR 20:211. Repeal of 302 KAR 20:210. Clint Quarles, counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 20:221. Repeal of 302 KAR 20:220.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 20:231. Repeal of 302 KAR 20:230.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 20:541. Repeal of 302 KAR 20:054.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 20:561. Repeal of 302 KAR 20:056.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 20:571. Repeal of 302 KAR 20:057.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the

amendments were approved.

302 KAR 20:581. Repeal of 302 KAR 20:058.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Purchase of Agricultural Conservation Easement Corporation

302 KAR 100:011. Repeal of 302 KAR 100:010.

In response to questions by Co-Chair Harris, Mr. Quarles stated that there was still a voluntary ability for the department to receive land donations. There was currently a purchase project in the Fort Campbell area. The voluntary program was implemented by statute.

302 KAR 100:021. Repeal of 302 KAR 100:020.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Kentucky Law Enforcement Council

503 KAR 1:110 & E. Department of Criminal Justice Training basic training graduation requirements; records. Amy Barker, assistant general counsel, represented the department.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: School Terms, Attendance, and Operation

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics. Todd Allen, deputy general counsel, represented the department, and Chad Collins, general counsel, represented the Kentucky High School Athletic Association.

A motion was made and seconded to approve the following amendments: to amend Sections 4 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

LABOR CABINET: Department of Workers' Claims

803 KAR 25:089 & E. Workers' Compensation Medical Fee Schedule for Physicians. B. Dale Hamblin, Jr., assistant general counsel, and Robert Swisher, commissioner, represented the department.

In response to questions by Co-Chair Harris, Mr. Swisher stated that reimbursement was based on the CPT code, of which there were 7,400. The fee schedule was updated every two (2) years. Stakeholders were involved in fee reimbursement development, and reimbursement rates were adjusted in response to stakeholder input. Generally, reimbursement rates increased; however, increases or decreases were capped at twenty (20) percent juxtaposed to the prior rate. There were no significant increases.

In response to a question by Representative Petrie, Mr. Hamblin stated that, in order to determine reimbursement rates, the department contracted with a data-collection agency that analyzed rates pursuant to individual CPT codes.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 3 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Occupational Safety and Health Review Commission

803 KAR 50:010. Hearings: procedure, disposition. Jeremy Sylvester, executive director, represented the commission.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 3, 9, 15, 16, 19, 20, 26 through 29, 33, 36, 38, 40, 43, and 55 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

806 KAR 17:570. Minimum standards for Medicare supplement insurance policies and certificates. Stephanie Bowker, program manager, and Patrick O'Connor II, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 3, 5 through 12, 14, 16 through 17, 19 through 20, 22, and 26 through 27 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreements of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Commissioner's Office: Administration

900 KAR 1:091. Repeal of 900 KAR 1:090. Jonathan Scott, regulatory and legislative advisor, represented the office.

Office of Inspector General

906 KAR 1:190. Kentucky National Background Check Program (NBCP). Stephanie Brammer – Barnes, regulation coordinator, and David McMahan, program manager, represented the office.

In response to questions by Co-Chair Harris, Ms. Brammer – Barnes stated that these requirements were mandatory for state-owned facilities and voluntary for privately owned facilities. Mr. McMahan stated that the disqualifier for checks with insufficient funds was being removed due to frequency and because most incidents did not result in follow-up action. Ms. Brammer – Barnes stated that background disqualifiers for other programs in the cabinet were similar but sometimes differed slightly, depending on the program.

In response to questions by Representative Petrie, Ms. Brammer – Barnes stated that the program was voluntary since 2012 because legislation to make the background checks mandatory had yet to be approved by the General Assembly. The office agreed to provide follow-up data to the subcommittee showing participation percentages among facilities that may voluntarily participate in the background checks. The cost of a fingerprint-supported background check was sixty-three (63) dollars. Many facilities opted to use a name-based, state-only background check, which was twenty (20) dollars.

Department for Medicaid Services: Medicaid Services

907 KAR 1:121. Repeal of 907 KAR 1:120 and 907 KAR 1:130. Johnathan Scott, regulatory and legislative advisor, represented the department.

The following administrative regulations were deferred or removed from the October 9, 2018, subcommittee agenda:

STATE BOARD OF ELECTIONS: Forms and Procedures

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

BOARDS AND COMMISSIONS: Board of Podiatry

201 KAR 25:090. Prescribing and dispensing controlled substances. Tony Cotto, executive advisor, represented the board.

Mr. Cotto requested deferral of this administrative regulation with the intent of withdrawing then refiling. A motion was made and seconded, to agree to defer consideration of this administrative regulation. Without objection, and with agreement of the agency, this administrative regulation was deferred.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:999. Corrections secured policies and procedures.

Pursuant to KRS 61.810(1)(k), 61.815(2), and 197.025(6), the subcommittee needs to go into closed session to review this administrative regulation.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Administration

601 KAR 2:030 & E. Ignition interlock.

LABOR CABINET: Workers' Compensation Funding Commission
803 KAR 30:021. Repeal of 803 KAR 030:020.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction

815 KAR 2:030. Vehicle identification.

815 KAR 2:040. Fees and refunds.

Building Code Enforcement: Elevator Safety

815 KAR 4:071. Repeal of 815 KAR 004:040, 815 KAR 004:050, 815 KAR 004:060, and 815 KAR 004:070.

Kentucky Building Code

815 KAR 7:070. The Kentucky Certified Building Inspector Program.

Division of Heating, Ventilation, and Air Conditioning: Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 8:010. Licensing requirements for master contractors and journeyman HVAC mechanics.

815 KAR 8:030. Apprentice HVAC mechanic registration and certification requirements.

815 KAR 8:091. 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 15:080. Boiler and pressure vessel licenses.

Plumbing

815 KAR 20:030. Plumbing licenses.

815 KAR 20:041. 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 22:011. Repeal of 815 KAR 022:010.

Building Code Enforcement: Manufactured Homes and Recreational Vehicles

815 KAR 25:001. Definitions for 815 KAR Chapter 025.

815 KAR 25:020. Recreational vehicles.

815 KAR 25:040. Fire safety requirements in manufactured and mobile homes.

815 KAR 25:060. Licensing and certifications with manufactured homes and mobile homes.

815 KAR 25:081. Repeal of 815 KAR 025:070 and 815 KAR 025:080.

815 KAR 25:100. Alternative dispute resolution and mediation program.

Electrical Division

815 KAR 35:015. Certification of electrical inspectors.

815 KAR 35:020. Electrical inspections.

815 KAR 35:080. Electrical code of ethics.

815 KAR 35:101. Repeal of 815 KAR 035:100.

Department of Charitable Gaming

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820 KAR 1:001. Definitions.

820 KAR 1:005. Charitable gaming licenses and exemptions.

820 KAR 1:011. Repeal of 820 KAR 1:010, 1:015, 1:016, 1:017, 1:026, 1:027, 1:028, 1:029, 1:033, 1:034, 1:036, 1:044, 1:056, 1:058, 1:100, 1:110, 1:120.

820 KAR 1:025. Reports.

820 KAR 1:032. Pulltabs.

820 KAR 1:042. Bingo.

820 KAR 1:050. Raffles.

820 KAR 1:055. Charity fundraising event standards.

820 KAR 1:057. Recordkeeping.

820 KAR 1:060. Prohibited conduct.

820 KAR 1:125. Gaming inspections.

820 KAR 1:130. Administrative actions.

820 KAR 1:135. Disposal of gaming supplies.

CABINET FOR HEALTH AND FAMILY SERVICES: 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.

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

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

921 KAR 3:025. Technical requirements.

921 KAR 3:035. Certification process.

The subcommittee adjourned at 1:45 p.m. The next meeting of the subcommittee is tentatively scheduled for November 13, 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 AGRICULTURE
Meeting of September 28, 2018

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Agriculture for its meeting of September 28, 2018, having been referred to the Committee on September 5, 2018, pursuant to KRS 13A.290(6):

012 KAR 003:007
012 KAR 003:012
012 KAR 003:017
012 KAR 003:022
012 KAR 003:027
012 KAR 003:028
012 KAR 003:032
012 KAR 003:037
012 KAR 003:039
012 KAR 003:042
302 KAR 029:020

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

INTERIM JOINT COMMITTEE AGRICULTURE
Meeting of October 3, 2018

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Agriculture for its meeting of October 10, 2018, having been referred to the Committee on October 3, 2018, pursuant to KRS 13A.290(6):

012 KAR 002:006
012 KAR 002:011
012 KAR 002:016
012 KAR 002:017
012 KAR 002:018
012 KAR 002:021
012 KAR 002:026
012 KAR 002:031
012 KAR 002:036
012 KAR 002:041
012 KAR 002:046
012 KAR 002:051
012 KAR 002:056
012 KAR 002:061
012 KAR 002:066

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

INTERIM JOINT COMMITTEE NATURAL RESOURCES AND ENERGY

Meeting of October 4, 2018

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Energy for its meeting of October 4, 2018, having been referred to the Committee on October 3, 2018, pursuant to KRS 13A.290(6):

301 KAR 1:201
301 KAR 1:410
400 KAR 1:001 & E
400 KAR 1:040 & E
400 KAR 1:090 & E
400 KAR 1:100 & E
400 KAR 1:110 & E
805 KAR 1:210 & E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of October 24, 2018

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on State Government for its meeting of October 24, having been referred to the Committee on October 3, pursuant to KRS 13A.290(6):

9 KAR 1:015
9 KAR 1:030

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

E - 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

E - 12

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

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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

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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

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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 43 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2017 Kentucky Administrative Regulations Service</i> was published.					
SYMBOL KEY:			Repealed	2703	8-31-2018
* Statement of Consideration not filed by deadline			201 KAR 3:006(r)	2703	8-31-2018
** Withdrawn, not in effect within 1 year of publication			201 KAR 3:025		
*** Withdrawn before being printed in Register			Repealed	2703	8-31-2018
‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			201 KAR 3:035		
IJC Interim Joint Committee			Repealed	2703	8-31-2018
(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.			201 KAR 3:045		
			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					

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201 KAR 20:411			Amended	2623	
Amended	2247		401 KAR 5:075		
As Amended	2479	6-20-2018	Amended	2625	See 45 Ky.R.
201 KAR 20:470			401 KAR 5:080		
Amended	2250		Amended	2628	
As Amended	2481	6-20-2018	401 KAR 5:320		
201 KAR 22:020			Amended	2631	See 45 Ky.R.
Amended	2255		401 KAR 51:240	2284	
As Amended	2486	6-20-2018	AmComments	2505	
201 KAR 22:040			401 KAR 51:250	2286	
Amended	2257		AmComments	2507	
As Amended	2487	6-20-2018	401 KAR 51:260	2288	
201 KAR 22:070			AmComments	2509	
Amended	2259		405 KAR 1:005		
As Amended	2487	6-20-2018	Repealed	2708	10-5-2018
201 KAR 25:090			405 KAR 1:007		
Amended	1623		Repealed	2708	10-5-2018
Withdrawn		10-26-2018	405 KAR 1:010		
201 KAR 34:060			Repealed	2708	10-5-2018
Amended	2568	See 44 Ky.R.	405 KAR 1:011(r)	2708	10-5-2018
201 KAR 41:100			405 KAR 1:015		
Amended	2572	See 44 Ky.R.	Repealed	2708	10-5-2018
301 KAR 1:130			405 KAR 1:020		
Amended	2574	8-6-2018	Repealed	2708	10-5-2018
301 KAR 2:049			405 KAR 1:030		
Amended	2260		Repealed	2708	10-5-2018
As Amended	2488	6-7-2018	405 KAR 1:040		
301 KAR 2:172			Repealed	2708	10-5-2018
Amended	2370		405 KAR 1:050		
As Amended		See 45 Ky.R.	Repealed	2708	10-5-2018
301 KAR 2:176			405 KAR 1:051		
Amended	2576	10-5-2018	Repealed	2708	10-5-2018
301 KAR 2:221			405 KAR 1:060		
Amended	2374		Repealed	2708	10-5-2018
As Amended		See 45 Ky.R.	405 KAR 1:070		
301 KAR 2:222			Repealed	2708	10-5-2018
Amended	2376		405 KAR 1:080		
As Amended		See 45 Ky.R.	Repealed	2708	10-5-2018
301 KAR 2:228			405 KAR 1:090		
Amended	2380	See 44 Ky.R.	Repealed	2708	10-5-2018
302 KAR 16:020			405 KAR 1:100		
Amended	2265		Repealed	2708	10-5-2018
As Amended	2492	7-6-2018	405 KAR 1:110		
302 KAR 16:081(r)	2283	7-6-2018	Repealed	2708	10-5-2018
302 KAR 16:091			405 KAR 1:120		
Amended	2267		Repealed	2708	10-5-2018
As Amended	2493	7-6-2018	405 KAR 1:130		
302 KAR 50:050	1768		Repealed	2708	10-5-2018
Amended	2383	7-24-2018	405 KAR 1:130		
401 KAR 5:002			Repealed	2708	10-5-2018
Amended	2578	See 45 Ky.R.	405 KAR 1:141		
401 KAR 5:005			Repealed	2708	10-5-2018
Amended	2585	See 45 Ky.R.	405 KAR 1:150		
401 KAR 5:006			Repealed	2708	10-5-2018
Amended	2598	See 45 Ky.R.	405 KAR 1:160		
401 KAR 5:015			Repealed	2708	10-5-2018
Amended	2602	See 45 Ky.R.	405 KAR 1:170		
401 KAR 5:037			Repealed	2708	10-5-2018
Amended	2604	See 45 Ky.R.	405 KAR 1:180		
401 KAR 5:039(r)	2707		Repealed	2708	10-5-2018
401 KAR 5:045			405 KAR 1:190		
Amended	2610	See 45 Ky.R.	Repealed	2708	10-5-2018
401 KAR 5:050			405 KAR 1:200		
Amended	2612		Repealed	2708	10-5-2018
401 KAR 5:052			405 KAR 1:210		
Amended	2615		Repealed	2708	10-5-2018
401 KAR 5:055			405 KAR 1:220		
Amended	2616	See 45 Ky.R.	Repealed	2708	10-5-2018
401 KAR 5:060			405 KAR 1:230		
Amended	2620		Repealed	2708	10-5-2018
401 KAR 5:065			405 KAR 1:240		

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Repealed	2708	10-5-2018	As Amended	2498	7-6-2018
405 KAR 1:250			501 KAR 16:330		
Repealed	2708	10-5-2018	Amended	1893	
405 KAR 1:260			Am Comments	2345	
Repealed	2708	10-5-2018	As Amended	2499	7-6-2018
405 KAR 3:005			501 KAR 16:340		
Repealed	2709	10-5-2018	Amended	1897	
405 KAR 3:007			Am Comments	2349	7-6-2018
Repealed	2709	10-5-2018	503 KAR 5:090		
405 KAR 3:010			Amended	2637	10-5-2018
Repealed	2709	10-5-2018	505 KAR 1:120		
405 KAR 3:011(r)	2709	10-5-2018	Amended	2384	
405 KAR 3:015			As Amended		See 45 Ky.R.
Repealed	2709	10-5-2018	505 KAR 1:140		
405 KAR 3:020			Amended	2386	See 45 Ky.R.
Repealed	2709	10-5-2018	600 KAR 4:010		
405 KAR 3:030			Amended	2272	
Repealed	2709	10-5-2018	As Amended	2501	7-6-2018
405 KAR 3:040			601 KAR 2:030		
Repealed	2709	10-5-2018	Amended	1651	
405 KAR 3:050			Withdrawn		6-13-2018
Repealed	2709	10-5-2018	603 KAR 2:015		
405 KAR 3:060			Amended	2640	
Repealed	2709	10-5-2018	Withdrawn		7-24-2018
405 KAR 3:070			703 KAR 5:190		
Repealed	2709	10-5-2018	Repealed	2157	8-6-2018
405 KAR 3:080			703 KAR 5:191(r)	2157	8-6-2018
Repealed	2709	10-5-2018	703 KAR 5:225		
405 KAR 3:090			Amended	2101	
Repealed	2709	10-5-2018	As Amended		See 45 Ky.R.
405 KAR 3:100			703 KAR 5:260		
Repealed	2709	10-5-2018	Repealed	2157	6-17-2018
405 KAR 3:111			703 KAR 5:280	2158	
Repealed	2709	10-5-2018	Am Comments	2351	
405 KAR 3:120			As Amended		See 45 Ky.R.
Repealed	2709	10-5-2018	704 KAR 7:090		
405 KAR 3:130			Amended	1658	
Repealed	2709	10-5-2018	As Amended	2015	4-6-2018
405 KAR 3:140			735 KAR 1:010		
Repealed	2709	10-5-2018	Amended	2388	
405 KAR 3:150			As Amended		See 45 Ky.R.
Repealed	2709	10-5-2018	735 KAR 1:020		
405 KAR 3:160			Amended	2391	
Repealed	2709	10-5-2018	As Amended		See 45 Ky.R.
405 KAR 3:170			735 KAR 2:010		
Repealed	2709	10-5-2018	Amended	2394	
405 KAR 3:180			As Amended		See 45 Ky.R.
Repealed	2709	10-5-2018	735 KAR 2:020		
405 KAR 3:190			Amended	2396	
Repealed	2709	10-5-2018	As Amended		See 45 Ky.R.
501 KAR 6:030			735 KAR 2:030		
Amended	2269		Amended	2398	
AmComments	2511	8-6-2018	As Amended		See 45 Ky.R.
501 KAR 6:070			735 KAR 2:040		
Amended	2635	See 44 Ky.R.	Amended	2399	
501 KAR 6:170			As Amended		See 45 Ky.R.
Amended	2270	7-6-2018	735 KAR 2:050		
501 KAR 6:270			Amended	2401	
Amended	2097		As Amended		See 45 Ky.R.
As Amended	2494	7-6-2018	735 KAR 2:060		
501 KAR 16:290			Amended	2403	
Amended	1884		As Amended		See 45 Ky.R.
Am Comments	2337		804 KAR 9:051(r)	1774	
As Amended	2494	7-6-2018	807 KAR 5:022		
501 KAR 16:300			Amended	2405	See 45 Ky.R.
Amended	1887		807 KAR 5:026		
Am Comments	2339		Amended	2436	See 45 Ky.R.
As Amended	2496	7-6-2018	810 KAR 1:111(r)	2711	
501 KAR 16:310			Withdrawn		7-18-2018
Amended	1891		810 KAR 8:040	2712	
Am Comments	2343		Withdrawn		7-18-2018

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811 KAR 1:241(r)	2717		902 KAR 20:058		
Withdrawn		7-18-2018	Amended	1714	5-4-2018
811 KAR 2:151(r)	2718		906 KAR 1:200		
Withdrawn		7-18-2018	Amended	2454	
815 KAR 7:110			As Amended		See 45 Ky.R.
Amended	2439	See 44 Ky.R.	910 KAR 2:030		
815 KAR 7:120			Amended	2698	
Amended	2442	8-22-2018	As Amended		See 45 Ky.R.
815 KAR 7:125			910 KAR 2:050	2723	9-19-2018
Amended	2445	8-22-2018	910 KAR 2:052(r)	2723	9-19-2018
815 KAR 8:007			921 KAR 2:015		
Repealed	2458	8-22-2018	Amended	1899	6-20-2018
815 KAR 8:011(r)	2458	8-22-2018	922 KAR 2:090		
815 KAR 8:045			Amended	2109	
Repealed	2458	8-22-2018	AmComments	2513	7-18-2018
815 KAR 8:070			922 KAR 2:100		
Amended	2446	See 44 Ky.R.	Amended	2118	
815 KAR 8:080			AmComments	2522	7-18-2018
Amended	2449	See 44 Ky.R.	922 KAR 2:110		
815 KAR 8:100			Repealed	2306	7-18-2018
Amended	2451	See 44 Ky.R.	922 KAR 2:120		
820 KAR 1:001			Amended	2129	
Amended	2646		AmComments	2533	
820 KAR 1:005			As Amended		See 45 Ky.R.
Amended	2650		922 KAR 2:170		
820 KAR 1:011(r)	2720		Repealed	2308	7-18-2018
820 KAR 1:025			922 KAR 2:180		
Amended	2654		Amended	2138	
820 KAR 1:032			As Amended		See 45 Ky.R.
Amended	2656		922 KAR 2:190		
820 KAR 1:042			Amended	2144	
Amended	2670		As Amended		See 45 Ky.R.
820 KAR 1:050			922 KAR 2:210		
Amended	2678		Repealed	2308	7-18-2018
820 KAR 1:055			922 KAR 2:270	2459	
Amended	2681		As Amended		See 45 Ky.R.
820 KAR 1:057					
Amended	2683				
820 KAR 1:060					
Amended	2690				
820 KAR 1:125					
Amended	2691				
820 KAR 1:130					
Amended	2693				
820 KAR 1:135	2721				
902 KAR 2:055					
Amended	2695	See 44 Ky.R.			
902 KAR 10:040					
Amended	2277	See 44 Ky.R.			
902 KAR 20:016					
Amended	1415				
Am Comments	2054	See 44 Ky.R.			

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.

VOLUME 45

EMERGENCY ADMINISTRATIVE REGULATIONS

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

SYMBOL KEY:

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- ** Withdrawn, not in effect within 1 year of publication
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- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of

an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

9 KAR 1:015E	234	7-11-2018
Replaced	933	10-24-2018
9 KAR 1:030E	235	7-11-2018
Replaced	933	10-24-2018
31 KAR 3:010E	7	5-22-2018
31 KAR 4:100E	236	6-21-2018
31 KAR 4:120E	239	6-21-2018
32 KAR 1:030E	906	8-31-2018
40 KAR 2:345E	241	7-2-2018
101 KAR 2:210E	908	9-14-2018
103 KAR 18:050E	910	9-10-2018

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105 KAR 1:147E	1174	10-5-2018	As Amended	626	10-5-2018
301 KAR 2:169E	912	8-24-2018	11 KAR 15:110	207	
Withdrawn		10-5-2018	As Amended	627	10-5-2018
301 KAR 2:225E	614	7-20-2018	12 KAR 2:006		
400 KAR 1:001E	243	7-13-2018	Amended	380	10-11-2018
Replaced	431	10-5-2018	12 KAR 2:011		
400 KAR 1:040E	245	7-13-2018	Amended	381	10-11-2018
Replaced	958	10-5-2018	12 KAR 2:016		
400 KAR 1:090E	251	7-13-2018	Amended	382	10-11-2018
Replaced	963	10-5-2018	As Amended	935	
400 KAR 1:100E	260	7-13-2018	12 KAR 2:017		
Replaced	970	10-5-2018	Amended	384	10-11-2018
400 KAR 1:110E	265	7-13-2018	12 KAR 2:018		
Replaced	974	10-5-2018	Amended	385	10-11-2018
501 KAR 5:020E	617	7-19-2018	As Amended	935	
503 KAR 1:110E	274	6-27-2018	12 KAR 2:021		
601 KAR 2:030E	9	6-13-2018	Amended	389	10-11-2018
787 KAR 1:010E	915	9-13-2018	As Amended	938	
803 KAR 25:089E	15	6-11-2018	12 KAR 2:026		
805 KAR 1:210E	277	7-13-2018	Amended	391	10-11-2018
Replaced	560	10-5-2018	As Amended	940	
895 KAR 1:001E	279	6-29-2018	12 KAR 2:031		
895 KAR 1:010E	282	6-29-2018	Amended	392	10-11-2018
Withdrawn		7-2-2018	As Amended	940	
895 KAR 1:015E	285	6-29-2018	12 KAR 2:036		
Withdrawn		7-2-2018	Amended	394	10-11-2018
895 KAR 1:020E	288	6-29-2018	As Amended	941	
Withdrawn		7-2-2018	12 KAR 2:041		
895 KAR 1:025E	290	6-29-2018	Amended	395	10-11-2018
Withdrawn		7-2-2018	12 KAR 2:046		
895 KAR 1:030E	292	6-29-2018	Amended	396	10-11-2018
Withdrawn		7-2-2018	12 KAR 2:051		
895 KAR 1:035E	295	6-29-2018	Amended	398	10-11-2018
Withdrawn		7-2-2018	12 KAR 2:056		
895 KAR 1:040E	297	6-29-2018	Amended	399	10-11-2018
Withdrawn		7-2-2018	As Amended	941	
895 KAR 1:045E	299	6-29-2018	12 KAR 2:061		
Withdrawn		7-2-2018	Amended	400	10-11-2018
895 KAR 1:050E	301	6-29-2018	12 KAR 2:066		
Withdrawn		7-2-2018	Amended	401	10-11-2018
895 KAR 1:055E	303	6-29-2018	As Amended	942	
Withdrawn		7-2-2018	12 KAR 3:007		
900 KAR 11:010E	917	9-13-2018	Amended	108	
900 KAR 5:020E	305	7-13-2018	As Amended	628	9-28-2018
900 KAR 6:075E	1176	9-25-2018	12 KAR 3:012		
902 KAR 20:008E	307	7-13-2018	Amended	109	
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 3:017		
906 KAR 1:071E(r)	315	7-13-2018	Amended	112	
907 KAR 1:025E	922	9-13-2018	As Amended	630	9-28-2018
907 KAR 1:642E	316	7-2-2018	12 KAR 3:022		
Withdrawn	619	7-27-2018	Amended	114	
922 KAR 1:100E	928	9-13-2018	As Amended	631	9-28-2018
922 KAR 1:360E		8-1-2018	12 KAR 3:027		
922 KAR 1:560E	318	7-13-2018	Amended	116	
<hr/>			As Amended	633	9-28-2018
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9 KAR 1:015			As Amended	634	9-28-2018
Amended	376		12 KAR 3:032		
As Amended	933	10-24-2018	Amended	118	
9 KAR 1:030			As Amended	635	9-28-2018
Amended	377		12 KAR 3:037		
As Amended	933	10-24-2018	Amended	119	
11 KAR 5:145			As Amended	635	9-28-2018
Amended	105		12 KAR 3:039	210	
As Amended	626	10-5-2018	As Amended	636	9-28-2018
11 KAR 15:010			12 KAR 3:042		
Amended	106		Amended	120	
			As Amended	637	9-28-2018
			13 KAR 2:020		

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Amended	403		103 KAR 16:290		
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16 KAR 2:010		See 44 Ky.R. 8-31-2018	103 KAR 16:330		
As Amended	321		Amended	1314	
16 KAR 5:030		See 44 Ky.R. 8-31-2018	103 KAR 16:340		
As Amended	326		Amended	1316	
31 KAR 3:010			103 KAR 16:352		
Amended	122		Amended	732	
As Amended	638		103 KAR 16:381(r)	1152	
31 KAR 4:100			103 KAR 17:010		
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	103 KAR 16:352	141.0401	103 KAR 15:110
	103 KAR 16:381		103 KAR 15:120
141.042	103 KAR 15:050		103 KAR 15:140
	103 KAR 15:060		103 KAR 15:180
141.044	103 KAR 15:060	141.4242	103 KAR 15:110
141.050	103 KAR 15:180		103 KAR 15:120
	103 KAR 17:020	141.4246	103 KAR 15:110
141.070	103 KAR 17:140		103 KAR 15:120
141.081	103 KAR 19:010	141.4248	103 KAR 15:110
141.120	103 KAR 15:195		103 KAR 15:120
	103 KAR 16:060	141.900	103 KAR 16:381
	103 KAR 16:090	142.357	103 KAR 1:040
	103 KAR 16:290	142.363	907 KAR 1:025
	103 KAR 16:330	143.085	103 KAR 1:040
	103 KAR 16:340	146.200 - 146.360	400 KAR 1:001
	103 KAR 16:352		400 KAR 1:040
	103 KAR 16:381		400 KAR 1:090
141.121	103 KAR 16:090		400 KAR 1:100
	103 KAR 16:290	146.450	400 KAR 1:001
141.160	103 KAR 15:050		400 KAR 1:090
	103 KAR 16:352	146.530	400 KAR 1:001
141.170	103 KAR 15:050		400 KAR 1:090
	103 KAR 16:352	146.990	400 KAR 1:001
141.180	103 KAR 1:040		400 KAR 1:040
	103 KAR 17:020		400 KAR 1:090
141.190	103 KAR 19:010		400 KAR 1:100
141.200	103 KAR 16:352	147A.310	103 KAR 15:195
141.205	103 KAR 16:230	149.344	400 KAR 1:001
141.206	103 KAR 16:240		400 KAR 1:090
	103 KAR 16:352		400 KAR 1:100
	103 KAR 18:081	149.346	400 KAR 1:001
141.210	103 KAR 15:041		400 KAR 1:090
	103 KAR 16:352		400 KAR 1:100
141.215	103 KAR 17:042	149.348	400 KAR 1:001
141.235	103 KAR 15:041		400 KAR 1:090
141.300	103 KAR 15:050		400 KAR 1:100
	103 KAR 15:060	150.010	301 KAR 1:201
	103 KAR 17:100		301 KAR 1:410
141.305	103 KAR 15:060		301 KAR 2:132
	103 KAR 17:100		301 KAR 4:090
141.310	103 KAR 18:110	150.025	301 KAR 3:022
	103 KAR 18:120	150.090	301 KAR 1:015
141.315	103 KAR 18:081	150.170	301 KAR 1:201
141.330	103 KAR 18:050		301 KAR 1:410
	103 KAR 18:150		301 KAR 2:132
141.335	103 KAR 18:050		301 KAR 3:100
141.340	103 KAR 1:040	150.175	301 KAR 1:132
141.347	103 KAR 18:180		301 KAR 1:201
	103 KAR 18:191		301 KAR 1:410
141.370	103 KAR 18:110		301 KAR 3:100

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	301 KAR 1:132	154.25-040	103 KAR 18:180
	301 KAR 2:095	154.26-010	103 KAR 18:180
	301 KAR 2:132	154.26-100	103 KAR 18:180
	301 KAR 3:022	154.28-010	103 KAR 18:180
	301 KAR 4:090		103 KAR 18:191
150.183	301 KAR 3:022	154.28-110	103 KAR 18:180
	301 KAR 4:090		103 KAR 18:191
150.235	301 KAR 1:410	154.32-010	103 KAR 18:180
150.240	301 KAR 3:022	154.32-090	103 KAR 18:180
150.275	301 KAR 3:022	156.010	704 KAR 3:292
150.280	301 KAR 1:132		704 KAR 3:365
	301 KAR 2:095	156.035	704 KAR 3:292
	301 KAR 3:022		704 KAR 3:365
150.290	301 KAR 1:115	156.070	701 KAR 5:150
	301 KAR 2:095		702 KAR 7:065
	301 KAR 3:022		704 KAR 3:292
150.305	301 KAR 4:090		704 KAR 3:303
150.330	301 KAR 2:225		704 KAR 3:306
	301 KAR 4:090		704 KAR 8:010
150.340	301 KAR 1:201		704 KAR 8:020
	301 KAR 2:225		704 KAR 8:030
150.370	301 KAR 4:090		704 KAR 8:040
150.411	301 KAR 4:090		704 KAR 8:050
150.445	301 KAR 1:410	156.108	701 KAR 5:140
150.450	301 KAR 1:132	156.160	13 KAR 2:020
	301 KAR 3:022		701 KAR 5:140
150.485	301 KAR 1:115		704 KAR 3:303
	301 KAR 1:132		704 KAR 3:305
	301 KAR 3:022		704 KAR 3:306
150.520	301 KAR 3:022		704 KAR 8:010
150.525	301 KAR 3:022		704 KAR 8:020
150.600	301 KAR 3:022		704 KAR 8:030
150.603	301 KAR 2:225		704 KAR 8:040
	301 KAR 3:022		704 KAR 8:050
150.620	301 KAR 1:201	156.162	704 KAR 3:306
	301 KAR 1:410	156.850	704 KAR 8:010
150.625	301 KAR 1:015	157.3175	704 KAR 3:015
150.660	301 KAR 3:022	158.142	704 KAR 3:305
150.720	301 KAR 3:022	158.197	704 KAR 3:306
150.990	301 KAR 1:015	158.645	704 KAR 3:305
	301 KAR 1:201		704 KAR 8:010
	301 KAR 1:410	158.6451	13 KAR 2:020
	301 KAR 2:132		704 KAR 3:303
	301 KAR 4:090		704 KAR 3:305
151.125	400 KAR 1:001		704 KAR 3:306
	400 KAR 1:090		704 KAR 8:010
151.182	400 KAR 1:001		704 KAR 8:020
	400 KAR 1:040		704 KAR 8:030
	400 KAR 1:090		704 KAR 8:040
	400 KAR 1:100		704 KAR 8:050
151.184	400 KAR 1:001	158.6453	13 KAR 2:020
	400 KAR 1:040		704 KAR 3:303
	400 KAR 1:090		704 KAR 8:020
	400 KAR 1:100		704 KAR 8:030
151.297	400 KAR 1:001		704 KAR 8:040
	400 KAR 1:040		704 KAR 8:050
	400 KAR 1:090	160.107	701 KAR 5:140
	400 KAR 1:100	160.290	704 KAR 3:303
151.990	400 KAR 1:001		704 KAR 3:306
	400 KAR 1:040		704 KAR 8:010
	400 KAR 1:090		704 KAR 8:020
	400 KAR 1:100		704 KAR 8:030
154.22-010	103 KAR 18:180		704 KAR 8:040
	103 KAR 18:191		704 KAR 8:050
154.22-070	103 KAR 18:180	160.380	702 KAR 7:065
	103 KAR 18:191	160.445	702 KAR 7:065
154.23-010	103 KAR 18:180	164.001	13 KAR 2:020
	103 KAR 18:191	164.020	13 KAR 2:020
154.23-055	103 KAR 18:180	164.030	13 KAR 2:020
	103 KAR 18:191	164.744	11 KAR 5:145
154.24-010	103 KAR 18:180	164.753	11 KAR 5:145
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	815 KAR 35:060		815 KAR 2:010
	200 KAR 30:011		815 KAR 2:020
	830 KAR 2:001		815 KAR 4:030
164.6907	830 KAR 2:010	198B.4027	815 KAR 4:030
164.6909	830 KAR 2:010	198B.4033	815 KAR 4:030
164.6911	830 KAR 2:010	198B.4037	815 KAR 2:040
164.6913 - 164.6933	830 KAR 2:020	198B.615	815 KAR 2:040
164.6915	830 KAR 2:010	198B.6405	815 KAR 2:010
164.7535	11 KAR 5:145	198B.6409	815 KAR 2:010
164.7871 - 164.7885	11 KAR 15:010		815 KAR 2:020
	11 KAR 15:110		815 KAR 22:011
164.7889	11 KAR 5:145		815 KAR 25:081
165A	815 KAR 6:040	198B.645	815 KAR 2:010
186.010	601 KAR 2:030	198B.650	815 KAR 8:010
186.440	601 KAR 2:030	198B.654	815 KAR 2:010
186.442	601 KAR 2:030		815 KAR 2:020
186.480	601 KAR 2:030		815 KAR 8:010
186.531	601 KAR 2:030		815 KAR 8:091
186.560	601 KAR 2:030	198B.656	815 KAR 8:010
186.570	601 KAR 2:030		815 KAR 8:030
186.655	603 KAR 5:070	198B.658	815 KAR 2:010
189.222	603 KAR 5:070		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
	922 KAR 1:100		815 KAR 6:010
194A.060	922 KAR 1:560		815 KAR 6:030
	501 KAR 6:020		815 KAR 6:040
196	501 KAR 6:020		815 KAR 6:101
197	815 KAR 7:070	198B.712	815 KAR 6:010
198B.010	815 KAR 7:070		815 KAR 6:030
198B.040	815 KAR 7:070		815 KAR 6:040
198B.050	815 KAR 35:020	198B.714	815 KAR 6:010
198B.060	815 KAR 7:070	198B.716	815 KAR 6:010
	815 KAR 35:015	198B.722	815 KAR 6:010
	815 KAR 2:010		815 KAR 6:030
198B.090	815 KAR 2:020		815 KAR 6:040
	815 KAR 7:070	198B.724	815 KAR 6:010
	815 KAR 35:015		815 KAR 6:040
198B.095	815 KAR 2:010	198B.728	815 KAR 6:030
	815 KAR 2:020	198B.730	815 KAR 6:030
	815 KAR 7:070	198B.738	815 KAR 6:010
198B.260	902 KAR 20:260	199.011	922 KAR 1:010
198B.4003	815 KAR 4:030		922 KAR 1:100
198B.4009	815 KAR 2:010		922 KAR 1:360
	815 KAR 2:020		922 KAR 1:530
	815 KAR 4:030		922 KAR 1:560
	815 KAR 4:071	199.430	922 KAR 1:100
198B.4011	815 KAR 2:010	199.470	922 KAR 1:010
	815 KAR 4:030	199.473	922 KAR 1:010
198B.4013	815 KAR 2:010	199.480	922 KAR 1:010
	815 KAR 4:030		922 KAR 1:560
198B.4023	815 KAR 2:010	199.490	922 KAR 1:010
	815 KAR 2:020	199.492	922 KAR 1:010

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199.500	922 KAR 1:010		902 KAR 100:018
	922 KAR 1:060		902 KAR 100:022
199.502	922 KAR 1:060		902 KAR 100:052
199.505	922 KAR 1:560		902 KAR 100:070
199.510	922 KAR 1:010		902 KAR 100:072
199.520	922 KAR 1:010		902 KAR 100:100
	922 KAR 1:100		902 KAR 100:142
199.525	922 KAR 1:100	211.990	902 KAR 100:018
199.540	922 KAR 1:010		902 KAR 100:022
199.555	101 KAR 3:045		902 KAR 100:052
	922 KAR 1:050		902 KAR 100:070
	922 KAR 1:060		902 KAR 100:072
199.557	922 KAR 1:060		902 KAR 100:100
199.570	922 KAR 1:010		902 KAR 100:142
	922 KAR 1:100	212.025	902 KAR 8:170
199.572	922 KAR 1:010	212.120	902 KAR 8:170
	922 KAR 1:100	212.230	902 KAR 8:165
199.575	922 KAR 1:100	212.240	902 KAR 8:165
199.590	922 KAR 1:010	212.245	902 KAR 8:165
199.640 - 199.680	922 KAR 1:360		902 KAR 8:170
199.801	922 KAR 1:360	212.890	902 KAR 8:165
199.8943	704 KAR 3:015		902 KAR 8:170
199.990	922 KAR 1:010	213.046	921 KAR 1:380
	922 KAR 1:560	216.510 - 216.525	900 KAR 2:040
200.575	922 KAR 1:411		902 KAR 20:300
202B.010	922 KAR 1:100	216.530	902 KAR 20:008
205.175	907 KAR 1:075	216.532	902 KAR 20:300
205.231	907 KAR 1:075	216.535	902 KAR 20:300
205.237	907 KAR 1:075	216.537 - 216.590	900 KAR 2:021
205.455	910 KAR 1:090	216.540	902 KAR 20:300
205.520	895 KAR 1:001	216.543	902 KAR 20:300
	895 KAR 1:010	216.545	902 KAR 20:300
	895 KAR 1:015	216.547	902 KAR 20:300
	895 KAR 1:020	216.555 - 216.567	900 KAR 2:040
	895 KAR 1:025	216.577	900 KAR 2:040
	895 KAR 1:030	216.785 - 216.793	902 KAR 20:300
	895 KAR 1:035	216.860	906 KAR 1:071
	895 KAR 1:040	216.865	906 KAR 1:071
	895 KAR 1:045	216.900 - 216.915	906 KAR 1:071
	895 KAR 1:050	216.930	902 KAR 20:008
	895 KAR 1:055	216.2925	900 KAR 2:040
	907 KAR 1:005	216A.010	900 KAR 6:075
	907 KAR 1:121	216B.010	902 KAR 20:008
	907 KAR 8:040		900 KAR 5:020
205.560	907 KAR 1:121	216B.010 - 216B.130	902 KAR 20:260
205.622	895 KAR 1:035	216B.010 - 216B.131	902 KAR 20:275
	907 KAR 8:040	216B.010 - 216B.170	900 KAR 6:075
205.639	922 KAR 1:050	216B.015	902 KAR 20:008
205.705	921 KAR 1:380		902 KAR 20:008
205.712	601 KAR 2:030	216B.020	902 KAR 20:008
205.710 - 205.800	921 KAR 1:380		902 KAR 20:251
205.900 - 205.925	910 KAR 1:090	216B.040	900 KAR 6:020
205.992	921 KAR 1:380		902 KAR 20:008
205.2005	921 KAR 3:025	216B.042	902 KAR 20:008
205.6328	900 KAR 1:091	216B.045 - 216B.055	902 KAR 20:008
205.8451	895 KAR 1:001	216B.075	902 KAR 20:008
209.030	902 KAR 20:300	216B.090	900 KAR 6:075
209.032	902 KAR 20:300	216B.105 - 216B.131	902 KAR 20:008
210.270	907 KAR 1:075	216B.176	902 KAR 20:401
210.366	201 KAR 26:175	216B.177	902 KAR 20:401
211.025	902 KAR 10:051	216B.185	902 KAR 20:008
211.090	902 KAR 10:051	216B.450	922 KAR 1:050
	902 KAR 47:071	216B.455	900 KAR 6:075
211.180	902 KAR 8:165	216B.990	900 KAR 6:075
	902 KAR 8:170		902 KAR 20:008
	902 KAR 10:051		902 KAR 20:260
	902 KAR 47:071		902 KAR 20:275
	902 KAR 100:022	216C.010	900 KAR 11:010
	902 KAR 100:070	216C.030	900 KAR 11:010
	902 KAR 100:100	216C.040	900 KAR 11:010
	902 KAR 100:142	216C.050	900 KAR 11:010
211.350	815 KAR 35:015	216C.060	900 KAR 11:010
	815 KAR 35:020	216C.070	900 KAR 11:010

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216C.090	900 KAR 11:010		401 KAR 42:341
216C.100	900 KAR 11:010	224.40-310	401 KAR 39:060
216C.110	900 KAR 11:010	224.43	401 KAR 42:060
216C.120	900 KAR 11:010		401 KAR 42:341
216C.160	900 KAR 11:010	224.46	401 KAR 39:060
216C.170	900 KAR 11:010		401 KAR 39:080
216C.180	900 KAR 11:010		401 KAR 39:090
216C.200	900 KAR 11:010		401 KAR 40:051
216C.210	900 KAR 11:010		401 KAR 42:060
216C.220	900 KAR 11:010		401 KAR 42:341
216C.230	900 KAR 11:010	224.50-130	401 KAR 39:090
217.005	902 KAR 45:007	224.60	401 KAR 42:005
217.005 - 217.205	902 KAR 45:005		401 KAR 42:020
	902 KAR 45:160		401 KAR 42:060
217.005 - 217.215	902 KAR 45:090		401 KAR 42:341
217.127	902 KAR 45:007	224.60-105	401 KAR 42:330
217.280 - 217.390	902 KAR 45:005	224.60-110	401 KAR 42:250
217.290 - 217.390	902 KAR 45:160	224.60-120	401 KAR 42:250
217.801	902 KAR 47:071	224.60-130	401 KAR 42:250
217.290	902 KAR 45:090		401 KAR 42:330
217.990 - 217.992	902 KAR 45:005	224.60-135	401 KAR 42:250
	902 KAR 45:160	224.60-140	401 KAR 42:250
217.992	902 KAR 45:090		401 KAR 42:330
217B	302 KAR 29:020	224.60-150	401 KAR 42:250
218A.160	902 KAR 55:011		401 KAR 42:330
218A.172	201 KAR 9:260	224.70-100	401 KAR 5:002
	201 KAR 20:057	224.70-120	401 KAR 5:002
218A.175	902 KAR 20:260	224.99	401 KAR 39:060
218A.205	201 KAR 9:260		401 KAR 39:080
	201 KAR 20:057		401 KAR 39:090
	902 KAR 20:260		401 KAR 40:051
219.310 - 219.410	815 KAR 25:040	224.99-010	401 KAR 5:002
223	400 KAR 1:001		401 KAR 40:051
	400 KAR 1:040	224.99-020	401 KAR 40:051
	400 KAR 1:090	224.99-030	401 KAR 40:051
	400 KAR 1:100	227.450	815 KAR 35:015
224	400 KAR 1:001	227.460	815 KAR 35:020
	400 KAR 1:040	227.480	815 KAR 35:015
	400 KAR 1:090		815 KAR 35:020
	400 KAR 1:100	227.487	815 KAR 35:020
224.1	401 KAR 42:005	227.489	815 KAR 35:015
	401 KAR 42:020	227.491	815 KAR 35:015
	401 KAR 42:060		815 KAR 35:020
	401 KAR 42:341	227.492	815 KAR 35:015
224.1-010	401 KAR 5:002	227.495	815 KAR 35:015
224.1-070	401 KAR 5:002	227.550	815 KAR 25:050
224.1-400	401 KAR 5:002		815 KAR 25:060
	401 KAR 39:060		815 KAR 25:090
	401 KAR 42:060	227.550 - 227.660	815 KAR 25:100
	401 KAR 42:250	227.550 - 227.665	815 KAR 25:020
224.1-405	401 KAR 42:250		815 KAR 25:001
224.10	401 KAR 39:060	227.555	815 KAR 25:050
	401 KAR 39:080	227.560	815 KAR 25:060
	401 KAR 39:090	227.570	815 KAR 2:010
	401 KAR 40:051		815 KAR 2:020
	401 KAR 42:005		815 KAR 25:050
	401 KAR 42:020		815 KAR 25:060
	401 KAR 42:060		815 KAR 25:090
	401 KAR 42:341	227.580	815 KAR 25:050
224.10-100	401 KAR 52:050		815 KAR 25:060
	401 KAR 52:070	227.590	815 KAR 2:010
224.10-410	400 KAR 1:110		815 KAR 2:020
	401 KAR 42:250		815 KAR 25:040
224.10-420	401 KAR 42:250		815 KAR 25:050
224.10-430	401 KAR 42:250		815 KAR 25:060
224.10-440	401 KAR 42:250		815 KAR 25:090
224.10-470	401 KAR 42:250	227.600	815 KAR 25:050
224.20-100	401 KAR 52:050		815 KAR 25:060
	401 KAR 52:070	227.610	815 KAR 25:060
224.20-110	401 KAR 52:050	227.620	815 KAR 25:060
	401 KAR 52:070	227.630	815 KAR 25:060
224.20-120	401 KAR 52:050	227.640	815 KAR 25:100
	401 KAR 52:070	227.660	815 KAR 25:090

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227.990	815 KAR 25:050	250.551	12 KAR 2:031
	815 KAR 25:060		12 KAR 2:046
	815 KAR 25:090		12 KAR 2:051
227.992	815 KAR 25:050	250.561	12 KAR 2:061
227A.010	815 KAR 35:060	250.581	12 KAR 2:051
227A.020	815 KAR 2:030	257	302 KAR 20:211
227A.040	815 KAR 2:010		302 KAR 20:231
	815 KAR 2:020		302 KAR 20:541
	815 KAR 35:080		302 KAR 20:581
	815 KAR 35:090	257.020	302 KAR 20:561
	815 KAR 35:101		302 KAR 20:571
227A.060	815 KAR 35:060	257.030	302 KAR 20:561
	815 KAR 35:080		302 KAR 20:571
	815 KAR 35:090	257.040	302 KAR 20:571
227A.100	815 KAR 2:010	257.050	302 KAR 20:221
	815 KAR 2:020		302 KAR 20:571
	815 KAR 35:060	257.080	302 KAR 20:221
227A.110	815 KAR 35:080	257.110	302 KAR 20:561
235.010	301 KAR 1:015	257.120	302 KAR 20:561
235.990	301 KAR 1:015	257.110 - 257.170	302 KAR 20:221
236.097	815 KAR 15:080	257.140	302 KAR 20:561
236.210	815 KAR 15:080	257.480	302 KAR 20:221
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243.390	804 KAR 4:011	262.904	302 KAR 100:011
243.630	804 KAR 4:011		302 KAR 100:021
244.090	804 KAR 5:021	262.908	302 KAR 100:011
244.240	804 KAR 5:021		302 KAR 100:021
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311.990	201 KAR 9:260	319A.160	201 KAR 28:060
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312.019	201 KAR 21:015		201 KAR 28:170
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327.075	201 KAR 22:020	351.315	400 KAR 1:001
327.080	201 KAR 22:020		400 KAR 1:040
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335.070	201 KAR 23:150		400 KAR 1:040
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339.230	815 KAR 35:060		400 KAR 1:040
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342.0011	803 KAR 25:089		400 KAR 1:110
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342.019	803 KAR 25:089	353.060	400 KAR 1:001
342.020	803 KAR 25:089		400 KAR 1:040
342.035	803 KAR 25:089		400 KAR 1:090
342.122	803 KAR 30:010	353.200	400 KAR 1:001
	803 KAR 30:021		400 KAR 1:040
342.1221	803 KAR 30:010		400 KAR 1:090
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342.1223	803 KAR 30:010	353.590	400 KAR 1:001
342.1231	803 KAR 30:010		400 KAR 1:040
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342.340	803 KAR 30:010	353.620	400 KAR 1:001
342.650	803 KAR 30:010		400 KAR 1:040
350.010	400 KAR 1:110		400 KAR 1:090
350.028	400 KAR 1:001	353.630	400 KAR 1:001
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350.029	400 KAR 1:090	353.640	400 KAR 1:001
350.032	400 KAR 1:001		400 KAR 1:040
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350.060	400 KAR 1:090		805 KAR 1:210
350.070	400 KAR 1:001	353.700	400 KAR 1:001
	400 KAR 1:040		400 KAR 1:040
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350.090	400 KAR 1:001	367.686	40 KAR 2:345
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350.093	400 KAR 1:001	367.690	40 KAR 2:345
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350.130	400 KAR 1:001	405.430	921 KAR 1:380
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350.255	400 KAR 1:001	407.5101 - 407.5903	921 KAR 1:380
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350.300	400 KAR 1:090	439	501 KAR 6:020
350.305	400 KAR 1:090	600.020	922 KAR 1:050
350.465	400 KAR 1:001		922 KAR 1:100
	400 KAR 1:040		922 KAR 1:360
	400 KAR 1:090		922 KAR 1:530
	400 KAR 1:110	605.090	922 KAR 1:100
350.610	400 KAR 1:001		922 KAR 1:360
	400 KAR 1:090	605.100	922 KAR 1:530
350.990	400 KAR 1:001	605.130	922 KAR 1:530
	400 KAR 1:040	610.110	922 KAR 1:360
	400 KAR 1:090	610.170	921 KAR 1:380
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625	922 KAR 1:010	74 C.F.R.	806 KAR 17:570
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	922 KAR 1:060		302 KAR 50:080
	922 KAR 1:100		921 KAR 3:025
625.045	922 KAR 1:100		921 KAR 3:030
625.065	922 KAR 1:560		921 KAR 3:035
625.108	922 KAR 1:100	15 U.S.C.	12 KAR 3:012
2 C.F.R.	902 KAR 8:165		12 KAR 3:028
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7 C.F.R.	921 KAR 3:025		401 KAR 5:002
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	921 KAR 3:035	20 U.S.C.	11 KAR 15:010
10 C.F.R.	401 KAR 42:020		702 KAR 7:065
	902 KAR 100:022		704 KAR 3:292
	902 KAR 100:052		704 KAR 3:365
	902 KAR 100:070	21 U.S.C.	12 KAR 2:041
	902 KAR 100:072		12 KAR 3:037
	902 KAR 100:100		902 KAR 20:260
	902 KAR 100:142		902 KAR 45:160
20 C.F.R.	895 KAR 1:001	23 U.S.C.	603 KAR 5:070
21 C.F.R.	12 KAR 2:031	25 U.S.C.	922 KAR 1:100
	12 KAR 2:041	26 U.S.C.	101 KAR 2:095
	12 KAR 2:051		103 KAR 15:180
	12 KAR 3:037		105 KAR 1:145
	902 KAR 45:160		105 KAR 1:147
23 C.F.R.	603 KAR 5:070		301 KAR 3:100
24 C.F.R.	815 KAR 25:090	29 U.S.C.	806 KAR 17:091
29 C.F.R.	806 KAR 17:091		806 KAR 17:570
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30 C.F.R.	400 KAR 1:001		400 KAR 1:090
	400 KAR 1:040		400 KAR 1:110
	400 KAR 1:090		803 KAR 30:010
	400 KAR 1:110	31 U.S.C.	45 KAR 1:050
39 C.F.R.	400 KAR 1:090	33 U.S.C.	401 KAR 5:002
40 C.F.R.	401 KAR 5:002		803 KAR 30:010
	401 KAR 39:060	42 U.S.C.	401 KAR 5:002
	401 KAR 39:080		401 KAR 39:060
	401 KAR 39:090		401 KAR 42:005
	401 KAR 42:005		401 KAR 42:020
	401 KAR 42:020		401 KAR 42:060
	401 KAR 42:060		401 KAR 42:341
	401 KAR 42:250		401 KAR 52:050
	401 KAR 42:330		806 KAR 17:091
	401 KAR 42:341		806 KAR 17:570
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	401 KAR 52:070		895 KAR 1:001
	902 KAR 100:022		895 KAR 1:010
42 C.F.R.	806 KAR 17:570		895 KAR 1:015
	895 KAR 1:001		895 KAR 1:020
	895 KAR 1:010		895 KAR 1:025
	895 KAR 1:015		895 KAR 1:030
	895 KAR 1:030		895 KAR 1:035
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	895 KAR 1:055		895 KAR 1:045
	900 KAR 2:040		895 KAR 1:050
	902 KAR 20:300		895 KAR 1:055
	907 KAR 1:005		900 KAR 2:040
	907 KAR 1:025		902 KAR 20:260
	907 KAR 8:040		902 KAR 20:275
45 C.F.R.	806 KAR 9:360		902 KAR 100:022
	806 KAR 17:570		902 KAR 100:052
	900 KAR 2:040		902 KAR 100:070
	902 KAR 20:260		902 KAR 100:072
	902 KAR 20:275		902 KAR 100:100
	902 KAR 100:072		902 KAR 100:142
	907 KAR 8:040		906 KAR 1:190
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CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

* KRS 13A.010(6) - "Effective" means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	First Effective Date	Previous Last Effective Date*	Letter Filed Date	Action
011 KAR 003:001	03-04-1993	01-10-1994	09-28-2018	Remain in Effect without Amendment
011 KAR 003:005	12-09-1992	09-12-1994	09-28-2018	Remain in Effect without Amendment
011 KAR 003:045	03-04-1993	03-04-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 003:055	03-04-1993	03-04-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 003:100	08-20-1992	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 003:001	03-04-1993	01-10-1994	09-28-2018	Remain in Effect without Amendment
011 KAR 003:005	12-09-1992	09-12-1994	09-28-2018	Remain in Effect without Amendment
011 KAR 003:045	03-04-1993	03-04-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 003:055	03-04-1993	03-04-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 003:100	08-20-1992	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 004:020	02-04-1976	09-13-2004	09-28-2018	Remain in Effect without Amendment
011 KAR 004:030	11-01-1978	04-14-1997	09-28-2018	Remain in Effect without Amendment
011 KAR 004:040	10-09-1984	11-08-2004	09-28-2018	Remain in Effect without Amendment
011 KAR 004:050	05-14-1985	10-01-1998	09-28-2018	Remain in Effect without Amendment
011 KAR 004:060	10-01-1992	10-01-1992	09-28-2018	Remain in Effect without Amendment
011 KAR 005:001	08-01-1992	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 005:033	08-01-1992	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 005:110	11-04-1988	08-01-1992	09-28-2018	Remain in Effect without Amendment
011 KAR 005:130	03-23-1989	10-06-2006	09-28-2018	Remain in Effect without Amendment
011 KAR 005:140	02-03-1989	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 005:145	08-01-1992	07-01-2016	09-28-2018	Remain in Effect without Amendment
011 KAR 005:150	02-03-1989	09-09-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 005:160	02-03-1989	03-11-2005	09-28-2018	Remain in Effect without Amendment
011 KAR 005:170	02-03-1989	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 005:180	02-03-1989	06-03-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 005:200	04-06-2007	07-13-2009	09-28-2018	Remain in Effect without Amendment
011 KAR 007:010	03-04-1986	02-07-1991	09-28-2018	Remain in Effect without Amendment
011 KAR 007:020	08-12-1986	02-07-1991	09-28-2018	Remain in Effect without Amendment
011 KAR 008:010	08-12-1986	08-09-1990	09-28-2018	Remain in Effect without Amendment
011 KAR 008:020	08-12-1986	08-09-1990	09-28-2018	Remain in Effect without Amendment
011 KAR 008:030	08-09-1990	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 008:040	08-09-1990	01-05-2009	09-28-2018	Remain in Effect without Amendment
011 KAR 010:010	04-14-1987	10-07-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 010:020	04-14-1987	10-07-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 012:010	08-02-1991	12-18-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 012:020	08-02-1991	10-11-1999	09-28-2018	Remain in Effect without Amendment
011 KAR 012:030	08-02-1991	12-18-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 012:040	08-02-1991	02-11-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 012:050	08-02-1991	02-11-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 012:060	08-02-1991	07-12-2010	09-28-2018	Remain in Effect without Amendment
011 KAR 012:070	08-02-1991	08-14-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 012:090	08-02-1991	10-01-1992	09-28-2018	Remain in Effect without Amendment
011 KAR 013:010	03-06-1997	03-06-1997	09-28-2018	Remain in Effect without Amendment
011 KAR 014:010	10-01-1998	11-05-2001	09-28-2018	Remain in Effect without Amendment
011 KAR 014:020	10-01-1998	10-01-1998	09-28-2018	Remain in Effect without Amendment
011 KAR 014:030	10-01-1998	03-10-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 014:040	10-01-1998	08-15-2001	09-28-2018	Remain in Effect without Amendment
011 KAR 014:050	10-01-1998	10-01-1998	09-28-2018	Remain in Effect without Amendment
011 KAR 014:060	10-01-1998	01-05-2009	09-28-2018	Remain in Effect without Amendment
011 KAR 014:070	10-01-1998	11-05-2001	09-28-2018	Remain in Effect without Amendment
011 KAR 014:080	10-01-1998	01-05-2009	09-28-2018	Remain in Effect without Amendment
011 KAR 015:010	10-01-1998	07-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 015:020	10-01-1998	01-28-2014	09-28-2018	Remain in Effect without Amendment
011 KAR 015:030	10-01-1998	12-21-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 015:040	10-01-1998	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 015:050	10-01-1998	12-21-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 015:060	10-01-1998	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 015:070	10-01-1998	12-21-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 015:080	09-09-2002	09-09-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 015:090	03-01-1999	03-09-2018	09-28-2018	Remain in Effect without Amendment

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011 KAR 015:100	10-12-2015	10-12-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 016:001	02-05-2001	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 016:010	02-05-2001	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 016:020	02-05-2001	02-05-2001	09-28-2018	Remain in Effect without Amendment
011 KAR 016:030	02-05-2001	02-05-2001	09-28-2018	Remain in Effect without Amendment
011 KAR 016:040	02-05-2001	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 016:050	02-05-2001	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 016:060	02-05-2001	10-12-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 016:070	07-06-2007	07-06-2007	09-28-2018	Remain in Effect without Amendment
011 KAR 017:010	12-01-2003	11-05-2004	09-28-2018	Remain in Effect without Amendment
011 KAR 017:040	12-01-2003	01-04-2005	09-28-2018	Remain in Effect without Amendment
011 KAR 017:050	12-01-2003	12-01-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 017:060	12-01-2003	12-01-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 017:070	12-01-2003	12-01-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 017:080	12-01-2003	12-01-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 017:090	12-01-2003	12-01-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 017:100	12-01-2003	11-05-2004	09-28-2018	Remain in Effect without Amendment
011 KAR 017:110	12-01-2003	12-01-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 019:010	04-01-2011	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 019:020	04-01-2011	04-01-2011	09-28-2018	Remain in Effect without Amendment
011 KAR 019:030	04-01-2011	04-01-2011	09-28-2018	Remain in Effect without Amendment
011 KAR 020:001	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:010	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:020	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:030	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:040	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:050	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:060	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:070	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
201 KAR 009:021	10-09-1984	02-14-2008	03-29-2018	To be Amended. Amendment filed 4-12-18
201 KAR 009:031	10-09-1984	05-05-2006	03-29-2018	To be Amended. Amendment filed 4-12-18
201 KAR 009:041	10-09-1984	11-15-2006	09-28-2018	Remain in Effect without Amendment
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 009:084	11-11-1986	02-02-2007	09-28-2018	Remain in Effect without Amendment
201 KAR 009:400	02-02-2007	02-02-2007	09-28-2018	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 006:001	10-08-2008	10-08-2008	09-05-2018	Remain in Effect without Amendment
401 KAR 006:200	08-07-1984	08-07-1984	09-05-2018	Remain in Effect without Amendment
401 KAR 006:310	08-13-1985	10-08-2008	09-05-2018	Remain in Effect without Amendment
401 KAR 006:302	11-15-1990	10-08-2008	09-05-2018	Remain in Effect without Amendment
401 KAR 006:350	10-08-2008	10-08-2008	09-05-2018	Remain in Effect without Amendment
401 KAR 008:010	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:020	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:022	03-18-2002	09-25-2009	10-03-2018	Remain in Effect without Amendment
401 KAR 008:030	11-15-1990	02-05-2010	10-03-2018	Remain in Effect without Amendment

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401 KAR 008:040	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:050	11-15-1990	07-06-2009	10-03-2018	Remain in Effect without Amendment
401 KAR 008:075	04-09-2001	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:100	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:150	11-15-1990	08-05-2010	10-03-2018	Remain in Effect without Amendment
401 KAR 008:200	11-15-1990	12-05-2014	10-03-2018	Remain in Effect without Amendment
401 KAR 008:250	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:300	11-15-1990	12-05-2014	10-03-2018	Remain in Effect without Amendment
401 KAR 008:700	11-15-1990	12-05-2014	10-03-2018	Remain in Effect without Amendment
401 KAR 009:010	08-21-2008	08-21-2008	09-05-2018	Remain in Effect without Amendment
401 KAR 009:020	10-08-2008	10-08-2008	09-05-2018	Remain in Effect without Amendment
401 KAR 030:005	03-12-1997	06-13-2007	09-05-2018	Remain in Effect without Amendment
401 KAR 030:020	06-04-1980	06-13-2007	09-05-2018	Remain in Effect without Amendment
401 KAR 030:031	06-24-1992	03-12-1997	09-05-2018	Remain in Effect without Amendment
401 KAR 030:040	06-04-1980	06-13-2007	09-05-2018	Remain in Effect without Amendment
401 KAR 039:005	03-12-1997	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 039:060	12-02-1983	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 039:080	02-04-1986	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 039:090	03-10-1988	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 039:120	10-26-1988	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 040:001	03-12-1997	03-12-1997	10-09-2018	Remain in Effect without Amendment
401 KAR 040:010	06-04-1980	12-02-1983	10-09-2018	Remain in Effect without Amendment
401 KAR 040:020	06-04-1980	12-02-1983	10-09-2018	Remain in Effect without Amendment
401 KAR 040:040	06-04-1980	12-02-1983	10-09-2018	Remain in Effect without Amendment
401 KAR 040:060	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 042:005	11-14-1995	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:011	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:020	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:030	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:040	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:045	12-19-1990	02-05-2016	10-09-2018	Remain in Effect without Amendment
401 KAR 042:050	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:060	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:070	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:080	11-14-1995	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:090	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:095	10-06-2011	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:200	09-25-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:250	09-13-2006	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:290	03-12-1993	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:300	03-12-1993	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:316	05-19-1999	10-06-2011	10-06-2011	Remain in Effect without Amendment
401 KAR 042:320	03-12-1993	10-06-2011	10-06-2011	Remain in Effect without Amendment
401 KAR 042:330	07-09-1997	10-06-2011	10-06-2011	Remain in Effect without Amendment
401 KAR 042:335	06-09-1999	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:340	06-09-1999	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 045:010	06-24-1992	05-05-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 045:020	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:025	04-28-1993	04-28-1993	09-05-2018	Remain in Effect without Amendment
401 KAR 045:030	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:040	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:050	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:060	06-24-1992	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 045:070	06-24-1992	05-05-2006	09-05-2018	Remain in Effect without Amendment
401 KAR 045:080	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:090	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:100	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:110	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:130	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:135	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:140	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:160	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:210	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:250	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 046:101	05-05-2017	05-05-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 046:110	05-05-2017	05-05-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 046:120	05-05-2017	05-05-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 047:005	03-12-1997	03-12-1997	10-09-2018	Remain in Effect without Amendment
401 KAR 047:025	04-28-1993	04-28-1993	10-09-2018	Remain in Effect without Amendment

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401 KAR 047:030	05-08-1990	03-18-2004	10-09-2018	Remain in Effect without Amendment
401 KAR 047:070	02-01-1982	05-08-1990	05-08-1990	Remain in Effect without Amendment
401 KAR 047:080	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:090	05-08-1990	08-05-2010	10-09-2018	Remain in Effect without Amendment
401 KAR 047:095	03-19-2003	03-19-2003	10-09-2018	Remain in Effect without Amendment
401 KAR 047:100	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:110	09-08-1999	09-08-1999	10-09-2018	Remain in Effect without Amendment
401 KAR 047:120	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:130	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:136	03-13-1991	03-13-1991	10-09-2018	Remain in Effect without Amendment
401 KAR 047:140	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:150	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:160	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:170	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:180	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:190	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:205	10-06-2011	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 047:207	10-06-2011	10-06-2011	10-09-2018	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 049:005	03-12-1997	03-12-1997	09-05-2018	Remain in Effect without Amendment
401 KAR 049:011	09-23-1992	09-08-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 049:080	01-21-2005	09-08-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 049:100	03-12-1993	03-12-1993	09-05-2018	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
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 052:001	01-15-2001	01-03-2011	09-12-2018	Remain in Effect without Amendment
401 KAR 052:020	01-15-2001	01-15-2001	09-12-2018	Remain in Effect without Amendment
401 KAR 052:030	01-15-2001	01-15-2001	09-12-2018	Remain in Effect without Amendment
401 KAR 052:040	01-15-2001	01-15-2001	09-12-2018	Remain in Effect without Amendment
401 KAR 052:060	01-15-2001	01-15-2001	09-12-2018	Remain in Effect without Amendment
401 KAR 052:090	01-15-2001	01-15-2001	09-12-2018	Remain in Effect without Amendment
401 KAR 052:100	01-15-2001	01-15-2001	09-12-2018	To be amended, file deadline 03-12-20
401 KAR 053:005	06-06-1979	04-14-1988	09-12-2018	Remain in Effect without Amendment
401 KAR 053:010	06-06-1979	07-19-2016	09-12-2018	Remain in Effect without Amendment
401 KAR 055:005	06-06-1979	04-14-1988	09-12-2018	Remain in Effect without Amendment
401 KAR 055:010	06-06-1979	04-14-1988	09-12-2018	Remain in Effect without Amendment
401 KAR 055:015	06-06-1979	06-06-1979	09-12-2018	Remain in Effect without Amendment
401 KAR 055:020	06-06-1979	06-06-1979	09-12-2018	Remain in Effect without Amendment
401 KAR 057:002	07-14-1999	11-14-2007	09-12-2018	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 063:001	06-24-1992	11-08-2006	11-08-2006	Remain in Effect without Amendment

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401 KAR 063:005	06-06-1979	07-13-2005	09-12-2018	Remain in Effect without Amendment
401 KAR 063:010	06-29-1979	06-29-1979	09-12-2018	Remain in Effect without Amendment
401 KAR 063:015	06-06-1979	06-06-1979	09-12-2018	Remain in Effect without Amendment
401 KAR 063:020	06-06-1979	06-06-1979	09-12-2018	Remain in Effect without Amendment
401 KAR 063:021	11-11-1986	01-19-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 063:025	06-06-1979	06-24-1992	09-12-2018	Remain in Effect without Amendment
401 KAR 063:031	08-24-1982	02-08-1993	09-12-2018	Remain in Effect without Amendment
401 KAR 063:060	11-29-1993	03-03-2017	09-12-2018	Remain in Effect without Amendment
401 KAR 065:001	11-29-1993	11-08-2006	09-12-2018	Remain in Effect without Amendment
401 KAR 065:005	06-06-1979	06-06-1979	09-12-2018	Remain in Effect without Amendment
401 KAR 068:010	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:020	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:048	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:065	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:090	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:100	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:150	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:200	10-13-1999	10-13-1999	09-12-2018	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
405 KAR 007:100	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 007:110	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 008:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 008:010	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 008:020	01-06-1983	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 008:030	01-06-1983	01-05-2015	07-03-2018	Remain in Effect without Amendment
405 KAR 008:040	01-06-1983	01-05-2015	07-03-2018	Remain in Effect without Amendment
405 KAR 008:050	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 010:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment

CERTIFICATION LETTER SUMMARIES

[illegible]

CERTIFICATION LETTER SUMMARIES

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
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
600 KAR 006:080	04-05-1996	01-25-2012	10-08-2018	Remain in Effect without Amendment
601 KAR 001:019	07-06-2012	07-06-2012	10-08-2018	Remain in Effect without Amendment
601 KAR 001:200	09-03-1996	08-06-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 001:201	03-02-1999	09-07-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 001:220	05-07-2010	05-07-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 002:020	09-01-1998	08-10-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 009:015	05-14-1975	11-05-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 009:090	01-04-1984	11-02-2012	10-08-2018	Remain in Effect without Amendment
601 KAR 009:160	05-23-1994	03-14-2012	10-08-2018	Remain in Effect without Amendment
601 KAR 009:205	01-03-2011	01-03-2011	10-08-2018	Remain in Effect without Amendment
601 KAR 009:210	12-19-2001	04-01-2011	10-08-2018	Remain in Effect without Amendment
601 KAR 011:035	10-04-2011	10-04-2011	10-08-2018	Remain in Effect without Amendment
601 KAR 012:060	10-01-1991	07-02-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 014:030	11-05-2010	11-05-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 023:010	02-05-2010	02-05-2010	10-08-2018	Remain in Effect without Amendment
603 KAR 004:035	11-03-1982	02-15-2012	10-08-2018	Remain in Effect without Amendment
603 KAR 007:080	01-25-2012	01-25-2012	10-08-2018	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

CERTIFICATION LETTER SUMMARIES

805 KAR 001:060	06-11-1975	12-07-2017	06-27-2018	Remain in Effect without Amendment
805 KAR 001:080	06-11-1975	06-11-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 001:100	08-13-1975	09-03-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:110	09-01-1984	04-04-2008	06-27-2018	Remain in Effect without Amendment
805 KAR 001:120	09-25-1991	09-25-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 001:130	09-25-1991	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:140	09-25-1991	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:160	07-09-1997	07-09-1997	06-27-2018	Remain in Effect without Amendment
805 KAR 001:170	07-09-1997	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:180	11-12-1997	11-12-1997	06-27-2018	Remain in Effect without Amendment
805 KAR 001:190	03-18-2004	11-17-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 001:200	10-23-2009	10-23-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 002:010	12-11-1974	12-11-1974	06-27-2018	Remain in Effect without Amendment
805 KAR 003:010	05-14-1975	09-22-1993	06-27-2018	Remain in Effect without Amendment
805 KAR 003:020	05-14-1975	07-09-1985	06-27-2018	Remain in Effect without Amendment
805 KAR 003:030	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:040	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:060	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:070	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:080	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:090	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:100	05-14-1975	02-05-2016	06-27-2018	Remain in Effect without Amendment
805 KAR 003:110	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:120	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 004:005	09-01-1976	06-07-1993	06-27-2018	Remain in Effect without Amendment
805 KAR 004:010	06-11-1975	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:020	07-02-1975	07-02-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 004:030	07-02-1975	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:040	06-11-1975	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:050	06-11-1975	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:060	06-11-1975	06-26-1991	06-27-2018	Remain in Effect without Amendment
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

CERTIFICATION LETTER SUMMARIES

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
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		
201 KAR 046:081	09-28-2018		
301 KAR 002:132	09-12-2018		
401 KAR 039:005	07-09-2018		
401 KAR 045:020	10-15-2018		
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